22 September 2011

The Secretary of the Committee
Joint Select Committee on Australia's Clean Energy Future Legislation

E: jscacefl@aph.gov.au

Dear Sir/Madam,

**Submission on Clean Energy Future Legislation**

Origin Energy Limited (Origin) welcomes this opportunity to make a submission on the Clean Energy Future legislative package.

Origin is a major Australasian integrated energy company focused on gas exploration, production and export, power generation and energy retailing. Listed in the ASX top 20 Origin has over 4,700 employees. Origin is now Australia's largest energy retailer servicing 4.6 million electricity, natural gas and LPG customer accounts and has one of the country's largest and most flexible generation portfolios with more than 5,930 MW of capacity, through either owned generation or contracted rights. We are a significant investor in low emissions and renewable energy technologies, including gas, geothermal, wind, hydro and solar and are by far the largest retailer of green energy products such as GreenPower. Through Australia Pacific LNG, our incorporated joint venture with ConocoPhillips and Sinopec, Origin is developing one of Australia's largest CSG to LNG projects based on Australia's largest CSG reserves.

Given the breadth of our business activities Origin is exposed to a range of challenging issues as a result of carbon pricing. These include the upward impact on our customers' energy prices, the risks associated with passing carbon costs through to consumers in state-regulated retail markets, and the changes a carbon price would bring about in the generation sector and wholesale energy markets. We are also exposed to the significant added cost of carbon as an Energy Intensive Trade Exposed (EITE) exporter through our multi-billion dollar CSG to LNG project in Queensland.

We appreciate the administrative changes that have been made to the clean energy legislative package since the Exposure Draft was released in late July and that some of our comments from the recent submission process have been specifically incorporated in the bills currently before Parliament. These include changes to the:

- treatment of natural gas liability; and
- point of liability for unincorporated joint ventures.

However, a number of key issues from our submission remain unresolved. These are summarised in the following table.

**Key Policy and Implementation issues**

| No | Issue | Comments |
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| 1 | International permits - floor price | The floor price on international permits could lead to inefficient carbon abatement outcomes and will raise the cost of the scheme for Australia. Implementation of the proposed top-up fee will be costly and difficult to administer. In our view it should be removed. |
| 2 | International permits – eligibility | The power to change the types of international permits that may be eligible in the scheme as contained in s 123 is too wide and can be made at too short notice. We caution that this will act as a major deterrent for Australian companies to source international permits and could prevent them from originating international projects. We recommend that this section be modified to allow the grandfathering of existing contracts for international permits, which would be a similar process as occurs under the EU ETS. |
| 3 | LNG assistance - Supplementary Allocation | Part 7 on trade exposed industry generally does not contain enough detail on the proposed assistance programs. In particular, we recommend that the Supplementary Allocation for LNG projects be defined and suggest that this should be included in s 145. |
| 4 | Information gathering and monitoring powers and executive officer liability | The circumstances in which the Regulator can exercise its monitoring and information gathering powers are too broad given the extensive and invasive nature of the powers. We suggest that these powers be limited to circumstances where the Regulator has a reason to believe that a person has information about a contravention of the Clean Energy Act. To better reflect corporations law an element of knowledge or involvement in a contravention should be required before a person is personally liable. |
| 5 | LPG for non-transport use | Emissions from LPG are effectively covered by changes to the taxation regime which means there is a flat charge applied and therefore no options to potentially reduce costs (e.g. by trade in permits). However, non-transport use LPG competes with other products such as natural gas which are covered by the scheme and have this flexibility, so LPG is placed at a relative disadvantage. Whilst we note a new “opt-in” scheme for taxable fuels has been adopted in the latest version of the legislation, this does not appear to include LPG. |

We are particularly concerned that the compensation available under the Jobs and Competitiveness Program (JCP) is not actually based on the principle of impact on international competitiveness. Australian LNG projects are “price takers” operating in a highly competitive international market and cannot pass through the increased costs associated with carbon to overseas customers. Additionally, Australian LNG projects are subject to cost pressures over and above the proposed carbon costs.

Further, the legislation and JCP compensation arrangements do not acknowledge the significant positive impact Australian LNG projects can have in reducing *global* emissions. In particular, the development of gas resources as part of the world's transition away from coal is one of the world's most urgent priorities in addressing climate change. While the Clean Energy Future package (including the contract for closure of highly intensive coal-fired electricity generators) potentially creates appropriate incentives to support a transition to lower-emission fuels within Australia, it creates an effective penalty when gas resources are made available to the rest of the world.

This is in direct conflict to the purpose of an emission trading scheme with international links, namely to reduce global emissions. This focus on reducing global emissions was recently highlighted by the Minister for Climate Change and Energy Efficiency Greg Combet who stated on 16 September[1]:

> "*The atmosphere knows no national boundaries. A tonne of pollution reduced overseas, credibly done, has the same importance as a tonne of pollution reduced in our own economy.*"

The Clean Energy Future legislative package is therefore adopting an internally inconsistent position in relation to this primary aim of reducing global emissions.

Compensation levels proposed in the clean energy policy for LNG in the 50% to 66% range are not adequate. In order to maintain competitive neutrality assistance rates for LNG should offset additional costs from the legislative package and not have a built in unconditional decay rate. The Productivity Commission review process should act to restore competitive neutrality and put the Australian LNG industry on an equal footing with its international competitors.

Please see the attached table which contains our more detailed remaining concerns on the legislative package. Origin has also contributed to a number of industry submissions including those of APPEA, AIGN, AFMA, BCA, esaa and the Tax Institute. We generally support these submissions; however where there are differences, this submission should be relied on as representing Origin's position.

If you have any questions regarding this submission, please contact me on (02) 8345 5301 or Matthew Kaspura (Manager Carbon Policy) on (02) 8345 5287.

Yours sincerely

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[1] *Daily Telegraph*, p2, 16 September 2011.

# Origin Energy

# Submission on the Clean Energy Future Legislation

# 22 September 2011

| Clean Energy Bill 2011 | | |
|---|---|---|
| **Part** | **Section** | **Comment** |
| 1 | 16 | *When regulations must be tabled* (for Carbon Pollution Cap)<br><br>The approach in the Act setting out a process for setting scheme caps by May 2014, nearly two years after the scheme has commenced, gives insufficient notice as to the cap that will be in place. Given the long lead times in the energy sector and the need for businesses to plan ahead to make investments under carbon pricing, it is important that the initial scheme caps are known as soon as possible (either as set out in regulations that are not disallowed or via any default trajectory). Ideally the scheme caps should be set as soon as practicable. |
| 2 | 17, 18 | *Default carbon pollution caps*<br><br>Origin notes that the default carbon pollution caps place a very heavy burden on those sectors of the economy which are covered by the scheme. Although the scheme only covers about 60% of Australian emissions these covered sectors are in fact being asked to carry the burden of over 90% of the abatement task required to meet Australia's minimum 5% reduction target. This is an inequitable and inefficient design. |
| 4 | 100 | *Issue of carbon units for a fixed charge* (price ceilings and floors)<br><br>We note that the policy of definite price ceilings and floors is only set for three years (i.e. only until 2017-18) and that the issue of any further price ceilings or floors will not be examined until 2016 as part of the scheme review. This means that any changes will not be made to legislation until 2017, which gives insufficient notice to the market.<br><br>Price ceilings and floors are such a fundamental part of scheme design that much more notice must be given to the market. We suggest a minimum notice period of at least three years. |
| | 101 | *Limit on issue of carbon units*<br><br>It would be preferable for auctions to take place as early as possible. However, the main impediment to early auctions is a final decision on the scheme caps. Therefore, Origin recommends that the scheme caps be set in regulations earlier than the proposed date of May 2014. This will allow for a far more informed auction process than is currently anticipated and generally enable a more robust and liquid Australian carbon market to develop. Further, given the long lead times in the energy sector and the need for businesses to plan ahead to make investments under carbon pricing, it is important that the initial scheme caps are known as soon as possible. |
| | 113 | *Auction of carbon units*<br><br>The details of permit auctions will be made by legislative instrument. Origin encourages that these rules be made as soon as practicable after the passage of legislation so that auctions can be held well in advance of the start of the flexible trading period, thereby promoting a healthy secondary market in carbon permits. Origin requests detailed consultation with industry on the development of these auction rules. |
| 6 | 123 | *Surrender restrictions* |

| Clean Energy Bill 2011 | | |
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| **Part** | **Section** | **Comment** |
| | | The provision that regulations prohibiting the surrender of specified eligible international units take effect from the following year after the regulations are registered is not supported. This does not provide sufficient notice to businesses of a change of law and is an inappropriate allocation of risk. Furthermore, it discourages the development of international emissions markets as it creates risks for businesses in establishing contractual arrangements for supplies of international permits. Further, it will most likely prevent Australian companies from originating projects that generate international permits. While noting the need to ensure the environmental integrity of the scheme, it is suggested that there be no retrospective application of any changes in eligible international units (noting that the Government has the option of purchasing additional abatement to redress any environmental concerns). This would align with similar processes in the EU ETS. Alternatively compensation could be paid to the holders of prohibited international units negatively affected by the change of eligibility. |
| | 126 | *Interim emissions number*<br><br>This section specifies how to calculate the interim emissions number for facilities and natural gas retailers.<br><br>For facilities, an interim emissions number is calculated as 75% of the person's provisional emissions number of the previous eligible financial year. It is not clear how facilities will be treated when the liability has been transferred from an operator to another person under a designated joint venture or liability transfer certificate for financial control. Section 126(3) provides an option to use an estimate instead of relying of the provisional emissions number for the previous year. However, a person using s126(3) is subject to an estimation error unit shortfall charge if the estimate is less than 75% of the final emissions number.<br><br>Origin suggests a holder of a financial control liability transfer certificate be permitted to rely on the facility's NGERs data from the previous year when determining the interim emissions number regardless of who reported under NGERs. For designated joint ventures, the joint venture party should be able to use the participating percentage of the previous year's NGERs data. |
| | 128 | *Final unit shortfall*<br><br>We note that the penalties in the event of a shortfall in surrender are highly punitive and the retail sales for gas retailers may be subject to revisions after the time of surrender. The flexibility around borrowing and estimation must be applied in a way that does not result in gas retailers being subject to penalties that arise from the normal market revision processes. Also there is no flexibility for an error in estimation however reasonable. That is a 1% error bears the same effective rate of penalty as a 20% error.<br><br>Section 128(7) should be changed to enable any excess of Australian carbon credit units to be rolled over to the June surrender rather than having to wait for the following February surrender (during the fixed price period). |
| 7 | 143 | *Aim and objective* |

| Clean Energy Bill 2011 | | |
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| **Part** | **Section** | **Comment** |
| | | Origin supports the modifications to the aim and objectives of the Jobs and Competitiveness Program as recommended by APPEA. |
| | 145 | *Jobs and Competitiveness Program*<br><br>This section should specifically refer to the LNG Supplementary Allocation and give power in regulations to allocate permits. Section 156(2)(i) which involves the Productivity Commission reviews actually makes reference to the Supplementary Allocation so it is inconsistent not to set up these powers in s 145.<br><br>An appropriate place could be a new s 145(4). The drafting of this section should make reference to the policy which is reflected on p 115 of the Securing a Clean Energy Future policy document. For example "*The Jobs and Competitiveness Program must provide for a Supplementary Allocation of permits for LNG projects which ensures an effective assistance rate of at least 50% in relation to emissions from the LNG project.*"<br><br>Origin supports the further comments made by APPEA regarding this section of the legislation. |
| 13 | 221 | *Regulator may obtain information or documents*<br><br>The Regulator can exercise its information gathering powers, which allow it to require that a person provide it with information and documents, if it believes on reasonable grounds that the person has information or a document that is relevant to the operation of the Act or associated provisions. The proposed trigger for such invasive powers is far too broad. Similar to the *Competition and Consumer Act 2010* (CCA) these powers should be limited to circumstances where the Regulator has a reason to believe that a person has information about a contravention of the *Clean Energy Act*. The comments below in relation to the type and nature of the material which is searched for are also relevant to section 221. |
| 15 | General; 232; 245 | *Monitoring powers*<br><br>Similar to the information gathering powers, the circumstances in which the Regulator can obtain a warrant to exercise its monitoring powers are far too broad given the extensive and invasive nature of the powers. It is difficult to imagine circumstances in which the Regulator would not be able to obtain a warrant against a liable entity under the current drafting – even if the person is fully complying with its obligations under the Clean Energy Act. The CCA, the compliance of which is fundamental to consumers and trade and commerce in Australia, also has far-reaching investigative powers for the Australian Competition and Consumer Commission (ACCC). However, the ACCC's powers are much more constrained under the CCA.<br><br>The investigative and enforcement powers of the Regulator under the Clean Energy Act should be based on those in the CCA to avoid liable entities facing an unreasonable and unmanageable compliance burden, and unnecessary and unjustified regulatory interference with business operations. In particular, the circumstances in which a warrant can be obtained should be limited to circumstances where there are reasonable grounds for suspecting that there is material on the premises which may evidence a contravention of the Clean Energy Act. The |

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| | | warrant should also set out the type and nature of the material which is being searched for, including the contraventions to which the search relates. See section 154X of the CCA and section 30 of the *Australian Securities and Investments Commission Act 2001* (ASIC Act). The latter refers to "specified books", and this also relevant to matters which can be searched under a warrant under section 135 of the ASIC Act. |
| | 231 | *Identity cards*<br><br>Consistent with the Competition and Consumer Act, if an inspector cannot produce their identity card on request they should not be able to exercise the powers under Part 15 of the Clean Energy Act. See section 154C(7) of the Competition and Consumer Act. |
| | 233 | *Monitoring powers*<br><br>The powers in section 233 should be connected to particular material or activity. For example, the power to search the premises should relate to the purpose of the search and the particular material which is being sought as specified in the warrant. See section 154E of the CCA and section 36(4) of the ASIC Act. The latter requires that the warrant specify which "books" are covered by the warrant. |
| | 235 | *Inspector may ask questions and seek production of documents*<br><br>Consistent with section 237, the inspector should explain to the person that is not required by law to answer the questions or produce the document. The power in section 235(1) should also be connected to the subject matter of the warrant: see section 154R of the CCA. |
| | 237 | *Consent*<br><br>Given the significance of the consent, it should be given by an executive officer, or least an officer (as defined in the Corporations Act) only. Ideally it should also be in writing. |
| | 245 | *Monitoring warrants*<br><br>A warrant must be executed within 6 months of it being granted. In comparison, the CCA and ASIC Act allow a warrant to be executed within 7 days of it being granted. It is unclear why such a long period is justified or required. |
| 16 | 248 and 249 | *Liability of executive officers of bodies corporate*<br><br>An element of knowledge or involvement in a contravention should be required before a person is individually liable. While directors must comply with directors' duties and have specific obligations, the Corporations Act does not apply the type of liability proposed by section 248 of the Clean Energy Act on executive officers. For example, a "person" must be "involved" in a contravention of the continuous disclosure rules: see sections 79 and 674 of the Corporations Act. Both the Corporations Act and CCA incorporate the following concepts: (a) aiding, abetting, counselling, or procuring; (b) inducing; (c) knowingly concerned; and (d) party to a contravention. Any changes to the Clean Energy Act should also be reflected in the other bills included as part of the carbon legislative package. |
| 18 | 265 | *When an infringement notice can be given*<br><br>Consistent with the CCA, the Regulator should not be able to issue multiple infringement notices for the same alleged contravention. See section 134A of the CCA and section 1317DAC(3) of the Corporations Act. This is particularly the case given the amount of penalty under the |

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| | | infringement notices (2000 penalty units compared to a maximum of 600 penalty units under the CCA and a maximum of $100,000 under the Corporations Act). |
| 20 | 278 | *Acceptance of undertakings*<br><br>Section 278(5) requires that the Regulator publish an undertaking on its website. Generally this is appropriate, however, there may be circumstances where an undertaking includes commercially sensitive material. For example, this could include a commitment to purchase or sell a certain number of carbon units with a specified time period. Publication of this material would be a commercial disadvantage for the person. Therefore, Origin recommends that provision be made for commercially sensitive aspects of an undertaking to be kept confidential while they remain commercially sensitive. |
| 22 | 288 | *Periodic reviews by Climate Change Authority*<br><br>The Productivity Commission has recently found that there are over 230 policies which seek to regulate greenhouse gases in Australia. Origin believes that these impose an unnecessary cost on the Australian economy and many of these inefficient policies should be removed upon the introduction of a carbon price.<br><br>Therefore we recommend that the cost and effectiveness of other State and Commonwealth policies to regulate greenhouse gas emissions and how they interact with the carbon price mechanism be specifically included in the scope of reviews conducted by the Climate Change Authority. |

| Clean Energy Regulator Bill 2011 | | |
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| **Part** | **Section** | **Comment** |
| | | *General comments*<br><br>There is currently significant expertise in the Office of the Renewable Energy Regulator and Greenhouse and Energy Data Officer and Origin has had positive interactions during "business as usual" periods. However, when major policies need to be implemented (e.g. LRET/SRES) it is our experience that both ORER and GEDO have been seriously under-resourced. It is vital that the Clean Energy Regulator is established by a properly resourced project team. This is necessary to maintain the effective functioning of LRET/SRES and NGERs during the transition and the effective introduction of the fixed carbon price and eventually the flexible carbon price. |
| **Clean Energy (Consequential Amendments) Bill 2011** | | |
| **Part** | **Section** | **Comment** |
| | | *With respect to tax issues Origin contributed to and generally supports the submission of the Tax Institute.* |

| Clean Energy (International Unit Surrender Charge) Bill 2011 | | |
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| **Part** | **Section** | **Comment** |
| n/a | 8 | *Imposition of charge* (top-up fee for international permits)<br><br>Origin does not support any proposed "top-up fee" on the surrender of international permits (if that price happens to be below the floor price). We believe that if the Government wishes to constrain the use of international permits or is concerned about certainty of revenue flows under the scheme it should use other more transparent and less distortive policy.<br><br>Any sort of top-up fee will be difficult and costly to implement and administer and may have a number of unintended consequences. We understand that the Government is considering an approach for entities surrendering international permits to pay a top-up fee based on an average price from that market. This approach greatly increases risk for purchasers of international permits. Those that paid above the average price for that market for example may be penalised unfairly. Those that purchased early in the year would carry increased risk for those permits until the average price date and would incur carrying costs for a longer period than entities buying late in the year. It would make participation in the market far less attractive and efficient.<br><br>Any sort of top-up fee will be difficult and costly to implement. Using a market reference price to measure the level of the top up fee payable greatly increases risk for purchasers of international permits, for the reasons outlined below:<br>• The secondary CER market, which is currently the largest and most transparent international carbon unit market in operation is highly volatile with prices over the last 6 months ranging from €13 highs to a low of €7.50. As such, over what time period and with what methodology will the "average market price" be calculated? Relevant factors include what the reference point, what units are included, are the spot or forward contracts considered. Such a fee needs to be transparent, robust and published prior to the inception of the floating price period, as depending on how this is set the results could vary dramatically.<br>• In addition to the carbon price volatility, there has been significant volatility in the EUR/AUD exchange rate over this period, which will also add complexity to the calculation of any carbon reference price.<br>• The time of purchase will also be a key factor in the purchase of any international units, as the longer the units are held on the liable entities balance sheet, the greater the associated "cost of carry". The costs to liable entities of purchasing units and holding them on balance sheet until surrender should be considered when setting the top-up fee.<br><br>The combination of these risks and the inherent risks of operating in the international carbon markets significantly reduces the value of international units to liable entities. Origin suggests that the Government consider alternative structures to allow for the use of international permits without the intrusive top-up fee structure, such as allowing a lower proportion of international units without an applicable surrender charge. Finally, one likely perverse outcome of the proposed top-up fee is that sellers of international permits will simply sell them to Australian liable entities at around the Australian floor price anyway. This would result in wealth transfers from Australia to overseas with little benefit to Federal Treasury revenue. |

| Fuel tax arrangements | | |
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| | | *Treatment of transport fuels for stationary energy purposes*<br><br>Emissions from transport fuels for stationary energy purposes (such as LPG, diesel, fuel oil and aviation fuel) are effectively covered by changes to the taxation regime which means there is a flat charge applied and therefore no options to potentially reduce costs (e.g. by trade in permits). However, non-transport use of transport fuels competes with other products such as natural gas which are covered by the scheme and have this flexibility, so transport fuels are placed at a relative disadvantage.<br><br>The treatment of LPG agreed to by the Government and industry under the CPRS and highlighted again by the Department of Climate Change and Energy Efficiency in April 2011 (briefing to the refinery fuels technical working group) in essence was that LPG was treated in the same manner as all fuels. LPG distributors would be obliged to purchase permits to match the carbon emissions of the LPG they sold, and to do so under the same terms as other fuels (time of purchase, freedom to trade etc). This outcome had been agreed between the LPG industry and Government following a series of co-operative submissions (LPGA submission September 2008) and discussions. The industry agreed that the approach was sound. The treatment of LPG was parallel to that of natural gas, and commercially parallel to the treatment of electricity at the time.<br><br>Stationary energy LPG competes in the market with natural gas and electricity. The significant disadvantages that stationary LPG will now suffer are thus:<br>• Large working capital impost from a weekly payment compared to annual payment regime.<br>• Under the flexible price scheme, exclusion from the ability to minimise cost through commercial activities.<br>• Severe penalty regime under the Excise Act (including imprisonment) for non compliance.<br>The comparison between LPG and electricity leaves LPG similarly disadvantaged. While electricity is treated differently from natural gas, with the obligation being at the generator level, LPG is disadvantaged compared to electricity also through the timing of payments and the inability to manage cost through trading.<br><br>Transport fuels are also used for stationary energy purposes to produce electricity. Electricity generators that combust diesel, fuel oil and aviation fuel are at a disadvantage to coal and natural gas-fired generators as the fuel tax amendments impose an effective cost of acquitting 100% domestic permits. Unlike the coal and gas-fired generator, generators that combust transport fuels are not able to source the least cost permits as they are prevented from purchasing carbon farming initiative and international permits. In addition, the fuel tax amendments do not account for varying fuel specifications and do not represent the actual facility emissions.<br><br>Ultimately, the resulting higher than necessary costs will be borne by households and small businesses, largely in regional areas. Therefore the LPG industry request that the Government reconsider how it collects the carbon price on fuels used for stationary energy and ensure legislation reflects collection of the carbon price on LPG and other transport fuels in the same way it will be collected from the natural gas industry. |