

Specific issues with the bills

- 4.1 This chapter focuses on specific issues or concerns raised during the committee's inquiry about the content of the bills in the Clean Energy Legislative Package and the Steel Transformation Plan Bill.
- 4.2 It focuses on the following areas:
- general views on the legislation;
 - specific issues concerning the drafting of the bills;
 - property rights and carbon units;
 - identification of liable entities;
 - links between the mechanism and international emissions reduction schemes;
 - the jobs and competitiveness program;
 - the mechanism and energy generation;
 - the powers of the Clean Energy Regulator;
 - the application of the mechanism to liquid petroleum gas;
 - the mechanism and small and medium-sized businesses;
 - the coverage of landfill facilities and impacts on local government;
 - the mechanism and the agricultural sector;
 - synthetic greenhouse gases;
 - the effectiveness of the household compensation arrangements; and
 - environmental integrity of the Steel Transformation Plan.

Each of these issues is discussed in detail below.

General views on the legislation

Background

- 4.3 The bills implementing the mechanism have had a long policy evolution.¹ While there are many changes, they are broadly based on the design of the Carbon Pollution Reduction Scheme, which was set out in the Carbon Pollution Reduction Scheme Bill 2009 and related bills and the Carbon Pollution Reduction Scheme Bill (No.2) 2009 and related bills, which were considered by the Parliament in 2009 and 2010.
- 4.4 The bills presently before the Parliament reflect the outcomes of the further policy process undertaken by the Multi-Party Climate Change Committee in 2010-11 and announced in *Securing a clean energy future: the Australian Government's climate change plan* on 10 July 2011.
- 4.5 The Government published 13 of the bills in draft on 28 July 2011. These bills covered the mechanism and the fuel tax reforms, which set out those issues which created new obligations for businesses and others. In response to issues raised in that consultation process, the Government made numerous changes to the legislation to improve the practical operation of the legislation. The main changes² made are:
- the **Opt-in Scheme** was included in response to calls from stakeholders that they would like to be part of the mechanism to manage their liability for liquid fuel emissions. This will enable large users of taxable fuels to voluntarily opt into the mechanism instead of paying the equivalent carbon price under the fuel tax or excise systems. Aviation industry businesses indicated they would prefer to be covered by the carbon price mechanism because of the opportunities it will give them to manage their liabilities for fuel emissions. These arrangements will apply from 1 July 2013 to allow for appropriate implementation two years before the start of the carbon price mechanism's flexible price period.
 - the **objects of the Clean Energy Bill 2011** have been clarified to:
 - ⇒ recognise that it is in Australia's national interest that average global temperatures increase by not more than 2 degrees Celsius above pre-industrial levels; and

1 See Chapter 1.

2 See Appendix D - Clean Energy Legislative Package – Outline of changes made since the exposure draft bills.

- ⇒ make it clear that a central objective of the bill is to put a price on carbon pollution in a way that encourages investment in clean energy, supports jobs and competitiveness in the economy, and supports Australia's economic growth while reducing pollution.
 - the **jobs and competitiveness program**'s provisions have been modified to reflect the Government's commitment to giving industry notice of changes to assistance and to more accurately reflect issues to be considered by the Productivity Commission and the Government.
 - the Government also introduced **technical changes** that have been made to clarify the legislation or facilitate implementation with respect to:
 - ⇒ carbon price liability in the natural gas supply chain;
 - ⇒ allocation of liability within joint ventures;
 - ⇒ disclosure of significant holdings of carbon units;
 - ⇒ legal title to carbon units;
 - ⇒ clean energy investment plans in the Energy Security Fund;
 - ⇒ application of anti-avoidance provisions;
 - ⇒ operation of an equivalent carbon price on synthetic greenhouse gases;
 - ⇒ the Regulator's powers to refuse or suspend registration under the Renewable Energy Target; and
 - ⇒ the functions and qualifications of the Land Sector Biodiversity and Carbon Board.
- 4.6 The Government has noted that these changes 'will enhance public confidence in the integrity of the mechanism, give industry clarity and certainty over their obligations and ensure regulatory costs are minimised.'

Analysis

- 4.7 In evidence received by the committee on the design of the package, a range of views were expressed. In the main, most submissions received from business groups and individual businesses sought specific amendments to the legislation. Some were generally supportive of the package, although a significant proportion expressed some reservations about the underlying policy.
- 4.8 Legal experts, in giving evidence to the committee, commented that the bills were a considerable improvement on the CPRS bills. Mr Doug Young,

representing the Law Council of Australia, said '[t]hese bills are a vast improvement on the 2009 Carbon Pollution Reduction Scheme documents.'³ These comments were echoed by Professor Lee Godden of the University of Melbourne and Mr Martijn Wilder of Baker & McKenzie.⁴

- 4.9 Other bodies commented that the legislation met the policy objectives announced by the Government and that it was sound. The Australian Network of Environmental Defenders' Offices (ANEDO) said that:

ANEDO represents community legal centres in every state and territory, specialising in public interest, environmental law and policy. We have looked at the legislation from that point of view and from our legal perspective we think the legislation is sound.⁵

- 4.10 General support for the legislation also came from businesses and financial sector bodies, although, in some cases, this came with suggestions for refinements to the legislation.⁶ Westpac Banking Corporation said in its submission to the committee that:

Westpac welcomes the release of draft legislation to introduce a price on carbon within a market framework by 1 July 2012 and is broadly supportive of the Clean Energy Future package announced.

Overall, Westpac supports the carbon pricing framework as detailed within the Clean Energy legislative package.⁷

- 4.11 The Investor Group on Climate Change, a body representing major institutional investors in Australia, noted in evidence to the committee that:

The key question for Australia seems to us to be: what is the best policy framework to deliver on Australia's national target and to consequently prepare for deeper emissions reductions in future? Our view is that the answer to this question should be judged on certain criteria, which, very broadly are: is the policy framework transparent and predictable; is it relatively low cost; and can it

3 Mr Douglas Young, Law Council of Australia, *Committee Hansard*, Canberra, 26 September 2011, p. 48.

4 Professor Lee Godden, *Committee Hansard*, Canberra, 26 September 2011, p. 48; Mr Martijn Wilder, Baker and McKenzie, *Committee Hansard*, Canberra, 26 September 2011, p. 48.

5 Mr Michael Power, ANEDO, *Committee Hansard*, Canberra, 26 September 2011, p. 38.

6 Infigen Energy, *Submission 22*; Hydro Tasmania, *Submission 41*; Clean Energy Council, *Submission 45*.

7 Westpac Banking Corporation, *Submission 12*, p. 4.

stand the test of time – as I say, including the need to respond to deeper emissions reduction targets in future?

Our assessment of the Clean Energy Future policy is that it can satisfactorily deliver on these criteria.⁸

- 4.12 Some submissions from businesses and business groups acknowledged improvements to the bills introduced into the Parliament when compared with the exposure draft bills released in July 2011. At the same time, many of these submissions also highlighted specific issues with the bills that they considered required further review and revision.⁹ For example, the Energy Supply Association of Australia said:

the Association provided comments and feedback in a joint submission with the Energy Retailers Association of Australia on the exposure draft legislation to the Department of Climate Change and Energy Efficiency. esaa is disappointed to see few of its proposed changes reflected in the Clean Energy Future Legislation introduced to Parliament on 13 September, including its concerns on substantive policy issues. However, the Association is pleased that at least some of the proposed implementation and drafting changes have been included in the revised legislation.¹⁰

- 4.13 Other business submissions did not comment on the policy settings reflected in the bills, but suggested specific amendments relating to their business's or sector's interests or concerns.¹¹
- 4.14 The committee also received submissions that expressed concerns about both the underlying policy represented by the bills and about specific issues in them, which reflected those policy concerns as well as practical issues.¹² For example, Rio Tinto said:

8 Mr Nathan Fabian, Investor Group on Climate Change, *Committee Hansard*, Sydney, 28 September 2011, p. 10.

9 See, for example, Energy Supply Association of Australia, *Submission 1*; Australian Industry Group, *Submission 2*, p. 3; Origin Energy, *Submission 18*.

10 Energy Supply Association of Australia, *Submission 1*, p. 1.

11 See, for example, Qantas Airways Limited, *Submission 17*; Australian Aluminium Council, *Submission 24*; Australian Trucking Association, *Submission 27*; Australian Pipeline Industry Association, *Submission 27*; Cement Industry Federation, *Submission 32*; Bus Industry Confederation, *Submission 46*; Green Cooling Association, *Submission 51*; LPG Australia, *Submission 55*.

12 See, for example, National Lime Association of Australia, *Submission 4*; Australian Petroleum Production & Exploration Association Limited, *Submission 5*; Association of Mining and Exploration Companies, *Submission 8*; CSR Limited, *Submission 20*; Rio Tinto, *Submission 29*.

Whilst it is important to respond to the climate challenge, Rio Tinto remains concerned about key features of the CEF package. Without significant changes, the scheme will inevitably hinder investment and jobs growth in Australia without meaningfully reducing global carbon emissions. It will undermine Australia's international competitiveness and hurt the nation's export-competing industries.¹³

- 4.15 The bills being considered by the committee are intended to reflect the policies announced by the Government on 10 July 2011. In considering the bills, the committee has had regard to whether the bills deliver those policies.

Conclusion

- 4.16 The bills have been the culmination of a long policy development process¹⁴, and take account of consultations held previously concerning the CPRS, and subsequent policy development and consultation concerning these bills. The committee notes the comments given in evidence before it that the bills represent an improvement on those previous bills.¹⁵
- 4.17 The committee acknowledges that some businesses have concerns about the policies implemented by the legislation. However, these issues reflect a disagreement with the underlying policy, which was announced on 10 July 2011, rather than the drafting of the bills, and are therefore beyond the scope of the committee's consideration.
- 4.18 The committee further notes that DCCEE, as a result of its consultation process on the exposure draft bills, made numerous refinements and changes to the provisions to take account of practical and other considerations raised by stakeholders. Many of these focused on compliance issues raised by businesses and business groups. These changes are summarised in Appendix D.
- 4.19 The committee has received evidence about a number of specific issues raised in the bills. These are addressed in more detail below.

13 Rio Tinto, *Submission 29*, p. 1.

14 See DCCEE, *Australia's plan for a clean energy future: Regulatory Impact Statement*, 2011, pp. 9-17.

15 See Chapter 1.

Specific issues concerning the drafting of the bills

4.20 The committee has received submissions suggesting changes to the bills, including specific proposals about:

- the practical application of specific elements of the mechanism, including the treatment of joint ventures, partnerships, international linking, the tax treatment of the holders of units, the application of specific elements of the fuel tax system, the operation of the Opt-in Scheme, the scope of regulatory powers under the mechanism, the specific design of elements of the mechanism, such as pollution caps, carbon unit auctioning and the design of the jobs and competitiveness program and the assistance to coal-fired electricity generators¹⁶; or
- the application of the mechanism to specific industry sectors and activities.¹⁷

4.21 Many of these specific issues raised concerning the detailed design of the mechanism represent concerns which were raised about the exposure draft of the bills and in previous consultations and which were not taken up by the Government, which is acknowledged by submitters. The committee has addressed some of these specific issues in detail elsewhere in this Chapter.

4.22 As a general comment, many of the concerns raised relate to the practical application of the mechanism and the compliance obligations of liable entities. These issues may be addressed by ensuring that:

- the necessary regulations and other legislative instruments relating to the detailed design of specific elements of the mechanism are completed as soon as practicable, and take into account the views of those covered by the mechanism;
- the specific practical requirements for compliance implemented by the Clean Energy Regulator are administratively simple and clear; and

16 See, for example, Energy Supply Association of Australia, *Submission 1*, Australian Petroleum and Production Association Limited, *Submission 5*, Qantas Airways Limited, *Submission 17*, Origin Energy Limited, *Submission 18*, Australian Trucking Association, *Submission 27*, Australian Pipeline Industry Association, *Submission 28*, Australian Industry Greenhouse Network, *Submission 33*, Bus Industry Confederation, *Submission 46*, LPG Australia, *Submission 55* and Law Council of Australia, *Submission 61*.

17 See, for example, National Lime Association of Australia, *Submission 4*, Association of Mining and Exploration Companies Inc., *Submission 8*, CSR Limited, *Submission 20*, Australian Aluminium Council, *Submission 24*, ATCO Gas Australia Limited, *Submission 25*, Rio Tinto Limited *Submission 29*, Cement Industry Federation, *Submission 32*.

- the Clean Energy Regulator, working with DCCEE, issues clear and straightforward information and guidance about potential liability under the mechanism and compliance with it in good time for the commencement of the mechanism on 1 July 2011, which takes account of the views of affected stakeholders.
- 4.23 There are other specific issues raised with the committee which, if adopted, would require an alteration to the bills. These have, as submitters acknowledge, been considered by the Government in the development of the bills in many cases.
- 4.24 The committee draws these matters to the attention of the Government for its further consideration.
- 4.25 Issues concerning the coverage of the mechanism or the treatment of emissions intensive-trade exposed industries are dealt with below under the headings 'The jobs and competitiveness program' and 'The mechanism and energy generation'.

Identification of liable entities

Background

- 4.26 Some concern was expressed during the committee's hearings that liable entities had not been informed by the Government about their liability under the mechanism.¹⁸
- 4.27 The Government has published factsheet concerning the liability under the mechanism to assist companies that may be affected, which is available on the Clean Energy Future website.¹⁹

Analysis

- 4.28 While the Government has indicated that around 500 entities would be directly liable under the mechanism and that entities covered by the fuel tax system may incur some additional liability under the reforms in the

18 Mrs Joanna Gash MP; Dr Steven Kennedy and Ms Jenny Wilkinson, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 14.

19 DCCEE 500 biggest polluting companies, 2011 <<http://www.cleanenergyfuture.gov.au/500-companies/>> accessed 5 October 2011.

fuel tax bills,²⁰ there is no definitive list of entities which are liable under the mechanism, nor is it possible to compile such a list at the present time.

4.29 Liability under the mechanism is self-assessed through reporting under the National Greenhouse and Energy Reporting System (NGERS), which was established by the Howard Government in 2007. Self-assessment is also used, for example, to determine liability for income and corporate taxation. Entities which report covered emissions above the thresholds set out in the Clean Energy Bill 2011 are liable entities for the purposes of the mechanism.

4.30 DCCEE explained the way in which liability under the mechanism is determined:

Dr Kennedy: A number of companies are already reporting under the National Greenhouse and Energy Reporting arrangements. Around 500 businesses already report their emissions through that act, which was introduced in 2007 from memory, and they would have reported their emissions for the last couple of years. The government will have and does already have an engagement strategy for waste facilities for people who may be liable under those facilities and has published estimates and is currently running workshops for anyone who may be liable in those arrangements. We do not go out and directly identify companies in that manner. Companies will be liable if they exceed the threshold – if they produce more than 25,000 tonnes of emissions. Ms Wilkinson would you like to add to that?

Ms Wilkinson: I might just clarify. The person who will be liable under the scheme is generally the person who has operational control. For example, local councils may have operational control over their waste facilities or they may not; they may have subcontracted to another entity who has operational control. In the majority of cases it is the entity with operational control who will be the liable party under the scheme, and liability is determined not at a company level but at the facility level – it depends on what your emissions from a given facility are. Just because one facility is

20 See the Clean Energy (Fuel Tax Legislation Amendment) Bill 2011, Clean Energy (Excise Tariff Legislation Amendment) Bill 2011 and the Clean Energy (Customs Tariff Legislation Amendment) Bill 2011. For a list of sectors affected by the fuel tax changes, see the Treasury, *Supplementary Submission 66*.

above the threshold it does not mean that you are liable for all the facilities.²¹

- 4.31 While many entities which report under NGERS are likely to be liable under the mechanism, liability will be determined by reference to a range of factors, leading to a net amount of total emissions for which a carbon price is payable. Similarly, under the fuel tax system, liability is determined through self-assessment.

Conclusion

- 4.32 It is not possible, until the commencement of the mechanism, to determine definitively who is and is not liable under it. While this is the case, the committee is also aware of a degree of confusion among some businesses and others about the question of liability under the mechanism and related reforms.
- 4.33 The committee notes the activities being engaged in by the Department to inform those affected by the mechanism about it and its potential application to them. The committee encourages the Government to continue working with industry, professional and other peak bodies and with state, territory and local governments to provide clear information about liability under the mechanism to assist those potentially liable to make the transition as quickly and as smoothly as possible.

Property rights and carbon units

Background

- 4.34 The committee received considerable correspondence concerning the provision in clause 103 of the Clean Energy Bill 2011 that a carbon unit is personal property. Much of this concern draws on a newspaper opinion piece by Mr Henry Ergas on 16 September 2011, in which Mr Ergas stated:

It was Mark Dreyfus QC, Parliamentary Secretary for Climate Change, who let the cat out of the bag.

Once the carbon change legislation is in place, he said, repeal would amount to an acquisition of property by the commonwealth, as holders of emissions permits would be

21 Dr Steven Kennedy and Ms Jenny Wilkinson, DCCCE, *Committee Hansard*, Canberra, 21 September 2011, p. 14.

deprived of a valuable asset. As a result, the commonwealth would be liable, under s.51(xxxi) of the Australian Constitution, to pay compensation, potentially in the billions of dollars. A future government would therefore find repeal prohibitively costly.²²

- 4.35 Mr Dreyfus responded to Mr Ergas's article on 22 September 2011 in an opinion piece in the same newspaper:

Whether units are property for the purposes of section 51(xxxi) of the Constitution does not depend on whether the units are declared, by the legislation, to be personal property. The High Court has found that permits created under other regulatory schemes can be property even if the legislation did not state this explicitly.

The purpose of the declaration is not to tie the hands of a future government. The purpose is, together with other provisions of the legislation, to ensure that the legal status of units is clear.

Transparent property rights are fundamental for any efficient market.²³

- 4.36 Mr Ergas then, on 26 September, said in a further opinion piece that:

once carbon emitters are issued permits, those permits will be property they own, so any government that abolishes them will have to pay compensation, possibly in the billions of dollars.²⁴

Analysis

- 4.37 Clause 103 of the Clean Energy Bill 2011 provides that:

A carbon unit is personal property and, subject to sections 105 and 106, is transmissible by assignment, by will and by devolution by operation of law

- 4.38 The Explanatory Memorandum says:

22 Henry Ergas (16 September 2011) 'Labor plants poison pills in carbon tax' *The Australian* <<http://www.theaustralian.com.au/national-affairs/opinion/labor-plants-poison-pills-in-carbon-tax/story-e6frgd0x-1226138227483>> accessed 5 October 2011.

23 The Hon Mark Dreyfus QC MP (22 September 2011) 'No poison pills in carbon tax, just vital certainty' *The Australian* <<http://www.theaustralian.com.au/national-affairs/opinion/no-poison-pills-in-carbon-tax-just-vital-certainty/story-e6frgd0x-1226142981412>> accessed 5 October 2011).

24 Henry Ergas (26 September 2011) 'Lies, deception and carbon tax' *The Australian* <<http://www.theaustralian.com.au/news/opinion/lies-deception-and-carbon-tax/story-fn7078da-1226146005701>> accessed 5 October 2011.

Transparent and secure property rights over and legal interests in carbon units will promote confidence in the integrity of the units and reduce uncertainty for their holders, and further promote confidence in the development of the market for carbon units. Similar provisions have been made for ACCUs, Kyoto units and prescribed international units in consequential amendments to the CFI Act and ANREU Act.²⁵

- 4.39 The purpose of this statement is to define the nature of carbon units for the purpose of ensuring the integrity and stability of the market for trading them. Mr Martijn Wilder, a partner of international law firm Baker & McKenzie, noted:

the changes which have been made to the bill are quite important about clarifying that the unit-holder in the registry owns legal title to the units because this is specifically designed to overcome the problem that we had in Europe earlier this year where a registry was hacked into and those units were then basically transferred illegally, and in different jurisdictions the law around who owns personal property when it has been stolen and transferred resulted in very different outcomes, depending on whether you were in Germany, France or the United Kingdom. So this particular amendment is very important because it means that if somebody is engaged in buying or surrendering permits and they do so in good faith, they know that they will be the legal holder of that unit. So I think this amendment is a very important one.²⁶

- 4.40 The provision does not, on its face, relate to section 51(xxxi) of the Constitution, and the question of whether that provision applies would depend on whether carbon units meet the requirements of that section. Section 51(xxxi) concerns the power of the Australian Parliament to make laws about:

the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws.

- 4.41 The public commentary on this issue does not spell out the basis of the view that the bills create property rights, which, if repealed, would give rise to compensation under section 51(xxxi) of the Constitution.

25 Clean Energy Bill 2011 - Explanatory Memorandum, paragraph 3.35.

26 Mr Martijn Wilder, Baker & McKenzie, *Committee Hansard*, Canberra, 26 September 2011, p. 53.

- 4.42 The committee sought clarification from witnesses on the question of whether the bills create a property right which would potentially give rise to liability for just terms compensation under section 51(xxxi) of the Constitution. Professor Lee Godden informed the committee that:

What needs to be understood is that it is personal property and it is created as a particular form of statutory property. It does not necessarily have all the attributes that at common law are understood to attach to personal property. So I think we need some clarification around those issues. I am flagging that perhaps more needs to be clarified here because, if we look at other instances where we have had resources attributed as private property or as property – and here I am drawing on water trading examples – the High Court has not interpreted them, in certain instances, as having the same characteristics as at common law. So I do think there is clarity needed around what is intended with the designation of personal property.²⁷

Conclusion

- 4.43 The effect of clause 103 of the Clean Energy Bill 2011 is to make clear that a carbon unit issued under the mechanism is an item of personal property capable of being owned and transferred from one person to another for the purposes of the mechanism. This is intended to clarify the status of the units and provide confidence in their integrity under the mechanism. It also provides clarity on the status of units for the purpose of using them as security or creating equitable interests in them.

Links between the mechanism and international emissions reduction schemes

Background

- 4.44 The links between the mechanism and international greenhouse gas pollution reduction schemes has been a matter of some interest and, for some, controversy, in the development of the mechanism.

27 Professor Lee Godden, University of Melbourne, *Committee Hansard*, Canberra, 26 September 2011, p. 53.

4.45 The use of international permits in the mechanism is intended to link it to overseas emissions trading schemes. In *Securing a Clean Energy Future: the Australian Government's climate change plan*, the Government said:

International linking of carbon markets will allow businesses that release carbon in one country to be matched up with businesses in other countries that are able to reduce their carbon pollution at lower costs. International linking encourages action to reduce carbon pollution around the world, and plays an important role in helping developing countries adopt clean technologies.²⁸

4.46 The mechanism will link to overseas emissions trading markets by allowing liable entities under the mechanism to surrender eligible international units from 1 July 2015, which is the commencement of the flexible charge period. The ability of liable entities to do this is subject to both quantitative and qualitative restrictions:

- from 1 July 2015 to 1 July 2020, liable entities must meet at least 50 per cent of their liability under the mechanism with carbon units issued under Australia's scheme. If the liable entity surrenders eligible international units which total more than 50 per cent of its liability under the mechanism, then the excess number of units will not count towards the meeting of the entity's liability for that year, but will be carried forward to the next year.²⁹
- the Government may also, by regulation, disallow the eligibility of certain international units to ensure that only credible international units are used to meet liabilities under the mechanism. This is intended to reinforce the environmental integrity of the mechanism and support Australia's compliance with its international obligations.³⁰

Analysis

International linking and the mechanism

4.47 The committee received correspondence expressing concern about the appropriateness of using international units in meeting Australia's greenhouse gas emissions reduction efforts.

28 Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, pp. 30-31.

29 Clause 133(7) of the Clean Energy Bill 2011.

30 Clause 123 of the Clean Energy Bill 2011.

- 4.48 International abatement efforts will allow Australian companies to access potentially cheaper international units, which reflect the higher degree of environmental effectiveness of greenhouse gas emissions reduction efforts represented by those units. Mr Comley, the Secretary of DCCEE, provided an example of this, in the context of aluminium production:

It is far from clear that the emissions intensity of aluminium from any source around the world is higher than Australian aluminium. The principal reason for that is that aluminium is often referred to as congealed electricity. The most important source of emissions for aluminium is the electricity used in the production. Around the world aluminium is produced from a range of sources, many of which have lower emissions intensity in terms of electricity supply than in Australia. Aluminium has been assessed as a high emissions intensive activity under the Renewable Energy Target Scheme and one would expect that when the regulations are produced for this package it will also be found to be a high emissions intensive activity.³¹

- 4.49 The committee was told that not including the ability to link to international greenhouse gas emissions reduction efforts would have a serious and significant effect on the operation of the mechanism and the cost of reducing Australia's emissions. The Treasury explained the impact on the mechanism of not linking to overseas schemes:

Treasury has found that forgoing cheaper international sources abatement would roughly double the economic cost of achieving the 2020 target. This is analysis that was released in the *Strong Growth, Low Pollution* report. If there were no ability to import permits then you would need a higher carbon price within Australia. That higher carbon price would be what would drive the higher economic cost.³²

The Treasury also noted that the estimated carbon price that would be necessary in Australia in the absence of international trading would be '[s]omewhere around \$62 or above'.³³

- 4.50 By contrast to suggestions that international linking is problematic by its nature, the committee received evidence that the bills do not go far enough in permitting international linking, and that the bills, by imposing

31 Mr Blair Comley DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 8.

32 Ms Meghan Quinn, The Treasury, *Committee Hansard*, Canberra, 21 September 2011, p. 4.

33 Ms Meghan Quinn, The Treasury, *Committee Hansard*, Canberra, 21 September 2011, p. 4.

some constraints on the ability of companies to link internationally, impose greater costs in achieving Australia's domestic greenhouse gas emission reduction task. For example, the Australian Industry Greenhouse Network, which represents a broad range of Australian businesses and business groups, said that :

the least-cost outcome requires a broad global price and broad global coverage. Unless we have both those things, we do not achieve a least-cost outcome. How is that done? We do not necessarily have to link with every other scheme in the world. Indeed, as a likely net buyer of international permits, we need to link with those countries that are the sellers. We do not know who those countries are at the moment, other than through the CDM [Clean Development Mechanism], and we are extremely concerned that in these bills there is a suggestion of a policy, if you like, that the regulations that will allow the purchase of international permits are going to be restricted in terms of their eligibility. That is going to be another area where these bills are going to cost far more than they should.³⁴

The use of government funds in acquiring international permits

- 4.51 Some evidence given to and correspondence received by the committee expressed concerns that taxpayer funds will be applied by the Government to the purchase of international units so that the mechanism may function properly³⁵ or that the Government would need to make payments to international organisations concerning greenhouse gas emissions reduction.
- 4.52 The bills provide that liable entities (which might include specific government agencies or enterprises) under the mechanism may use eligible international emissions units (subject to conditions) to meet their liabilities under it.³⁶
- 4.53 The bills do not provide for general acquisition of international units by the Government for the purposes of meeting Australia's international greenhouse gas pollution reduction commitments, nor is there any requirement or provision under the legislation requiring payments to international organisations.
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34 Mr Michael Hitchens, Australian Industry Greenhouse Network, *Committee Hansard*, Canberra, 26 September 2011, p. 27.

35 Mr Stuart Allinson, Exigency Management Pty Limited, *Committee Hansard*, Melbourne, 27 September 2011, p. 16.

36 See Division 3, Part 4 and Division 2, Part 6 of the Clean Energy Bill 2011.

Concerns about the integrity of links to overseas schemes

- 4.54 The Clean Energy Bill 2011 allows for the mechanism to be linked to specified overseas schemes, which means that permits issued under those schemes may be used to meet liabilities under the mechanism, subject to conditions set out in the legislation. Mr Comley, the Secretary of DCCEE, said:

The bill provides a framework in which you can link to schemes. If part of the question is: what schemes do we envisage at the moment as being the most prospective to link to? I think there are probably three schemes that are the most prospective to link to in the first instance. The first is the CDM market under the UNFCCC, the Clean Development Mechanism market. The second is the European Union Emissions Trading System. The third is the New Zealand Emissions Trading Scheme. They seem to be the most prospective at the moment. The main reason that they are the most prospective at the moment is that they have already been established, so there is a track record with them. They also conveniently fit under the Kyoto protocol, so they have the common accounting mechanisms and assumptions that would be applied to those schemes. It is possible that other schemes would be available for linking over time, but they are the most prospective at this stage.³⁷

- 4.55 The committee also received correspondence which expressed concerns that the use of international units will allow for rorting and fraud, and the use of non-credible units from countries with poor accountability in their greenhouse gas reduction schemes. Furthermore, some submitters expressed concerns about the way in which international trading schemes have worked, and that these posed both a bad example for Australia and a risk when linking to them, particularly the EU and New Zealand emissions trading schemes.³⁸
- 4.56 General concerns about the potential risks of links to overseas schemes are to be contrasted with publicly available assessments of their performance, which suggest that both the EU and NZ schemes are effective, albeit with room for improvement (which is acknowledged by both the EU and the NZ Government in making improvements to their respective schemes

37 Mr Blair Comley, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 3.

38 Exigency Management Pty Limited, *Submission 43*; See Mr George Christensen MP, *Committee Hansard*, Canberra, 26 September 2011, p. 46.

over time). Both of these schemes are broadly similar to the mechanism set out in the bills, in that they are 'cap and trade' schemes.

The EU emissions trading scheme³⁹

The EU's emissions trading scheme (ETS) covers the 27 EU member states, along with Iceland, Liechtenstein and Norway. It covers a total population of around 500 million people.

The scheme covers CO₂ emissions from power generation, manufacturing, oil refining and nitrous oxide emissions. Facilities covered by the scheme account for almost half of the EU's CO₂ emissions and 40 per cent of its total greenhouse gas emissions. The scheme will cover airline emissions from 2012 and will expand in 2013 to cover the petrochemicals, ammonia and aluminium industries and to additional gases.

Like the mechanism, the EU ETS is a 'cap and trade' scheme. It imposes a limit on the total amount of certain greenhouse gases that can be emitted by those covered by it. Within the cap, companies receive emission allowances which they can sell to or buy and the limit ensures that allowances have a value.

At the end of each year each company must surrender enough allowances to cover all its emissions, or be subject to penalties. Companies can bank surplus allowances for future use. The total limit is reduced over time to reduce total emissions, and in 2020 emissions will be 21 per cent lower than in 2005.

4.57 The EU ETS commenced with a pilot phase, which was designed to allow for improvements to be introduced where issues were identified with the scheme. This phase lasted from 2005 to 2007 and resulted in some significant changes being made to improve the practical operation of the EU ETS in 2008-09.⁴⁰

4.58 The principal recent concern with the EU scheme has been a series of major frauds, which led to the closure of several national trading markets in early 2010. It is noteworthy that the form of this fraud was not uniquely related to an emissions trading scheme, and reflected longstanding forms of financial market fraud such as cyber hacking, 'phishing', and 'missing trade frauds' which are – unfortunately – well known to international and

39 See <http://ec.europa.eu/clima/policies/ets/index_en.htm> accessed 5 October 2011.

40 See Council of the European Union *Council adopts climate-energy legislative package*, 6 April 2009 <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/misc/107136.pdf> accessed 5 October 2011.

national financial market regulators and law enforcement agencies. In July 2011, the European Commission acknowledged deficiencies existent in some European emissions trading markets and announced strengthened provisions to better combat these forms of fraud and to protect the integrity of the market, in line with financial market regulation.⁴¹

The New Zealand emissions trading scheme⁴²

The New Zealand ETS was implemented in 2008.

The NZ ETS covers the forestry, transport fuels, electricity production, industrial processes, synthetic gases, agriculture and waste sectors and emissions the six greenhouse gases covered by the Kyoto Protocol. The NZ ETS will include all sectors of the NZ economy and all greenhouse gases by 2015. It is also internationally linked and reflects international climate change rules. Compliance is achieved through self-assessment for monitoring, reporting and verifying emissions produced by participants.

After its election in 2008, the Key Government made modifications to the original design of the ETS. It introduced a transition phase to the scheme between 1 July 2010 and 31 December 2012, during which, participants can buy emission units from the NZ Government for a fixed price of \$25. In addition, participants in the energy, industrial and liquid fossil fuel sectors will have to surrender only one emission unit for every two tonnes of emissions they produce during that period. The NZ ETS will be completely implemented by 2015.

4.59 The New Zealand Ministry of the Environment recently received a report by an independent Panel on the implementation of the scheme. While the Panel noted that it was early days and final conclusions about the NZ ETS could not be made, it also found that the general impression received from submissions was that:

the impact of the ETS has been low for most submitters given the transitional measures in place (i.e. the fixed price option, the one-for-two surrender obligation, and free allocation of New Zealand emission units (NZUs)) and the short period of time that

41 See Directorate-General on Climate Action, *Questions and Answers on emissions trading: new registry rules*, 8 July 2011, <<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/495&format=HTML&aged=0&language=EN&guiLanguage=en>> accessed 5 October 2011.

42 See <<http://www.climatechange.govt.nz/emissions-trading-scheme/about/basics.html>> accessed 5 October 2011.

some sectors have faced obligations. For example, business and industry representatives noted the ETS had not had a significant impact on investment decisions and competitiveness. Most submitters noted the ETS had not yet incentivised behavioural changes nor had it resulted in significant reductions in domestic emissions. The Panel also noted a Ministry of Economic Development business survey which found that for the majority of businesses surveyed the ETS is unlikely to have had such a marked effect on costs that they have had to reduce their energy consumption or emissions.⁴³

4.60 In its submission to the committee, Westpac noted that:

the implementation of the NZ ETS has been remarkably smooth for such a new market established by regulation and particularly considering current global economic conditions. Considering its size, the market is reasonably efficient and liquid. Participants have good indications of where carbon units are trading and the market has linked well with the international market.⁴⁴

Quantitative and qualitative restrictions on the use of international units

4.61 The Clean Energy Bill 2011 permits liable entities under the mechanism to use eligible international units⁴⁵ to meet their liabilities, subject to a range of quantitative and qualitative restrictions, which DCCEE explained to the committee:

The Clean Energy Bill contains provisions to apply both quantitative and qualitative restrictions on the use of international units. Regarding the quantitative restrictions, in the fixed price period there will be no ability for liable entities to surrender their units against liabilities; that comes into play in the flexible price period only. There is a provision in clause 133 of the main bill that allows liable entities to surrender only 50 per cent of their liabilities in terms of international units.

The qualitative provisions define exactly what sort of international units are eligible to be surrendered and these are found, essentially, in the Australian National Registry of Emissions Units

43 Emissions Trading Scheme Review Panel *Doing New Zealand's Fair Share: ETS Review 2011 Final Report* Wellington, 2011, pp. 17-18 <<http://www.climatechange.govt.nz/emissions-trading-scheme/ets-review-2011/index.html>> accessed 5 October 2011.

44 Westpac Banking Corporation, *Submission 12*, p. 7.

45 See section 4 of the *Australian National Registry of Emissions Units Act 2011*. See also Explanatory Memorandum - Clean Energy Bill 2011, paragraphs 3.100-3.103.

Act, which was passed recently by the parliament. The definition of eligible emissions units includes certain units under the Kyoto protocol, including certified emission reductions, emission reduction units and removal units that result from forestry and other land activities.

Additional international units might be prescribed in regulations if there was, for example, bilateral linking with another country or if a new international scheme gave rise to new types of international units. The legislation, and existing legislation, broadly sets out the types of units which would be available to liable entities to surrender, but there are also restrictions that can be added through regulations to exclude units if they are found subsequently not to have the level of environmental integrity that international units are required to have.⁴⁶

4.62 The quantitative restriction applies only for the first five years of the flexible charge period, commencing on 1 July 2015.⁴⁷

4.63 The Clean Energy Bill 2011 also includes provisions which allow for specific types of international permits to be proscribed from use in meeting liabilities under the mechanism.⁴⁸ The intention of this power is to ensure that the Government may take timely and effective action to prevent the future use of international permits about which concerns exist as to their integrity. The reasons were further explained by DCCEE:

If concerns do arise about the integrity of particularly international units, the minister may prohibit their surrender through regulations under clause 123 of the main bill. The minister may also cancel the eligibility of any units that are prescribed in regulations simply by amending those regulations under the national registry act. This could happen very quickly, but there is a provision that allows liable entities to use any units that they already hold for the purpose of that financial year. This provision is there so that people who purchase these on a bona fide basis are not disadvantaged by changes in opinion about those units but they would not be able to use those units for subsequent compliance periods.⁴⁹

46 Mr Tas Sakellaris, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, pp. 3-4.

47 Clause 133(7) of the Clean Energy Bill 2011.

48 Clause 123 of the Clean Energy Bill 2011.

49 Mr Tas Sakellaris, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 4.

- 4.64 Other submitters expressed concerns that Australian entities may use permits derived from overseas activities which are environmentally questionable. The bills include provisions which impose qualitative restrictions on international emissions units, which are designed to ensure that such units cannot be used to meet liabilities under the mechanism.⁵⁰ In evidence to the committee, DCCEE noted that:

[t]he government has already made announcements that certain additional types of units will be excluded from surrender provisions, and that includes nuclear projects because these are not allowed under the Kyoto rules. The government has also indicated that it will exclude units arising from the destruction of certain industrial gases – trifluoromethane and nitrous oxide, which is used in the production of adipic acid – it will also exclude large-scale hydroelectric projects that are not consistent with criteria that have already been adopted by the European Union and are based on the World Commission on Dams' guidelines. In addition, the minister would also have the capacity to prohibit even the entry of units that are not acceptable in terms of environmental integrity. This is in addition to surrender restrictions. In addition the minister would also have the capacity to prohibit even the entry of units that are not acceptable in terms of environmental integrity. So there is an addition to surrender restrictions.⁵¹

- 4.65 The inclusion of these powers to impose restrictions by the Government causes concerns among some, who would prefer that the market be able to use international units with minimal prospect of their being removed from use through government intervention.⁵² However, the committee also notes that the Government made adjustments to these provisions after the consultation on the exposure draft bills, to take account of these concerns and to provide greater certainty to those seeking to use international units by allowing those holding disallowed units to surrender them up until the end of the eligible financial year in which they were disallowed.⁵³

50 See clause 123 of the Clean Energy Bill 2011. See also Clean Energy Bill 2011 - Explanatory Memorandum, paragraphs 3.104-3.111 and Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, Table 8 on p. 107.

51 Mr Tas Sakellaris, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 4.

52 Origin Energy, *Submission 18*; Mr Michael Hitchens, Australian Industry Greenhouse Network, *Committee Hansard*, Canberra, 26 September 2011, p.27; Australian Industry Greenhouse Network, *Submission 33*, p. 7.

53 See Appendix D. See also Mr Nathan Fabian, Investors Group on Climate Change, *Committee Hansard*, Sydney, 28 September 2011, p. 10; see also Australian Financial Markets Association, *DCCEE Submission 18*, p. 6; Australian Industry Greenhouse Network, *DCCEE Submission 21*,

Actual experience of international linking

- 4.66 Lastly, the committee also received evidence about the actual experience of the use of international permits in New Zealand, which is a market where the use of international permits is permitted. Westpac said that:

within the New Zealand scheme, even though there is the ability to meet your compliance obligations with 100 per cent international permits, around 98 per cent of the permits acquitted were actually New Zealand compliance units. While that may be slightly different this year on account of the fact that the international units have come down, it demonstrates that ultimately companies are looking to acquit their liabilities using the domestic permits as a first step.⁵⁴

Conclusion

- 4.67 The committee has considered the views expressed about the need for and the manner of international linking raised in correspondence and submissions.
- 4.68 The provisions in the bills concerning international linking deliver the policy intention of creating a least-cost approach to greenhouse gas emissions reduction in Australia, while also linking to international efforts to reduce global greenhouse gas emissions.
- 4.69 The mechanism does not require the Australian Government to use taxpayer funds to purchase international emissions units to ensure that Australia meets its international commitments to reduce greenhouse gas emissions.
- 4.70 There would be significant additional costs with a mechanism which does not allow for international linking, and preventing international linking would effectively double the cost of meeting Australia's greenhouse gas emissions reduction targets.
- 4.71 The committee notes the restrictions in clause 123 of the Clean Energy Bill 2011 on the use of international units and the efforts of the Government to accommodate concerns about the application of these restrictions in the drafting of the bills. The treatment of this issue in the bills represents an

p. 10; Investors Group on Climate Change, *DCCEE Submission 140*, pp. 6-7; Law Council of Australia, *DCCEE Submission 151*, pp. 14-15; Westpac Banking Corporation, *DCCEE Submission 260*, pp. 6-7.

54 Ms Emma Herd, Westpac Banking Corporation, *Committee Hansard*, Sydney, 28 September 2011, p. 20.

appropriate balance between allowing for broad international linkage, while at the same time reflecting the need to ensure the ongoing environmental integrity and security of Australia's carbon pricing mechanism over time.

- 4.72 The powers in clause 123 of the Clean Energy Bill 2011 provide the ability for the Government to take appropriate action if evidence emerges that particular international emissions units are compromised, while recognising the legitimate concerns of businesses in ensuring such action is not arbitrary.
- 4.73 Australia's financial market regulatory framework has proven its robustness over time. The committee notes that the bills will complement this framework and that provision is made for the cooperation of the Clean Energy Regulator with Australia's national economic regulators, including ASIC, and with law enforcement agencies, including the Australian Federal Police and the Australian Reporting and Transaction Analysis Centre (Austrac).
- 4.74 The bills were prepared after the security problems emerged in the EU, and the Government has included appropriate and proportionate features in the bills which address the sorts of issues which arose in the EU ETS, including:
- the regulation of carbon units as financial products under Australia's financial services laws, with additional oversight by the Australian Securities and Investments Commission;⁵⁵
 - provision for appropriate actions to be taken by the Regulator concerning suspicious activity on the Registry through amendments to the ANREU Act⁵⁶; and
 - compliance and enforcement powers for the Clean Energy Regulator, which allow for proportionate action to ensure ongoing compliance and swift action to address conduct designed to undermine the integrity of the mechanism and obtain unlawful financial and other advantages.⁵⁷

55 See Schedule 1, Part 2, items 47, 48, 256A, 259, 260 of the Clean Energy (Consequential Amendments) Bill 2011.

56 See Schedule 4 of the Clean Energy (Consequential Amendments) Bill 2011.

57 See Parts 13, 14, 15, 16, 17, 18, 19 and 20 of the Clean Energy Bill 2011.

The Jobs and Competitiveness Program

Background

- 4.75 Many submissions received by the committee and by DCCEE concerning the bills covered the assistance available to emissions-intensive, trade-exposed (EITE) activities through the jobs and competitiveness program (the Program).⁵⁸
- 4.76 The Program provides for the annual delivery of free carbon units concerning EITE activities as defined by the Program. The Program is set out in Part 7 of the Clean Energy Bill 2011, with other elements of it contained in Part 9 and 11.
- 4.77 The Explanatory Memorandum states that:
- The Program provides significant support for jobs and protects the competitiveness of these emissions-intensive trade-exposed industries from risks for emissions-intensive trade-exposed activities to be located in, or relocated to, foreign countries as a result of different climate change policies applying in Australia compared to foreign countries. The Program also ensures that industry, local communities and workers have a smooth transition to a clean energy future.⁵⁹
- 4.78 Under the Program, the Government will provide assistance on an activity basis to ensure that it is well targeted and is equitably distributed within and across industries.⁶⁰ The assistance will be provided for the following:
- the direct emissions associated with an activity, that gives rise to an obligation under the mechanism, which can be discharged by surrendering eligible emissions units;
 - the emissions associated with the use of steam in an activity;
 - the cost increase associated with the indirect emissions from the use of electricity in an activity, which is assessed as resulting from the introduction of the mechanism;

58 See, for example, National Lime Association of Australia, *Submission 4*, Association of Mining and Exploration Companies Inc., *Submission 8*, CSR Limited, *Submission 20*, Australian Aluminium Council, *Submission 24*, ATCO Gas Australia Limited, *Submission 25*, Rio Tinto Limited *Submission 29*, Cement Industry Federation, *Submission 32*.

59 Clean Energy Bill 2011 - Explanatory Memorandum, paragraph 5.2.

60 The Program is explained in detail in Explanatory Memorandum – Clean Energy Bill 2011, Chapter 5.

- the cost increase related to the upstream emissions from the extraction, processing and transportation of natural gas and its components, such as methane, used as feedstock and sequestered by an activity.
- 4.79 In receiving assistance under the Program, businesses must meet certain eligibility requirements, which are assessed based on an emissions intensity and trade exposure test:
- trade-exposure is to be assessed for trade shares (the ratio of the value of imports and exports to the value of domestic production) being greater than 10 per cent in any one of the 2004-05, 2005-06, 2006-07 or 2007-08 financial years, or there being a demonstrated lack of capacity to pass-through costs due to the potential for international competition.
 - emissions-intensity is to be assessed as to whether the industry-wide weighted average emissions intensity of an activity is above a threshold of:
 - ⇒ 1,000 tonnes CO₂-e per million dollars of revenue; or
 - ⇒ 3,000 tonnes CO₂-e per million dollars of value added.
- 4.80 Clause 145 of the Clean Energy Bill 2011 requires the Minister to take all reasonable steps to ensure that these regulations are made before 1 March 2012.
- 4.81 On 21 September 2011, DCCEE commenced a consultation process on the draft regulations implementing the Program. Submissions must be made to the Department by 28 October 2011.⁶¹ As part of the consultation the Government has encouraged firms conducting potential emissions-intensive, trade-exposed activities which have yet not been finalised to submit audited data as soon as possible so that the eligibility of their activity can be assessed under the program. As further activities are assessed as eligible they can be added to the regulations.

Analysis

- 4.82 The committee has received a considerable amount of evidence from businesses and business groups concerning the potential for 'carbon leakage' as businesses may decide to transfer activities overseas to avoid any liability under the mechanism.⁶² The committee also notes the categorical statements about the potentially adverse impacts on Australian
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61 See <http://climatechange.gov.au/government/regulations.aspx> accessed 5 October 2011 for more information.

62 Mr Greg Evans, Australian Chamber of Commerce and Industry, *Committee Hansard*, Canberra, 26 September 2011, p. 34.

industry that have been made in the press and through advertising funded by industry organisations.

4.83 The basis of many of the contentions expressed in these public statements is not always clear, and it was acknowledged by numerous witnesses that certainty about the impacts on specific industry sectors was not possible until the design of the Program and related measures was completed.⁶³

4.84 The stated purpose of the Program is to address the issue of 'carbon leakage' through the provision of appropriate transitional assistance to Australian businesses through the mechanism.⁶⁴ The Government has said:

A Jobs and Competitiveness Program will provide \$9.2 billion over the period to 2014-15 to assist the most emissions-intensive activities in the economy that are exposed to international competition. This will support local jobs, encourage industry to invest in cleaner technologies and avoid 'carbon leakage' offshore.⁶⁵

4.85 Much of the evidence received by the committee dealing with the specifics of the Program may be characterised as proposals which would result in a more favourable treatment of a business activity, either through its inclusion in the Program or through more favourable treatment in the Program.

4.86 As an example of this, the committee received evidence from the Magnetite Network, a consortium of mining enterprises, concerning the treatment of magnetite mining and processing activities under the Program. The Magnetite Network advised the committee that:

The magnetite industry welcomes the government's commitment to provide some sort of support to the industry for the effects of the carbon tax. As I said, we add value in Australia to what are otherwise unsaleable ore bodies in order to produce a high-value product. We have been in dialogue with the government on the design of the carbon tax and its predecessor, the CPRS, for a

63 These issues are discussed at a general level in Chapter 3; see Mr Michael Hitchens, Australian Industry Greenhouse Network, *Committee Hansard*, Canberra, 26 September 2011, p. 29; Mr John Pegler, Australian Coal Association, *Committee Hansard*, Melbourne, 27 September 2011, pp. 68-69; Mr Nathan Fabian, Investors Group on Climate Change, *Committee Hansard*, Sydney, 28 September 2011, p. 14.

64 See Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, p.xv and Chapter 5.

65 Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, p. 51.

considerable time but, to be frank, it just seems that that is falling on deaf ears. Whilst it finally seems that we might be getting some sort of support, we do not know the form of that. At the moment, as it stands, our industry looks as though it will get nothing.⁶⁶

- 4.87 The committee notes the concerns of the Magnetite Network and its suggested proposals to amend the bills to accommodate its concerns. The committee, while not forming a view on the issue, recommends that the Magnetite Network continues its present dialogue with the Government to find a way forward on its concerns, as they apply to new and emerging industries.

Conclusion

- 4.88 While there is much debate about the appropriate level of industry assistance, the detailed design of the Program is in the process of development, and the committee notes that the Government is presently consulting on the detailed design of the Program and its application to specific business activities.
- 4.89 The committee encourages EITE businesses to engage in the Government's current consultation process on the detailed design of the Program. It also encourages businesses conducting potential EITE activities which have yet not been finalised to submit audited data as soon as possible so that the eligibility of their activity can be assessed under the program. As further activities are assessed as eligible they can be added to the regulations.

The mechanism and energy generation

Background

- 4.90 A key focus of the mechanism is shifting Australia's economy to cleaner energy sources, reflecting the large role of electricity generation and direct fuel combustion in contributing 52 per cent of Australia's total greenhouse gas emissions.⁶⁷
- 4.91 Given the significance of reducing energy emissions to the effectiveness of the mechanism and the importance of ensuring ongoing energy security,

66 Mr Bill McKenzie, Magnetite Network, *Committee Hansard*, Sydney, 28 September 2011, p. 48.

67 Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, p.13, Figure 2.2

the Government has also announced initiatives to support the energy sector in the transition to a low emissions economy.

4.92 Specifically, the Government will:

- set up a \$5.5 billion Energy Security Fund, to provide assistance to strongly affected generators;
- seek to negotiate a managed and orderly closure of around 2,000 megawatts of highly polluting electricity generation capacity by 2020;
- set up an Energy Security Council, which will advise the Government on emerging risks to energy security and possible support measures;
- plan for a clean energy grid, through asking the Australian Energy Market Operator to expand its planning scenarios to take account of increased renewable energy generation.⁶⁸

4.93 The Government is also proposing a range of energy efficiency measures to assist households and businesses and expediting the development of a national energy savings initiative.⁶⁹

Analysis and conclusions

4.94 The committee received evidence from the Energy Supply Association of Australia (ESAA) suggesting five significant changes required to the legislation, along with a range of specific issues. The issues raised cover a range of concerns, which are dealt with in turn below.

4.95 The ESAA suggests that the assistance measures for the energy sector should:

adequately address the stranding of coal-fired generation assets. A more measured transition to full auctioning of carbon units (as proposed in most other schemes around the world to date) would enable a greater volume of carbon units to be administratively allocated to affected generators to ensure there is no disproportionate loss of economic value on the sector's balance sheets or a rise in costs to such a level as to compromise both the ability to refinance, and/or re-invest in existing power plant.⁷⁰

68 See Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, Chapter 7.

69 See Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, Chapter 8.

70 Energy Supply Association of Australia, *Submission 1*, p. 2.

- 4.96 The Government is presently consulting on the detailed design of assistance measures to the energy generation sector and that this consultation ends on 13 October 2011.⁷¹
- 4.97 The ESAA also raised two specific issues concerning the provisions of the Clean Energy Bill 2011, namely that the bills should:
- ensure there are no additional working capital requirements for liable entities from the operation of the Clean Energy Bill 2011, including from taxation and auctioning;
 - provide longer term certainty to the sector by committing to ten years of rolling scheme caps followed by a ten-year rolling gateway. This is necessary to support the development of the emissions market in Australia and because global emissions prices do not provide sufficient long term information in isolation.⁷²
- 4.98 In considering these concerns, the committee notes that:
- the detailed auction design will be set out in regulations⁷³, which are in the process of development by the Government and will require consultation with business groups to ensure that it is both effective and efficient;
 - the degree to which practical compliance issues may be addressed through guidance from the Clean Energy Regulator; and
 - the need in the bills to ensure a balance between long-term certainty and a degree of flexibility in the ongoing administration of the mechanism, which can serve the interests of businesses and investors.
- 4.99 ESAA suggests that the mechanism should ‘cover the greatest proportion of greenhouse gas emissions possible’, because ‘measures that only target a subset of sectors of the Australian economy are unlikely to lead to least cost abatement’.⁷⁴
- 4.100 The committee has received evidence from numerous witnesses to the effect that an emissions trading scheme needs to cover as much economic activity as possible to be as effective as possible.⁷⁵ The committee accepts
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71 See <<http://climatechange.gov.au/government/regulations.aspx>> accessed 5 October 2011.

72 Energy Supply Association of Australia, *Submission 1*, p. 2.

73 See clause 113 of the Clean Energy Bill 2011.

74 Energy Supply Association of Australia, *Submission 1*, p. 2.

75 Mr Michael Hitchens, Australian Industry Greenhouse Network, *Committee Hansard*, 26 September 2011, p.27; Mr Brendan Pearson, Minerals Council of Australia, *Committee Hansard*, 27 September 2011, pp.75-76; Ms Emma Herd, Westpac Banking Corporation, *Committee Hansard*, 28 September 2011, p.15 Mr Simon Kelley, AGL Energy Limited, *Committee Hansard*, 28 September 2011, pp.24-25.

this basic proposition, but also notes need to balance this with the practical effects of application in some cases, including whether there are more efficient mechanisms to achieve the same objective. To this end, the committee notes that the mechanism does not cover a range of activities, including emissions from:

- fuels subject to excise or customs duties (noting that there is an equivalent carbon price applied to some of these through the fuel tax system);
- agricultural activities;
- land use (except landfills);
- combustion of biomass, biogas and biofuels;
- fugitive emissions from decommissioned underground mines;
- waste deposited in landfill facilities prior to 1 July 2012;
- closed landfill facilities;
- synthetic greenhouse gases (noting that there is an equivalent carbon price applied to these through the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*); and
- scope 2 and scope 3 emissions, as defined in the NGER Act.⁷⁶

4.101 In *Securing a clean energy future: the Australian Government's climate change plan*, the Government noted that:

Over half of Australia's emissions will be directly covered by the carbon pricing mechanism and around two-thirds will be covered by a carbon price applied through various means.⁷⁷

4.102 Lastly, the ESAA requests that the Government should:

ensure retail price regulation is removed for electricity and gas. Efficient prices are necessary to provide the appropriate signals for consumption and new investment and without full cost pass-through the viability of retailers and the entire electricity and gas supply industry is at risk.⁷⁸

4.103 The regulation of retail prices for electricity is a matter within the responsibility of state and territory governments. The committee notes

⁷⁶ See clause 30 of the Clean Energy Bill 2011.

⁷⁷ Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, p. 27.

⁷⁸ Energy Supply Association of Australia, *Submission 1*, p. 2.

that Victoria has removed retail electricity price regulation and that there is a process under the Australian Energy Market Agreement to review retail price regulation in all jurisdictions. The committee also notes that the recent experience of consumers in dealing with retail electricity price rises is, in large part, attributable to the holding back by state and territory governments of historical cost increases caused by necessary infrastructure investment.⁷⁹

- 4.104 The effective management of electricity demand is an important factor in ensuring more efficient use of electricity by consumers. The committee understands that one way in which this can be achieved is in ensuring that consumers are aware, through a price signal, of the true value of energy at particular times, particularly times of peak demand. There are also other mechanisms to manage demand, including through encouraging energy efficiency, which will be supported as part of the related programs encompassed by the Government's policy.⁸⁰
- 4.105 At the same time, the committee is aware of concerns that removing price regulation may impose additional costs on consumers, particularly vulnerable consumers.⁸¹ However, the committee also notes that there are ways in which these concerns can be managed through community service obligations and assistance to vulnerable consumers.⁸² The committee also notes the household compensation which will be provided as part of this Package, which is, in part, designed to compensate consumers for increased prices for energy.⁸³

79 See the Hon Martin Ferguson AM MP *Strategic priorities for Energy Market Development*, 1 April 2011
<<http://minister.ret.gov.au/MediaCentre/Speeches/Pages/StrategicPrioritiesforEnergyMarketDevelopment.aspx>> accessed 5 October 2011.

80 For example, the Government has announced a household advice line and support service on energy efficiency through Living Greener, the adoption of new standards of energy efficiency for appliances and other consumer products and the Renewable Energy Bonus, which helps households replace electric hot water systems with more efficient alternatives. See Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, Chapter 8.

81 See Mr Damian Sullivan, Brotherhood of St Laurence, *Committee Hansard*, Canberra, 26 September 2011, pp.57-58.

82 See Ms Susan Helyar, UnitingCare Australia, *Committee Hansard*, Canberra, 26 September 2011, p. 62; Mr Damian Sullivan, Brotherhood of St Laurence, *Committee Hansard*, Canberra, 26 September 2011, p. 63.

83 See 'The effectiveness of household compensation arrangements' below.

The powers of the Clean Energy Regulator

Background

- 4.106 The Energy Supply Association of Australia raised concerns about the scope of the Clean Energy Regulator's information-gathering powers and monitoring powers, including that powers should be contained to circumstances where the Regulator has a reasonable belief that breach or non-compliance has occurred.⁸⁴ These concerns express similar views to those raised in the press at the time the bills were exposed in draft.⁸⁵

Analysis

- 4.107 The Explanatory Memorandum for the Clean Energy Bill 2011 explains that:

The Regulator has broad powers to gather information to let it monitor compliance with the mechanism, investigate possible contraventions and, where necessary, take enforcement action. These powers reflect the nature of the mechanism, under which liable entities must actively comply with its requirements, as well as avoid contravening the law.⁸⁶

- 4.108 The Clean Energy Bill 2011 defines the powers of the Clean Energy Regulator and its staff in some detail with regard to monitoring, investigation and enforcement powers⁸⁷, and the reasons for the nature of these powers are explained in the Explanatory Memorandum.⁸⁸ Furthermore, civil penalties and criminal sanctions may only be applied by a court, and not the Regulator.
- 4.109 The obligations created by the bills are imposed on a limited class of persons, namely liable entities, and those who may be in some way connected with their participation in the mechanism.

84 Energy Supply Association of Australia, *Submission 1*, p. 3.

85 The Hon Greg Hunt MP "Real power to go to carbon cops" *Herald Sun*, 22 August 2011 <<http://www.greghunt.com.au/Pages/Article.aspx?ID=2156>> accessed 5 October 2011.

86 Clean Energy Bill 2011 - Explanatory Memorandum, p. 218.

87 See Parts 13, 14, 15, 16, 17, 18, 19 and 20 and clauses 295 and 297 of the Clean Energy Bill 2011.

88 Clean Energy Bill 2011 - Explanatory Memorandum, Chapter 7.

Conclusion

- 4.110 The Clean Energy Regulator is a public body which is required to act in accordance with its legislative remit, and in the public interest. Claims that it could engage in capricious or arbitrary action do not appear to have a basis in the bills.
- 4.111 The mechanism is not simply a prohibitive scheme, whereby people comply by not breaching the law, such as is the case for competition and consumer laws. Rather, liable entities must take active steps to comply with the mechanism, and the role of the Clean Energy Regulator is to:
- facilitate compliance with the mechanism;
 - engage in ongoing monitoring of the integrity and security of the mechanism; and
 - investigate possible breaches of the law; and
 - take enforcement action under the Clean Energy Bill 2011 where justified.
- 4.112 Imposing a limitation on the Regulator of the sort suggested by the ESAA would significantly limit its ability to monitor the ongoing integrity and security of the mechanism, even where there is no suspected breach of the law. This activity could include, for example, the detection of compliance practices which are inefficient or potentially compromise its security, which could be corrected through administrative changes.
- 4.113 The committee is satisfied that the scope of the Clean Energy Regulator's powers is appropriate given its role in promoting compliance with the mechanism and in ensuring its ongoing integrity and security.

The application of the mechanism to liquid petroleum gas

Background

- 4.114 The bills provide that liquid petroleum gas (LPG) is subject to an equivalent carbon price through the fuel tax system.⁸⁹ The committee heard evidence from LPG Australia about the application of the mechanism to LPG, which appears to assume the primary use for LPG is as fuel for transport, despite the wide range of non-transport uses for LPG.

89 See Clean Energy (Fuel Tax Legislation Amendment) Bill 2011.

LPG Australia is the peak body for LPG suppliers in Australia. LPG Australia said:

Our industry sector is a little perplexed as to why we are not in the emissions trading scheme, and we welcome the opportunity today to raise those concerns again. The industry is represented by a number of petroleum and marketers in LPG. Our industry has two distinct market segments – the auto gas market segment, where we service about 700,000 vehicles and we also handle the stationary energy market. They are two distinct markets. Those two markets are also serviced by electricity and natural gas.⁹⁰

Analysis

- 4.115 In evidence before the committee, LPG Australia indicated that the treatment of LPG under the scheme could lead to distortions in treatment, which would leave the LPG sector disadvantaged. Given LPG's status as a cleaner fuel, this appeared to be inconsistent. The specific issues for LPG were discussed in evidence:

Senator MILNE: I want to start with the issue of stationary energy and the competition issue that you set out, where your gas is treated as an excise. Therefore, you have two issues, as I see it. One is cash flow issues because you have to pay an excise on a regular basis; whereas your competitors in other stationary energies do not have to pay their liability until the following February. Your second issue is that, because it is an excise, you do not have the opportunity when we go to a trading market in 2015 to purchase international credits and hedge your liability. Are they essentially the two issues you are trying to draw our attention to in relation to stationary energy?

Mr Neilson: Yes, but I think there is another one as well. There is a flow-on cost that occurs in that exercise because, while we are excluded from the litigation and controlling our carbon costs, the complexity of us remaining in an excise scheme is that we are up for a massive reconciliation program with the Australian Taxation Office to handle our transport excise and then on top of that we have got a carbon excise that we have to try to deal with. We deliver thousands and thousands of cylinders and we would have to reconcile each invoice back. It just does not make sense. How we operate in New Zealand is that when we purchase the product

90 Mr Warring Neilson, LPG Australia, *Committee Hansard*, Sydney, 28 September 2011, p. 7.

and we put it in our storage we pay the carbon tax on that, so we already know what our obligation is in terms of carbon. Under this current regime we would be doing that and all we would simply do is we would adjust that balance with the transport excise and deduct it from the carbon cost. They are the two main things. What will happen is that by remaining in this current mechanism our costs for our consumer will actually increase. So not only do we impair the original consumer but I think we also impair the take-up of a fuel that can provide an enormous contribution to abatement.⁹¹

- 4.116 LPG Australia also indicated that the practical elements of the scheme would impose administrative burdens on the sector, about which they have been in discussions with the Treasury and DCCEE:

We are coming into an excise regime that is not designed for gaseous fuels, therefore it is quite complicated. We have been able to arrange a patch arrangement with the current system where we are now given an additional six-day period for payment. We will have to reconcile our invoices to our customers with our delivery dockets because the legislation says excise is imposed at the delivery point, so when we load a truck that is when excise supplies. We do not know when that fuel will go to a transport person until we see the customer's invoice, so we will have to reconcile each of those invoices back.⁹²

- 4.117 LPG Australia suggested that the issues it raised could be fairly straightforwardly dealt with:

I think it is a matter of clarifying the definitions. If you look at the way that natural gas is going to be handled, the same approach could be taken with LPG. It is just a matter of clarifying the definitions so that you clearly identify the marketer and who has the obligation. The producer will have the obligation. I do not think there are a lot of changes that need to occur. I think the system is reasonably – well, I should not say simplistic. Nothing is simplistic in the way the regulations have come about. But I do not believe there is a great deal of complication there.⁹³

91 Senator Christine Milne and Mr Warring Neilson, LPG Australia, *Committee Hansard*, 28 September 2011, p. 7.

92 Mr Warring Neilson, LPG Australia, *Committee Hansard*, Sydney, 28 September 2011, pp. 7-8.

93 Mr Warring Neilson, LPG Australia, *Committee Hansard*, Sydney, 28 September 2011, p. 9.

Conclusion

- 4.118 The committee has received numerous submissions and heard evidence about specific administrative elements of the scheme. These proposals would, in the view of those putting them forward, improve the operation of the mechanism and the related reforms at a practical level. The committee encourages DCCEE and the Treasury and other relevant agencies to continue their discussions with a view to ensuring the practical operation of the scheme reduces the financial and other costs of compliance.
- 4.119 The evidence provided by LPG Australia suggested a potentially significant implication to the current design of the scheme for the LPG sector, which arises due to the uses of LPG in both stationary energy and transport. While the committee has not have the opportunity to test the arguments put forward by LPG Australia with the Treasury and DCCEE, it urges the departments to examine the proposals made by LPG Australia concerning the treatment of LPG under the mechanism and, where appropriate, refine the provisions to ensure that a carbon price is most efficiently applied to all uses of LPG.

Recommendation 2

- 4.120 **That the Government examine the proposals made by LPG Australia concerning the treatment of LPG under the mechanism and, where appropriate, refine the provisions to ensure that a carbon price is most efficiently applied to all uses of LPG.**

The mechanism and small and medium-sized businesses

Background

- 4.121 The committee received evidence suggesting that the mechanism may give rise to additional costs and compliance obligations for small and medium sized businesses.
- 4.122 The mechanism will apply only to liable entities that have facilities which emit emissions from a facility or a landfill facility that emits 25,000 tonnes CO₂-e or more of greenhouse gas in an eligible financial year or operates a landfill facility that emits 10,000 tonnes CO₂-e or more of greenhouse gas

in an eligible financial year and is within a prescribed distance of a 'designated large landfill facility'.⁹⁴

- 4.123 An equivalent carbon price will apply to certain users of liquid fuels covered by the fuel tax system, as follows:

Table 4.1 Treatment of transport fuels

A carbon price will be applied to:	A carbon price will not apply to:
Domestic aviation	Fuel used by households for transport
Domestic shipping	Light on-road commercial vehicles
Rail transport	Ethanol, biodiesel and renewable diesel
Off-road transport use of liquid and gaseous fuels (except in agriculture, forestry, fisheries)	Gaseous fuels used for on-road transport
	Off-road fuel use by the agriculture, forestry and fishing industries
Non-transport use of liquid and gaseous fuels	Transport fuels when used as lubricants and solvents or in other ways that do not result in emissions

Source Clean Energy Bill 2011 – Explanatory Memorandum, page 35

- 4.124 While some small and medium-sized enterprises may have a direct liability, the principal impact on small and medium-sized businesses will be through cost pass through, rather than direct liability under the mechanism.

Analysis

- 4.125 Submissions and correspondence received by the committee suggest that the mechanism may give rise to additional costs and compliance obligations for small and medium sized businesses. For example, Capricorn Enterprise, a regional economic development body based in Rockhampton, told the committee that:

businesses constantly tell me that they are drowning in red tape, their fees and charges are going up, with local government and state government taxes and ultimately this federal tax. The general viewpoint of businesses right across the board is that they are being forced to deal with consistent increases in red tape and they feel that increased charges are being constantly put upon them. That is not my view; it is what our businesses are constantly telling us. Any new tax proposed by any level of government, whether it

94 See Part 3, Division 2, Sub-division B of the Clean Energy Bill 2011.

be federal, state or an increase in local rates, does alarm businesses.⁹⁵

4.126 This view, while based in a legitimate concern about the flow-through impacts of price changes, also suggests a degree of uncertainty as to the actual application of the mechanism and related reforms in the community.

4.127 As the vast majority of small businesses will not be liable entities under the mechanism, they will not face any direct additional compliance burden as a consequence of its implementation. The only potential impacts would be:

- the time and costs associated with:
 - ⇒ changing passing on costs through price changes for the goods and services a small business supplies, which could be incorporated into regular price adjustments made by businesses; and
 - ⇒ making applications for assistance for small to medium-sized enterprises for implementing energy efficiency measures, which must be considered in the light of the potential gains to those businesses as a result of making the changes⁹⁶; and
- ongoing compliance with existing laws concerning competition, fair trading and consumer protection, as they may apply to the responses of small businesses to the impact of the mechanism.

4.128 As noted by Capricorn Enterprise in its evidence to the committee⁹⁷, the Government, in *Securing a clean energy future: the Australian Government's climate change plan*, has stated that:

Small businesses will not have to directly pay a carbon price. They will not be required to undertake any compliance activity or fill out any forms due to the carbon price. When it comes to indirect impacts, most small businesses will not be materially affected. Nevertheless, many small businesses may wish to make a contribution towards the move to a clean energy future. The Government will support these businesses.⁹⁸

4.129 Evidence provided to the committee raised concerns about the impact of increased input costs for small businesses, such as higher costs of

95 Ms Mary Carroll, Capricorn Enterprise, *Committee Hansard*, Sydney, 28 September 2011, p. 38.

96 See Mr Blair Comley, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 23.

97 Ms Mary Carroll, Capricorn Enterprise, *Committee Hansard*, Sydney, 28 September 2011, p. 41.

98 Australian Government (2011) *Securing a clean energy future: the Australian Government's climate change plan*, p. 58.

materials and increased energy costs, and the longer-term impact on their viability, caused by their having to pass these costs onto consumers. The Australian Chamber of Commerce and Industry (ACCI) told the committee that:

the chamber unambiguously represents the views of businesses as energy users but, more particularly, the views of small and medium ranking businesses, which face the prospect of much higher energy prices and also hikes in the prices of their inputs. It is true that these business range across many sectors and have varying degrees of exposure and varying degrees of market power as well. Consequently, these entities will have limited capacity to pass on higher energy prices or higher costs of other inputs. Nor are such businesses able to adjust their processes to substantially alleviate the associated price impacts. Therefore, their earnings and competitiveness will suffer, and so will jobs and expansion opportunities. SMEs have little if any market power to negotiate the rate of carbon pass-through from an upstream supplier. SMEs are likely to have already realised cheap efficiency gains in their businesses to remain competitive and thus have few if any opportunities to cut costs further. SMEs are thinly capitalised and are unable to cope with even marginal cost increases. I would also add that Treasury has ignored the circumstances of small business in their modelling to date.⁹⁹

- 4.130 Small businesses will not receive compensation under the package, but most will pass on the increased costs that they will face to their customers, remembering that nine out of ten households will receive compensation through the household assistance package. Mr Comley noted that, for example:

... if you think of one which is not particularly emissions intensive in the broad scheme of things – a dry cleaner et cetera – they face little international competition and they would pass [increased costs] on.¹⁰⁰

- 4.131 The passing on of costs is the principal impact on, and response by, small businesses to the mechanism. In addition, improving efficiency, particularly energy efficiency, will also be important. The fact that the Package includes several programs to assist businesses to reduce energy waste indicates that the Government does not agree with the assertion by

99 Mr Greg Evans, ACCI, *Committee Hansard*, Canberra, 26 September 2011, p. 31.

100 Mr Blair Comley, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 23.

Australian Chamber of Commerce and Industry that small and medium-sized businesses have few if any opportunities to improve efficiency.

- 4.132 DCCEE also noted that many small business owners would themselves be the recipients of compensation to households and that:

small to medium-sized enterprises would have access to the industry assistance programs that provide for grant based assistance for people putting in energy efficiency programs. Those programs total about \$1.2 billion.¹⁰¹

- 4.133 Furthermore, small businesses would have the benefit of the increase in the instant small-business asset write-off from \$5,000 to \$6,500, which requires no additional paperwork for small businesses.¹⁰²

- 4.134 The estimated size of any price increases to be faced by end consumers as a consequence of the mechanism are expected to be modest. These changes would have been passed on by small and other businesses in the supply chain. The Treasury, in its updated modelling report, notes that:

carbon pricing will increase aggregate consumer prices by 0.7 per cent in 2012-13 and that a second increase of 0.2 per cent by 2015-16 is projected, reflecting the move to a floating carbon price and other policy parameters. These effects are small compared with the increase from the Goods and Services Tax introduced in July 2000, and small in the context of movements in consumer prices from year to year. Nothing in this modelling update affects those conclusions.¹⁰³

- 4.135 The Treasury, in its updated modelling, also noted that the average increase nationally of household electricity bills would be 10 per cent in the period 2013 to 2017 and 8 per cent in the period 2018-2022.¹⁰⁴ These specific price impacts have been factored into the Treasury's overall estimates of cost increases for end consumers, and these could be taken as broadly representative of impacts on small businesses.

Conclusion

- 4.136 The mechanism is not likely to directly apply to many small businesses as they will not meet the required threshold for coverage, although small

101 Mr Blair Comley, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 23.

102 Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, p. 58.

103 The Treasury, *Strong growth, low pollution: Modelling a carbon price – Update*, 2011, p. 2.

104 The Treasury, *Strong growth, low pollution: Modelling a carbon price – Update*, 2011, pp. 11-12.

businesses, like other consumers, will experience some increases in input costs. Based on the Treasury modelling, these impacts are expected to be modest.

- 4.137 Similarly, the fuel tax changes set out in the bills will have limited impact on small businesses at this time. The committee notes that the Government has announced that it will apply an equivalent carbon price through the fuel tax system to heavy on-road vehicles from 1 July 2014, although this is a policy commitment and not part of the bills being considered by the committee.¹⁰⁵
- 4.138 The committee notes that there is a degree of uncertainty among many small and medium-sized businesses about the impact on them of the mechanism and related reforms, and the potential opportunities for them in terms of new sources of investment, energy efficiency programs and other assistance. To some extent this is understandable, given the highly contested nature of the policy in the public arena.
- 4.139 Once the bills are passed, there is clearly a considerable amount of effort required on the part of the Government to inform small and medium - sized businesses about both the actual impacts of the mechanism and also the many opportunities that it and its related reforms present for them.

Coverage of landfill facilities and impacts on local government

Background

- 4.140 The mechanism will apply to certain emissions from landfill facilities, namely:
- emissions from a landfill facility that emits 25,000 tonnes CO₂-e or more of greenhouse gas in an eligible financial year; or
 - emissions from a landfill facility that emits 10,000 tonnes CO₂-e or more of greenhouse gas in an eligible financial year and is within a prescribed distance of a 'designated large landfill facility'.¹⁰⁶
- 4.141 The prescribed distance for smaller landfill facilities is to be prescribed in regulations. The purpose of the coverage of smaller landfills is to prevent

105 Dr Steven Kennedy, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 11.

106 See Part 3, Division 2, Sub-division B of the Clean Energy Bill 2011.

avoidance of liability by landfill operators transferring waste to other landfills.

4.142 While the mechanism will apply to the operation of covered landfills and related activities, it will not cover:

- emissions attributable to waste deposited in a landfill facility prior to 1 July 2012¹⁰⁷;
- emissions from landfill facilities which no longer accept waste and closed prior to 1 July 2012¹⁰⁸;
- emissions from the combustion of biomass, biofuels and biogas¹⁰⁹;
- emissions, other than emissions attributable to the operation of a landfill facility, from changes in the levels of carbon sequestered in living biomass, dead organic matter or soil and that are attributable to land use, changes in land use (including land clearing) or forestry activities.¹¹⁰

Analysis

4.143 Concerns were expressed about the degree to which entities were aware of their liability under the mechanism and the level of reporting requirements imposed by the mechanism on local councils concerning their liabilities for greenhouse gas emissions from covered landfill facilities. Mr Rob Donaldson, Assistant General Manager of the Shoalhaven City Council in NSW, told the committee that:

I suspect that, so far, most local governments around Australia are really struggling to identify from the package information, in any precise terms, what the impacts are going to be on them.¹¹¹

4.144 Shoalhaven City Council has attempted to work through the implications of the mechanism for it, and the committee is grateful for this information. Indeed, as Mr Tony Windsor MP noted during the hearing, it appears that the Shoalhaven City Council is “one of the councils that are actually in front of the game.”¹¹²

107 Clause 30(9) of the Clean Energy Bill 2011.

108 Clause 30(10) of the Clean Energy Bill 2011.

109 Clause 30(3) of the Clean Energy Bill 2011.

110 Clause 30(6) and (7) of the Clean Energy Bill 2011.

111 Mr Rob Donaldson, DCCCE, *Committee Hansard*, Sydney, 28 September 2011, p. 43.

112 Mr Tony Windsor MP, *Committee Hansard*, Sydney, 28 September 2011, p. 45.

Case Study: Shoalhaven City Council¹¹³

Shoalhaven City Council is a regional council on the South Coast of NSW. It is based around the town of Nowra, covers both urban and rural regions, and includes many small communities. It has a population of 100,000, rising to around 300,000 each summer. The Council has annual revenue of \$180 million a year, just under half of which is derived from rates, and much of the rest from various fees and charges.

The Council has annual revenue of \$180 million a year, with about \$50 million derived from rates, and much of the rest from various fees and charges.

The Council estimates that its West Nowra landfill has 49,440 tonnes in gross emissions a year. The Council extracts gas for electricity generation from the landfill, and that reduces its net total emissions to 13,260 tonnes a year. Other Council operations directly or indirectly emit just under 30,000 tonnes of emissions.

The closest large landfills to the West Nowra landfill (that is, with more than 25,000 tonnes of greenhouse gas emissions a year) are run by Shellharbour Council (about 60 kilometres away) and Wollongong City Council (approximately 80 kilometres away).

If the prescribed distance between designated large landfills and smaller landfills is around 60 kilometres, then the Council may have a liability under the scheme for the net emissions from the West Nowra landfill facility, emitted by waste deposited after 1 July 2012, because it exceeds the threshold for small landfills of 10,000 tonnes of emissions a year.

The Council estimates that its liability under the mechanism would be \$40,000 in the first year of the mechanism. This liability would continue until 2055, when the landfill would stop emitting greenhouse gases, but the Council would need to obtain the revenue to cover this future liability in the remaining 15 years of the landfill's life.

If the Council stops energy generation when the landfill stops accepting waste, it estimates that it would need to recover \$1 million a year from the operation of the landfill for those remaining 15 years to cover its future liability. If it continues to generate energy, the annual revenue required would reduce to \$450,000 per year.

In addition to this, the Council has estimated, based on the Treasury's modelling, that it will incur:

- a 0.7 per cent increase in input costs, which would total \$760,000 a year;
- an \$8,900 annual increase in nett non-transport fuel costs;

113 See Shoalhaven City Council, *Submission 54*.

- electricity and gas cost increases of \$285,000 per year, if the impact of the carbon price is passed on to consumers by power providers; and
- (subject to the intended introduction of carbon pricing in 2014-15) heavy vehicle fleet fuel cost increases of \$25,000 per year.

The Council is also aware of potential opportunities available to it under the reforms contained in these bills, including investment from the Clean Energy Finance Corporation, the Australian Renewable Energy Agency, industry and community assistance through schemes like the Clean Energy Skills Program and the Low Carbon Communities Program.

4.145 Many local councils do not currently report under NGERS, established by the *National Greenhouse and Energy Reporting Act 2007*.¹¹⁴ DCCEE noted that:

the government will have and does already have an engagement strategy for waste facilities for people who may be liable under those facilities and has published estimates and is currently running workshops for anyone who may be liable in those arrangements. We do not go out and directly identify companies in that manner. Companies will be liable if they exceed the threshold – if they produce more than 25,000 tonnes of emissions.¹¹⁵

4.146 It is also important to note that, in cases where local councils contract the operation of their landfill facilities to third parties, such as waste management services providers, liability under the mechanism lies with the operator of the facility, and not the local council.¹¹⁶

4.147 Local governments that incur additional costs as a result of the mechanism may pass those costs onto ratepayers, or through increases to fees and charges for local council services. In response to a question from Mr George Christensen MP, Shoalhaven City Council noted that:

Mr CHRISTENSEN: There are some things that you as a council will not be able to change. There will be cost impacts. You are

114 NGERS is a system for the reporting of greenhouse gas emissions and energy use. It has been in place since mid-2007. DCCEE noted that around 500 liable entities already report greenhouse gas emissions under the *National Greenhouse and Energy Reporting Act 2007* (NGER Act), and that this would continue under the mechanism: Dr Steven Kennedy, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 14. NGERS will be the basis for the reporting of emissions under the mechanism.

115 Dr Steven Kennedy, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 14.

116 Ms Jenny Wilkinson, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 14.

saying that if those are not being fully compensated, the costs will have to be passed on to ratepayers?

Mr Donaldson: Yes. There is one thing that we are not clear about. In New South Wales we operate with rate pegging and the state government determines, on a default setting, what revenue increases the council will be able to work with. It is not clear to us how the carbon price impacts would flow through in the rate pegging determination, bearing in mind that less than half of our revenue comes from rates.¹¹⁷

- 4.148 DCCEE, in evidence to the committee, also noted the opportunities available to local councils, whether covered by the mechanism or not, under the related Carbon Farming Initiative (CFI) to generate additional income through the sequestration of carbon in the land or the generation of clean energy¹¹⁸ and through other programs. DCCEE noted that:

that legislative framework [the *Carbon Credits (Carbon Farming Initiative) Act 2011*] provides landfill operators and councils with the opportunity to generate carbon credits as a result of action like flaring methane from landfill.¹¹⁹

- 4.149 DCCEE also noted that a methodology would be prepared to assist the operators of landfill facilities with measuring the credits they may obtain through carbon farming projects prior to the commencement of the CFI on 1 December 2011.¹²⁰

- 4.150 Awareness of these and other opportunities among local governments is limited, but developing. The evidence of the Shoalhaven City Council showed that it was aware of these initiatives, but that there was some way to go to understanding how the Council could benefit from them. In its submission, it noted that “[t]hese programs may well offer significant partnership opportunities for council to advance energy efficiency and renewable energy.”¹²¹ The Australian Local Government Association noted that:

the CFI is still comparatively new for local government and the councils are trying to get a basic understanding of what the CFI

117 Mr George Christensen MP and Mr Rob Donaldson, Shoalhaven City Council, DCCEE, *Committee Hansard*, Sydney, 28 September 2011, p. 46.

118 Ms Jenny Wilkinson, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 14; Mr Blair Comley DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 15.

119 Ms Shayleen Thompson, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, pp. 14-15.

120 Ms Shayleen Thompson, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 15.

121 Shoalhaven City Council, *Submission 54*, p. 7.

means to them. The Australian Local Government Association has been working with the department to better understand what the opportunities might be. In the near future we would hope to be able to assist councils with information so that they can realise some opportunities that the CFI might provide.¹²²

4.151 Mr Pritchard went on to say:

We certainly encourage the government to provide assistance to encourage councils to understand the opportunities and take advantage of the CFI. We think that, once councils do understand the opportunities, CFI will be used extensively, and in fact it may be that with CFI opportunities demand might exceed supply.¹²³

4.152 In its evidence, the Shoalhaven City Council noted that programs to encourage investment in cleaner energy and energy efficiency are ‘an opportunity to help us shift the way we operate and to change some of our infrastructure’.¹²⁴ This highlights a key element of this package of reforms, which is the potential to drive changes in the way in which local councils and others behave to reduce greenhouse gas emissions and move to cleaner energy sources.

Conclusion

4.153 The mechanism will not apply to many smaller local councils as they will not meet the required threshold for coverage, although they will, like other consumers, will experience some increases in input costs. Based on the Treasury modelling, these impacts are expected to be modest. Furthermore, councils will have opportunities to obtain potentially considerable benefits through the Carbon Farming Initiative and assistance through energy efficiency programs and the Low Carbon Communities Program.

4.154 The committee notes that there may be uncertainty among many local councils about the impact on them of the mechanism and related reforms, and the potential opportunities for them in terms of new sources of income through the Carbon Farming Initiative, new sources of investment for their communities, energy efficiency programs and the Low Carbon Communities Program. To some extent this is understandable, as local councils seek a clearer understanding of the direct impacts of the

122 Mr John Pritchard, DCCEE, *Committee Hansard*, Melbourne, 27 September 2011, p. 33.

123 Mr John Pritchard, DCCEE, *Committee Hansard*, Melbourne, 27 September 2011, p. 33.

124 Mr Rob Donaldson, Shoalhaven City Council, *Committee Hansard*, Sydney, 28 September 2011, p. 46.

mechanism on them, before considering ways in which these impacts, if any, may be mitigated.

- 4.155 Once the bills are passed, there is clearly a considerable amount of effort required on the part of the Government, working with the Australian Local Government Association, its State and Territory affiliates, and with State and Territory governments, to inform local councils about both the actual impacts of the mechanism and also the many opportunities that it presents for them, particularly the Carbon Farming Initiative, which will be implemented from 1 December 2011.

The mechanism and the agricultural sector

Background

- 4.156 Agricultural activities are excluded from coverage by the mechanism, although agricultural enterprises will be indirectly affected by it as consumers and suppliers.
- 4.157 Emissions from agricultural activities are excluded from the application of the mechanism under clause 30(4) of the Clean Energy Bill 2011. Agricultural emissions include:
- emissions of methane from the digestive tract of livestock;
 - emissions of methane or nitrous oxide from the decomposition of livestock urine or dung;
 - emissions of methane from rice fields or rice plants;
 - emissions of methane or nitrous oxide from the burning of savannas or grasslands;
 - an emission of methane or nitrous oxide from the burning of crop stubble and residues in fields and sugar cane before harvest; or
 - an emission of carbon dioxide or nitrous oxide from soil.
- 4.158 Relevantly, the mechanism also excludes emissions, other than emissions attributable to the operation of a landfill facility, from changes in the levels of carbon sequestered in living biomass, dead organic matter or soil and

that are attributable to land use, changes in land use (including land clearing) or forestry activities.¹²⁵

- 4.159 The bills also contain reforms that benefit land users. There is specific support for conservation tillage equipment through the Carbon Farming Futures program.¹²⁶ The offset is delivered by a 15 per cent refundable tax offset for eligible equipment. This will provide incentives for farmers to move to zero till and minimum tillage farming techniques which can enhance soil carbon, water retention and productivity. The Carbon Farming Futures program will provide \$429 million of funding over six years to help farmers and landholders benefit from carbon farming practices.
- 4.160 The committee also notes the upcoming commencement of the Carbon Farming Initiative (CFI) in December 2011. The CFI is an emissions offset scheme, whereby farmers and others may generate carbon credits. Each credit represents abatement of greenhouse gases which is achieved by:
- reducing or avoiding emissions, for example, through capture and destruction of methane emissions from landfill or livestock manure; or
 - removing carbon from the atmosphere and storing it in soil or trees, for example, by growing a forest or reducing tillage on a farm in a way that increases soil carbon.
- 4.161 Carbon credits are usually purchased and used by individuals or companies to cancel out or 'offset' the emissions they generate during their day-to-day life or normal course of business, for example, by consuming electricity or catching a plane. Carbon credits can be used to offset emissions voluntarily or to meet regulatory requirements.
- 4.162 The level of greenhouse gas abatement that could be achieved through the CFI is considerable on any estimate¹²⁷, given that the agriculture sector current represents around 20 per cent of Australia's total greenhouse gas emissions.¹²⁸

125 Clause 30(6) and (7) of the Clean Energy Bill 2011.

126 See Schedule 2, Clean Energy (Consequential Amendments) Bill 2011 and Clean Energy (Consequential Amendments) Bill 2011 – Explanatory Memorandum, Chapter 3.

127 A detailed discussion of the potential abatement opportunities presented by the CFI is set out in Chapter 1 of the Senate Standing Committee on the Environment and Communications – Legislation Committee report on the *Carbon Credits (Carbon Farming Initiative) Bill 2011 [Provisions]*, *Carbon Credits (Consequential Amendments) Bill 2011 [Provisions]* and the *Australian National Registry of Emissions Units Bill 2011 [Provisions]*, see pp. 16-20.

128 DCCEE *Australian National Greenhouse Accounts: National Inventory by Economic Sector 2009, 2010*, p. 1 <www.climatechange.gov.au/~media/publications/greenhouse-acctg/national-inventory-by-economic-sector-2009.pdf> accessed 5 October 2011.

Analysis

- 4.163 The committee received evidence suggesting that the mechanism may give rise to additional costs and compliance obligations for farmers, which would also lead to increased exposure to trade competition which is not covered by a price on greenhouse gas emissions.¹²⁹ The WA Farmers Federation told the committee that:

From the evidence that has been given to us, we believe that financially we will be worse off under a carbon tax. Some of the detail, of course, is pretty limited in relation to proving that. I know the government's research does not indicate that, but we have been through these processes before. Farmers are very much at the end of the line and we believe a lot of the costs from processing, from retailing and from transport will gravitate back as increased costs and charges to growers.¹³⁰

- 4.164 Like small businesses, individual farmers will not be liable entities under the mechanism set out in the bills and will not have any direct compliance costs. There is a view that farmers will lose out financially, as they will bear the brunt of cost increases incurred by processors and others in the supply chain as a result of the mechanism, which are passed up the supply chain to them, rather than down the supply chain to consumers.¹³¹ While there are long-standing concerns about the way in which the food supply chain may operate to the disadvantage of farmers, which have been the subject of extensive parliamentary consideration, it is not clear to the committee that these issues translate, as a matter of course, to this context, without more evidence being provided.
- 4.165 The scale of potential direct cost increases to end consumers has been discussed above in the context of small and medium-sized businesses.¹³² The WA Farmers Federation noted work done by the Australian Farm Institute, which attempts to quantify these costs.¹³³ The Institute's work

129 Mr Dale Park and Mr Michael Norton, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 55.

130 Mr Michael Norton, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 54; see also Mr Dale Park, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 56.

131 Mr Michael Norton and Mr Dale Park, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, pp. 54-55.

132 See 'The mechanism and small and medium-sized business' above.

133 See Sally Davidson 'Agriculture's excluded, so a carbon price won't add costs. Right?' in (2011) 8 *Farm Institute Insights* 3 (<http://www.farminstitute.org.au/newsletter/August_featurearticle.html> accessed 5 October 2011) and cited in National Farmers Federation, *Submission* 63, pp.4-5). It is unclear

shows that these additional costs are material, but does not account for the benefits available to farmers through the Conservation Tillage Offset, the CFI, tax reforms, household assistance and other programs which form part of the Package, and which have, in the case of the Conservation Tillage Offset, been designed to remove the potential for any benefit to be transferred to others in the supply chain.

- 4.166 Farming organisations are aware of the potential benefits to be realised from linked parts of this reform, including the CFI. The WA Farmers Federation noted that:

we certainly intend to work with NFF to look at ways and means as to how farmers in Western Australia can lock into some of those packages so that we can try and develop some way of ameliorating any potential costs that do flow back to us.¹³⁴

However, the WA Farmers Federation also noted that:

There has not been a terrible lot of research and development done in this area, so to really sit down and quantify numbers as far as agriculture is concerned is very difficult. We are very much of the opinion that agriculture can be part of the solution but there needs to be a terrible lot more research and development done to clearly identify what they are and what the value to agriculture is going to be.¹³⁵

- 4.167 While the CFI, taken alone, represents a significant opportunity for farmers to obtain benefits from farming practices which reduce or abate greenhouse gas emissions, there appears to be degree of confusion about the significant additional benefits that can be obtained from the linkage of the CFI with the mechanism.¹³⁶
- 4.168 Under the mechanism, Australian carbon credit units (ACCUs), which represent carbon credits generated through the CFI, can be used to meet liabilities under the mechanism.¹³⁷ As such, those generating carbon

where the figure of \$24,000 of additional costs for a WA grain farmer stated by Mr Norton comes from. The article states that the additional costs to a WA grain farmer in the first year of the mechanism would be \$2,951, and in the third year of the mechanism (assuming the inclusion of heavy vehicles) would be \$6,661 (see Tables 2 and 3).

134 Mr Michael Norton, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 59

135 Mr Michael Norton, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 58.

136 Mr Michael Norton and Mr Dale Park, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 59.

137 Clause 122 of the Clean Energy Bill 2011.

credits through the CFI, can sell them (as ACCUs) to liable entities under the mechanism. There are limits to the number of ACCUs to meet liabilities in the fixed charge phase of the mechanism¹³⁸, and surplus ACCUs may be applied to the next year's liability.¹³⁹ However, these restrictions will be removed from 1 July 2015, providing those generating ACCUs a potentially significant source of additional income from their sale to liable entities under the mechanism.

- 4.169 In this regard, the committee notes the comments of the National Farmers Federation in its submission to the Senate Standing Committee on Environment and Communications – Legislation Committee on the legislation to introduce the CFI:

it is important that the CFI is not excluded from linking with any future domestic carbon market, such as a carbon tax or emissions trading scheme.

The NFF notes that there is some opposition to the linking of CFI offsets to any future economy wide carbon pricing mechanism. The NFF argues that excluding CFI offsets from any future economy wide carbon pricing mechanism will increase the total cost of abatement for the Australian economy. This would also be the case if CFI offsets were excluded from a future economy wide carbon pricing mechanism during a fixed price phase as is being proposed under the Government's carbon pricing mechanism architecture.¹⁴⁰

- 4.170 The contribution of agriculture to Australia's greenhouse gas emissions reduction tasks is significant and important. However, it is only part of a much broader effort that will be required and there is the opportunity for the mechanism to encourage further research and development in this regard.¹⁴¹ Indeed, while there are clearly many opportunities available for effective action through the CFI and other programs¹⁴², the technologies

138 A liable entity may meet only five per cent of its liabilities with ACCUs in the period 1 July 2012 to 1 July 2015; see clause 125(7) of the Clean Energy Bill 2011.

139 Clause 128(7)-(9) of the Clean Energy Bill 2011.

140 National Farmers Federation, *Senate Standing Committee on Environment and Communications – Legislation Committee Submission 39*, pp. 8-9. This issue is also discussed in more detail in Chapter 4 of the Senate Standing Committee on Environment and Communications – Legislation Committee report on the *Carbon Credits (Carbon Farming Initiative) Bill 2011 [Provisions]*, *Carbon Credits (Consequential Amendments) Bill 2011 [Provisions]* and the *Australian National Registry of Emissions Units Bill 2011 [Provisions]*, see pp. 56-60.

141 See Mr Michael Norton, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 59.

142 For a list of these initiatives see National Farmers Federation, *Submission 63*, p.5.

are still being developed. For example, a considerable amount of work needs to be done in more fully understanding and developing the most effective methods of carbon sequestration in soil. The WA Farmers Federation advised the committee that:

We need a lot more research into soil carbon because it is going to be a viable alternative. It depends who you talk to – whether you talk to soil scientists or [agri]cultural scientists – but the whole fact that soil carbon can be quite transitive in the soil is one of the problems that we really need to get to. That is where we need to put a lot of research money into to firm up some of these mechanisms.¹⁴³

Conclusion

- 4.171 The mechanism will not apply to many agricultural enterprises as they will not meet the required threshold for coverage, although they will, like other consumers, will experience some increases in input costs. Based on the Treasury modelling, these impacts are expected to be modest. Furthermore, farmers will have opportunities to obtain potentially considerable benefits through the Carbon Farming Initiative, the Conservation Tillage Offset and assistance through energy efficiency programs.
- 4.172 The committee notes that there may be uncertainty among many farmers about the impact on them of the mechanism and related reforms, and the potential opportunities for them in terms of new sources of income. To some extent this is understandable, as farmers take up opportunities in the CFI from December 2011 and also seek a clearer understanding of the direct impacts of the mechanism and related reforms on them, before considering ways in which these impacts, if any, may be mitigated.
- 4.173 Once the bills are passed, there is clearly a considerable amount of effort required on the part of the Government, working with the National Farmers Federation, its State and Territory affiliates, and other agriculture sector organisations and with State and Territory governments, to inform farmers councils about both the actual impacts of the mechanism and also the many opportunities that it presents for them, particularly the Carbon Farming Initiative, which will be implemented from 1 December 2011.

143 Mr Dale Park, WA Farmers Federation, *Committee Hansard*, Sydney, 28 September 2011, p. 58.

Synthetic greenhouse gases

- 4.174 Synthetic greenhouse gases are far more potent in their atmospheric effects than carbon dioxide. For this reason, the bills provide for the application of an equivalent carbon price to the importation or manufacture of synthetic greenhouse gases in Australia.¹⁴⁴
- 4.175 The committee heard from a range of stakeholders concerning ways in which the regulation of synthetic greenhouse gases could be made more effective.¹⁴⁵
- 4.176 The Green Cooling Association informed the committee that:
- We very much support the price on carbon and associated emissions, but we are here particularly to talk about the synthetic greenhouse gases. These are gases used widely in the refrigeration and air conditioning industry and they are very potent emissions, so one kilogram might equal many tonnes, up to 10,000 tonnes or more, of carbon dioxide equivalent. Although they are at the moment a small slice of our emissions pie they are among the most rapidly growing of our emissions. The good news is that it is relatively easy to do something about it. They are a significant slice of our emissions, they are unnecessary, and the emissions we have today are in fact illegal.
- What we are about today is trying to close the loop and create a cash incentive, a financial incentive, to enable people to comply with their legal obligation to prevent emissions.¹⁴⁶
- 4.177 In particular, the Green Cooling Council argued that the introduction of carbon-equivalent pricing for refrigerant imports in July 2012 should be supported by complementary measures, including:
- bringing forward the planned introduction of financial incentives for the recovery and destruction of fluorocarbon gases,
 - removing the existing regulatory exemption for recovery of synthetic greenhouse gases from the destruction of foams,

144 See Part 2, Schedule 1 of the Clean Energy (Consequential Amendments) Bill 2011 and the Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2011 and the Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2011.

145 Green Cooling Association, *Submission 51 and supplementary submission*.

146 Mr Brent Hoare, Green Cooling Association, *Committee Hansard*, 28 September 2011, p.30.

- the establishment of a Product Stewardship scheme to manage the environmental impacts of fluorocarbon refrigerants and blowing agents, and
 - improved enforcement of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.
- 4.178 The principal concern of the Green Cooling Association and others is that, while the introduction of a price on the emissions of synthetic greenhouse gases is a welcome and necessary step, there appear to remain considerable issues with ensuring full compliance with laws regulating the emission of existing synthetic greenhouse gases contained in older cooling equipment, particularly when this equipment is disposed of and the gas is simply released into the atmosphere rather than being collected and destroyed.
- 4.179 The committee strongly encourages Department of Sustainability, Environment, Water, Population and Communities to proactively and transparently assess the Green Cooling Association's recommendations such that they may, if appropriate, be given Parliamentary consideration.

Recommendation 3

- 4.180 **That the Department of Sustainability, Environment, Water, Population and Communities proactively and transparently assesses the Green Cooling Association's recommendations such that they may, if appropriate, be given Parliamentary consideration.**

The effectiveness of the household compensation arrangements

Background

- 4.181 The household compensation arrangements in the package have two principal elements:
- financial assistance through increased Government payments to families, veterans, allowees, pensioners, carers and self-funded retirees

for increases in the cost of living resulting from the implementation of the mechanism;¹⁴⁷

- assistance designed to encourage the adoption of energy saving measures;¹⁴⁸ and
- income tax cuts and new supplements for low and middle-income earners.¹⁴⁹

4.182 These arrangements are intended to shield low and middle income earners from the full impact of the price increases resulting from the implementation of the mechanism, and also allow recipients of assistance to use that money to purchase lower cost goods and services from less emissions intensive sources or to introduce their own energy saving measures in the home. In this way, the household assistance is also designed to encourage the adoption of lower-emissions technologies and energy sources by households and business.¹⁵⁰

Analysis

4.183 The committee received evidence from a range of community sector organisations which provide support and assistance to low-income Australians. While noting some specific issues, these organisations were generally supportive of the household compensation arrangements. By way of example, the Brotherhood of St Laurence told the committee:

In terms of the adequacy of the household assistance package, we think it is adequate to cover the additional costs for low-income households. The amount, which is going to over 120 per cent of the anticipated costs to these households, is particularly welcome. We do not see it as overcompensation, as it will cover those households with higher than average energy usage in this bracket. Also, it will cover both the direct energy costs, such as electricity and gas, and impacts on food and the like.

In terms of the mechanisms that have been chosen – the increase in pensions and benefits, changes to the low-income tax threshold,

147 See Clean Energy (Household Assistance Amendments) Bill 2011 – Explanatory Memorandum.

148 See Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, Chapter 8.

149 See Clean Energy (Income Tax Rates Amendments) Bill 2011 and Clean Energy (Income Tax Laws Amendments) Bill 2011 – Explanatory Memorandum.

150 Australian Government, *Securing a Clean Energy Future: the Australian Government's climate change plan*, 2011, pages 37, 38 and 48 and Chapter 8.

including adjustments to ensure that it does not flow through to all wage and salary earners – we welcome those changes, as with the family tax benefit changes and, importantly, the additional support for households with medical special needs and disabilities. The safeguards that are put in place, such as \$300 to households that have not been appropriately compensated, the annual review of the adequacy of compensation and ACCC oversight of pricing are particularly important. Here we recognise that there is some lumpiness in terms of the amount that households get, but this reflects the choice of mechanisms chosen.¹⁵¹

- 4.184 The committee also heard that there will be some cost impacts on the provision of services by community sector organisations. However, these cost impacts need to be considered within a broader context. UnitingCare Australia, a major provider of social and other services, said:

That cost impact will hit our services at the same time that we are dealing with low-wage increases, which we absolutely support but are worried about how to afford. At the same time, we are looking at the diminution in value of the fringe benefits tax to our services. It is one of the ways we can attract and retain our workforce. We are looking at the superannuation guarantee. All of these things – the super guarantee and better wages for our low-wage staff – we think are very important. Pricing carbon will be a much smaller impact but we think a significant one. We have not quantified it.¹⁵²

- 4.185 Further detail on the other, more significant impacts on the community sector noted that:

The carbon price is a contributor to that and it is an issue we are working with the government on, but it is actually not the primary contributor. Our primary costs are around staffing, and the stuff around the low-wage case and FBT exemptions are actually more substantial concerns than the carbon price.¹⁵³

- 4.186 Some of these costs will be met through the provision of household assistance through increases to pensions and other government payments. The Council of the Ageing explained how this would work:

151 Mr Damian Sullivan, Brotherhood of St Laurence, *Committee Hansard*, Canberra, 26 September 2011, pp. 56-57.

152 Ms Lin Hatfield-Dodds, UnitingCare Australia, *Committee Hansard*, Canberra, 26 September 2011, p. 57.

153 Ms Susan Helyar, UnitingCare Australia, *Committee Hansard*, Canberra, 26 September 2011, p. 57.

They get their compensation through the individual getting the compensation, though. The individual who is in residential care gets their 1.7 per cent, or whatever it is, compensation and they then hand 50 per cent of it over to the residential care facility. That is basically how it is done. So it is still done through the individual and half of it goes to the aged-care provider and the other half stays with the individual, plus the percentage of their pension that they are going to pay goes up from 84 to 85 per cent. I am not an aged-care provider – COTA is a policy and advocacy organisation – but I used to run aged care. I am sure some of the aged-care providers feel that that is not actually adequate compensation, but I think time will tell whether that will be enough. We have got to work it through a bit.¹⁵⁴

- 4.187 While noting general support for the package, community service providers did note some concerns with the potential for compensation to be eaten up by increases in public housing rents by state and territory governments. To some extent this may be avoided by the payment of some benefits being paid as a supplement, rather than an increase in the pension or payment.¹⁵⁵ Similar concerns exist in relation to electricity cost increases over time, which may serve to impose additional costs on vulnerable and low-income families. UnitingCare told the committee that:

The brutal reality is that, in Australian communities and households that are characterised by poverty and exclusion, parents are making decisions all the time, particularly around whether or not they eat adequately so that their children can. Older Australians living in their own homes are making decisions about whether they heat them or not. So again I have to say around heating, around fuel, those increases are not being driven by pricing carbon. Those increases are being driven at over 10 to 15 per cent a year by other drivers. So, pricing carbon will have an impact, a minimal impact but an important impact that is compensated.¹⁵⁶

154 Ms Josephine Root, Council of the Ageing, *Committee Hansard*, Canberra, 26 September 2011, p. 59.

155 See Senator Louise Pratt and Ms Josephine Root, Council of the Ageing, *Committee Hansard*, Canberra, 26 September 2011, p. 62.

156 Ms Lin Hatfield-Dodds, UnitingCare Australia, *Committee Hansard*, Canberra, 26 September 2011, p. 61. See also UnitingCare Australia, *Submission 65*.

4.188 Community organisations also provided evidence to the committee on the tax changes, and the potential benefits that these can provide. With reference to the increase in the tax-free threshold, UnitingCare said:

we go up to \$18,000 and then we go up to \$19,400, from memory. They are good moves. Using ... the revenue raised from carbon pollution to make changes to our taxation system to make it fairer, to also enable Australians who are locked out of the labour market to more easily find and keep jobs – losing some of those taper rate issues – is smart policy and will positively impact people's lives on the ground, in the communities and the people are who we are delivering services to and supporting.¹⁵⁷

Conclusion

4.189 The committee is aware of the concern among many Australians that the mechanism will have a direct financial impact on them. The Treasury modelling indicates that, despite claims to the contrary, this impact is likely to be modest.

4.190 The committee also notes that the mechanism, by pricing greenhouse gas emissions, is intended to drive change in the behaviour of businesses and consumers to foster over time:

- supply-side changes to implement cleaner, more energy efficient production methods for energy, primary production and manufacturing; and
- demand-driven change, through a price signal to consumers about the comparative emissions intensity of goods and services in the economy.

4.191 The household assistance measures in the bills are designed to ensure that many households, particularly low and middle-income households, are not left financially worse off as a result of applying a price to greenhouse gas emissions.

4.192 The committee is satisfied that the full suite of household assistance measures will provide compensation for those Australian households that will most directly experience the impacts of pricing greenhouse gas emissions, and provide them with the ability to drive further change. The committee is also satisfied that the measures announced by the Government provide for appropriate support over time to assist

157 Ms Lin Hatfield-Dodds, UnitingCare Australia, *Committee Hansard*, Canberra, 26 September 2011, p. 63.

community sector service providers in adjusting, and in better assisting vulnerable and low-income Australians.

Steel Transformation Plan

Background

- 4.193 The Steel Transformation Plan is additional assistance to Australian steel manufacturers. It is likely that those Australian steel manufacturers that can seek assistance under the Plan will be liable entities under the mechanism and, as emissions-intensive trade-exposed businesses, may be eligible for free carbon units under the jobs and competitiveness program.¹⁵⁸
- 4.194 Under the Plan, the Government may provide financial assistance to Australian steel manufacturers to undertake activities that will significantly enhance the competitiveness and economic sustainability of the steel manufacturing industry in Australia in a low carbon economy.¹⁵⁹ The total amount of assistance is capped at \$300 million for the four years from 2012-2013.¹⁶⁰

Analysis

- 4.195 The Plan is intended to assist steel manufacturers in adjusting to the mechanism in the context of a challenging international trade environment at present. Part of this adjustment will involve steel manufacturers adapting to a low carbon economy, and working to reduce their liabilities under the mechanism.
- 4.196 DCCEE noted that '[t]he steel transformation plan is about providing assistance to the sector in order to help it transform into a sector which is going to be viable in the long term in Australia. It reflects the particular circumstances that the Australian steel makers are facing at the moment.'¹⁶¹
- 4.197 DIISR further noted environmental issues could be included as part of the consideration of applications under the Plan, specifically that '[i]n relation

158 Ms Jenny Wilkinson, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 22.

159 Clause 5 of the Steel Transformation Plan Bill 2011.

160 Steel Transformation Plan Bill 2011 – Explanatory Memorandum, p. 1.

161 Ms Jenny Wilkinson, DCCEE, *Committee Hansard*, Canberra, 21 September 2011, p. 22.

to environmental outcomes under the bill the second part of the scheme will be a self-assessment scheme similar to the automotive transformation scheme. The details of environmental outcomes will be set out in the disallowable instrument which will be formulated in the second part of this year.’¹⁶²

Conclusion

4.198 The committee considers that the Steel Transformation Plan Bill 2011 adequately provides for the consideration of environmental factors in the provision of assistance to Australian steel makers.

Issues for further consideration

4.199 The committee has received a considerable amount of detailed evidence about specific aspects of the bills. As noted elsewhere in this chapter, the committee draws these specific issues to the Government’s attention.

4.200 A theme that emerged during the committee’s inquiry degree of uncertainty about the mechanism and its application. In particular, there are areas which would benefit from clear information and guidance being provided to those directly affected by the mechanism and related reforms, including:

- liability under the mechanism and compliance with the Clean Energy legislation;
- the linkages between the mechanism and related initiatives like the Carbon Farming Initiative; and
- opportunities for government support for and investment in clean energy and energy efficiency initiatives.

Recommendation 4

4.201 **That the Government intensify its efforts to promote awareness and understanding of the mechanism, including through:**

- **working with the Clean Energy Regulator to provide information and guidance to liable entities about the**

162 Ms Lindy Edwards, DIISR, *Committee Hansard*, Canberra, 21 September 2011, p. 22.

mechanism and compliance with it in good time for the start of the mechanism on 1 July 2012;

- **working with representative bodies, state, territory and local governments, to inform state, territory and local governments, businesses, community organisations and individuals about:**
 - ⇒ **the linkages between the mechanism and related initiatives like the Carbon Farming Initiative; and**
 - ⇒ **opportunities for government support for and investment in clean energy and energy efficiency initiatives.**

**Ms Anna Burke MP
Chair
5 October 2011**