



Carbon Pollution Reduction Scheme Bill 2009

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Glossary

Abatement	Reduction of greenhouse gas (GHG) emissions
The Authority	Australian Climate Change Regulatory Authority
AAU	Assigned Amount Unit is a unit issued out of a country's initial assigned amount and allocated as an assigned unit amount, expressed as a tonne of CO ₂ by the Authority.
ACCI	Australian Chamber of Commerce and Industry
AEU	Australian Emissions Units
AIG	The Australian Industry Group
BCA	Business Council of Australia
Carbon dioxide-equivalent (CO ₂ -e)	The basis for comparing the warming effect of a greenhouse gas as compared to carbon dioxide. It is calculated as the global warming potential of a given mass of a non-CO ₂ GHG (based on its ability to absorb heat and its lifetime in the atmosphere) compared to CO ₂ .
CER	Certified Emission Reduction units are credits generated from Clean Development Mechanism (CDM) projects, each equivalent to one tonne of CO ₂ e.
Carbon leakage	The transfer of emissions offshore, as industries relocate to markets with lower or unregulated carbon pricing.
CDM	The Clean Development Mechanism is a means by which developed countries may sponsor clean development projects in developing countries to help meet their emissions reduction commitments.
EITE	Emissions-intensive trade-exposed industries
ERU	Emission Removal Units
ETS	Emissions trading scheme
GHGs	Greenhouse gases

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GreenPower	Refers to power from renewable sources that electricity customers can opt to subscribe to.
IPCC	Intergovernmental Panel on Climate Change
Mt	Million tonnes
NETT	National Emissions Trading Taskforce
REDD	Refers to reduced emissions from deforestation and forest degradation.
RET	Renewable Energy Target
RU	Removal Units are units corresponding to emissions or removals of GHGs from land use, land use change and forestry activities, which are accounted for as part of each country's emissions commitments under the Kyoto Protocol.
Sequestration	Refers to the removal of greenhouse gases from the atmosphere and their storage in a 'sink'.
Sink	A natural, enhanced or human-designed system that absorbs greenhouse gases from the atmosphere and keeps them in a long-term store.
UNEP	United Nations Environment Program
UNFCCC	United Nations Framework Convention on Climate Change
WMO	World Meteorological Organisation

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Carbon Pollution Reduction Scheme Bill 2009

Date introduced: 14 May 2009

House: House of Representatives

Portfolio: Climate Change & Water

Commencement: Royal Assent for sections 1 and 2 and the 28th day after receiving Royal Assent for sections 3 to 397, contingent on whether certain other Acts also receive Royal Assent.

The other Acts required to receive Royal Assent for sections 3 to 387 to come into effect are:

- the *Australian Climate Change Regulatory Authority Act 2009*
- the *Carbon Pollution Reduction Scheme (Charges–Customs) Act 2009*
- the *Carbon Pollution Reduction Scheme (Charges–Excise) Act 2009*
- the *Carbon Pollution Reduction Scheme (Charges–General) Act 2009*, and
- the *Carbon Pollution Reduction Scheme (Consequential Amendments) Act 2009*.

If the above Acts do not receive Royal Assent on or before the 28th day after the day on which the CPRS Bill receives Royal Assent, then sections 3 to 387 do not commence at all. The relevant Bills for the above Acts are also before Parliament and are being treated as a package.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

The CPRS Bill sets up an emission trading scheme (ETS) as part of a framework designed to reduce pollution caused by emissions of carbon dioxide (CO₂) and other greenhouse gases, collectively known as GHG emissions and measured in parts per million of carbon dioxide equivalent¹ (or ppm CO₂e). The ETS provides economic incentives for achieving reductions in GHGs. The objectives of this Bill, according to **Clause 3 in Part 1**, are:

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1. Carbon dioxide equivalent is calculated for non-CO₂ GHGs by their global warming potential (GWP). The six GHGs controlled under the Kyoto Protocol are carbon dioxide

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- to give effect to Australia's obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol to that Convention.²
- to support the development of an effective global response to climate change, and
- to take action to enable the reduction of Australia's GHG emissions to meet its emissions reduction targets. If a comprehensive international agreement to which Australia is a party is reached to stabilise atmospheric GHG concentrations at 450 parts per million CO₂e or lower, this target is a 25 per cent reduction in emissions below 2000 levels by 2020.³ Otherwise, the target is to reduce emissions to 60 per cent below 2000 levels by 2050 and by between 5 and 15 per cent below 2000 levels by 2020, with the larger reduction dependant on whether a strong international agreement on GHG emissions control is reached.

This last point specifies the current Australian targets for GHG emissions reduction. These targets are important for setting the trajectory of the proposed scheme (see below).

(CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs, a class of gases containing carbon, hydrogen and fluorine), perfluorocarbons (PFCs, a class of gases containing carbon and fluorine), and sulphur hexafluoride (SF₆). A gas' GWP is defined as the relative ability of 1kg of that gas, compared with 1 kg of CO₂, to warm the atmosphere over a 100-year time horizon (or other defined timeframe). Thus each gas is assigned a multiplier, ranging from 1 for CO₂ to as high as 22,200 for SF₆; See IPCC, Chapter 2: 'Changes in Atmospheric Constituents and in Radiative Forcing', *Climate change 2007: the physical science basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge University Press, Cambridge and New York, 2007.

2. Australia ratified the Kyoto Protocol to the UNFCCC on 12 December 2007. Domestic abatement action should be the primary means by which Annex I countries such as Australia meet their emissions target. The Kyoto Protocol also sets out three 'flexibility mechanisms' that Annex I parties may use as a supplementary means of meeting their targets. International emissions trading is one such mechanism, enabling countries that emit less than their assigned targets, to sell surplus credits to countries that have exceeded their targets. Domestic emissions trading schemes, which are independent of the Kyoto Protocol, may also be established by countries, and they may be usefully operationally linked to credits generated by the flexibility mechanisms.
3. See generally K Rudd (Prime Minister), W Swan (Treasurer), P Wong (Minister for Climate Change and Water), *A new target for reducing Australia's carbon pollution*, joint media release, Canberra, 4 May 2009.

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Comment – purposes

Australia's GHG emissions were 552.7 million tonnes (Mt) of CO₂e in 2000 according to the emissions accounting rules for the Kyoto Protocol.⁴ The Government has not explicitly stated which accounting rules its emissions reduction targets will be based upon, but presumably if a global agreement is reached then the accounting rules associated with that agreement will be used for Australia's domestic targets. Using the Kyoto accounting rules as a guide, the targets to which Australia's GHG emissions must be reduced are approximately:

- between 525.0 Mt (at five per cent reduction on 2000 levels) and 414.5 (at 25 per cent reduction on 2000 levels) Mt CO₂e emissions in 2020, and
- 221.1 Mt CO₂e in 2050 (at 60 per cent reduction on 2000 levels in 2020).

The Kyoto Protocol targets for emissions reduction were based on the level of GHG emissions in 1990. Consequently, some commentators will call for emission reduction targets based on 1990 emission levels. According to the Department of Climate Change, Australia's GHG emissions levels in 1990 were 546.3 Mt CO₂e.⁵ This is only slightly less than the actual level of such emissions in 2000 noted above, so the distinction under the Kyoto accounting rules is only about one percentage point. However, the Kyoto rules apply special treatment to emissions from deforestation in the base year (1990) that leads to a larger emissions total for that year than under other accounting rules.⁶ The difference between using 1990 or 2000 may therefore become significant under future accounting rules.⁷

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4. Department of Climate Change (DCC), 'National greenhouse gas inventory – Kyoto Protocol accounting framework', DCC website, viewed 9 June 2009, <http://www.ageis.greenhouse.gov.au/>.
 5. DCC, 'National greenhouse gas inventory – Kyoto Protocol accounting framework'.
 6. See A Talberg, *The Kyoto Protocol accounting rules*, Background note, Parliamentary Library, Canberra, 2009, viewed 25 May 2009, <http://www.aph.gov.au/Library/pubs/BN/2008-09/KyotoAccRules.htm>.
 7. For example, under the UNFCCC accounting rules, Australia's emissions in 2000 were nearly two per cent higher than in 1990. Therefore, if Australia's emissions reduction commitments are applied under the UNFCCC rules, a five per cent reduction from 2000 levels translates to only a 3.3 per cent reduction from 1990 levels. See UNFCCC, 'Greenhouse gas inventory data – detailed data by party', UNFCCC website, viewed 9 June 2009, <http://unfccc.int/di/DetailedByParty.do>.

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Background

Policy Development

Growing awareness of climate change issues

Scientific concern about the possible build-up of carbon dioxide in the atmosphere commenced as far back as 1861. However, it was not until the latter half of the twentieth century that improvements in technology allowed for more precise measurements of the level of GHGs in the atmosphere. From the 1980's onward scientific concern about the possible long term consequences of the increase in GHGs in the atmosphere accelerated.⁸ At the beginning of the twenty first century the effects of such a build-up, as predicted by scientific modelling, were being increasingly observed. These effects include increasing average global temperatures, sea level rise, accelerated glacial melting, intense and prolonged droughts and increased storm severity.⁹ The projected environmental and consequent economic impacts of continued adverse changes in these areas are severe to catastrophic, and form a compelling case for significant global policy action to mitigate or reverse these trends.¹⁰

International policy

The development of Australian emissions trading policy took place against the background of increased concern about climate change in various international bodies.

Between 1979 and 1988 a series of international conferences convened by the World Meteorological Organisation (WMO) and the United Nations Environment Program (UNEP) raised concerns about the ramifications of the mounting evidence that human activity was causing potentially dangerous increases in GHGs in the atmosphere. In 1988 the WMO and UNEP jointly established the Intergovernmental Panel on Climate Change (IPCC). The IPCC's role is to provide independent scientific advice on the complex and important issue of climate change. The Panel was asked to prepare, based on available scientific information, a report on all aspects relevant to climate change and its impacts

8. S Weart, 'The discovery of global warming: the carbon dioxide greenhouse effect', American Institute of Physics website, June 2008, viewed 8 April 2009, <http://www.aip.org/history/climate/co2.htm#survey>.

9. Intergovernmental Panel on Climate Change (IPCC), *Climate change 2007: the physical science basis*, Cambridge University Press, Cambridge and New York, 2007, pp. 5–9.

10. J Styles, *Climate change: the case for action*, Research paper, no. 28, 2008–09, Parliamentary Library, Canberra, 2009, viewed 22 April 2009, <http://www.aph.gov.au/library/pubs/rp/2008-09/09rp28.pdf>.

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and to formulate realistic response strategies. It has issued four major assessment reports to date as well as a number of special reports on various topics.¹¹

The findings of the first IPCC Assessment Report of 1990 played a decisive role in leading to the UNFCCC, which was opened for signature in the Rio de Janeiro Summit in 1992 and entered into force in 1994 (Australia is a signatory to this Convention). The IPCC Second Assessment Report of 1995 provided key input for the negotiations of the Kyoto Protocol in 1997 and the Third Assessment Report of 2001. Special and Methodology Reports provided further information relevant for the development of the UNFCCC and the Kyoto Protocol.¹²

The Fourth Assessment Report of the IPCC in 2007 has provided the essential scientific background for the negotiations leading up to a new global agreement on climate matters to be finalised in Copenhagen at the end of 2009. The increasing wealth of scientific evidence presented in each new IPCC report has heightened concern about the rate of climate change and increased the urgency of a coherent policy response at a global level.

Australia in Context

Australia is currently responsible for only about 1.5 per cent of global GHG emissions, but suffers the full effects of global warming arising from the emissions of other countries.¹³ Hence, it has a strong interest in seeing effective global policy action to address climate change issues. Australia is also one of the largest per capita emitters in the world, which places additional pressure on it to implement substantial domestic mitigation measures and contribute its fair share towards a global mitigation effort.

The choice of a cap - and - trade scheme is generally consistent with efforts in many other countries.¹⁴ The significance of being consistent lies in the ability to link internationally with minimal compliance and transaction costs. The European Union (EU) has had an ETS in place since 2005. New Zealand already has legislation for an ETS in place.¹⁵ Japan

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11. For a short history of the IPCC see: WMO/UNEP, 'Intergovernmental Panel on Climate Change—16 years of scientific assessment in support of the climate convention', IPCC website, December 2004, viewed 8 April 2009, <http://www.ipcc.ch/pdf/10th-anniversary/anniversary-brochure.pdf>.
 12. Intergovernmental Panel on Climate Change (IPCC), 'About IPCC', IPCC website, viewed 8 April 2009, <http://www.ipcc.ch/about/index.htm>.
 13. R Garnaut, *The Garnaut climate change review: final report*, Cambridge University Press, Cambridge, 2008, p. 65.
 14. New Zealand Government, 'International examples of emissions trading', New Zealand's climate change solutions website, viewed 29 May 2009, <http://www.climatechange.govt.nz/emissions-trading-scheme/international-examples.html>.
 15. The *Climate Change Response (Emissions Trading) Amendment Act 2008* established the New Zealand Emissions Trading Scheme. The Act describes the legal details of the

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is currently exploring options for replacing its voluntary ETS with a mandatory ETS.¹⁶ In early 2007, seven US states and four Canadian provinces created the [Western Climate Initiative](#), as a collaborative effort to develop ways of reducing GHGs, with a focus on a market-based cap and trade scheme.¹⁷ The United States has had a number of subnational schemes operating for a few years, and the United States Congress is making serious progress in developing a national cap-and-trade scheme.¹⁸ Also, so-called ‘major emerging emitters’ have or are in the process of developing a range of domestic policies and measures to reduce their greenhouse gas emissions.¹⁹

Details of other schemes and how they compare to the scheme proposed in the Bill are provided below.²⁰

ALP policy development

The broad outline of current government policy appears to have been formulated in the period leading up to the 2004 election. During the 2004 election campaign Australian Labor Party (ALP) policy documents carried the following words:

Labor will establish a National Emissions Trading Scheme, to allow market based mechanisms to deliver lowest cost greenhouse gas emissions reductions, and seek linkages with international trading arrangements.²¹

emissions trading scheme. See: New Zealand Government, ‘Climate change regulations’, New Zealand’s climate change solutions website, viewed 29 May 2009, <http://www.climatechange.govt.nz/emissions-trading-scheme/regulations.html>.

16. A Tuerk & H Kimura, ‘Emerging Japanese emissions trading schemes and prospects for linking’, Institute for Global Environmental Strategies, October 2008, viewed 5 June 2009, <http://www.indiaenvironmentportal.org.in/content/emerging-japanese-emissions-trading-schemes-and-prospects-linking>.
17. See Western Climate Initiative website, viewed 9 June 2009 <http://www.westernclimateinitiative.org/>
18. See Regional Greenhouse Gas Initiative website, viewed 9 June 2009 <http://www.rggi.org/home> and the US Environmental Agency Website, Cap and Trade Programs, viewed 9 June 2009 <http://www.epa.gov/captrade/programs.html> and United States House of Representatives, Energy and Commerce Committee, Chairman Waxman and Markey Introduce the American Clean Energy and Security Act, viewed 9 June 2009 http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1622&catid=155&Itemid=55.
19. See L Nielson, ‘Climate Change Policy: Brazil, China, India and Russia’, *Background Note*, Parliamentary Library, Canberra, 25 February 2008, viewed 1 June 2009, <http://www.aph.gov.au/LIBRARY/Pubs/bn/2008-09/ClimateChange.htm>.
20. See ‘International comparisons’ below, p. 49.

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Another policy document from the 2004 campaign stated on 7 October 2004, that a Federal Labor Government would ratify the Kyoto Protocol and introduced an ETS that was operational no later than 2010.²²

These themes were carried over into the 2007 election where ALP policy was to introduce an ETS commencing in 2010.²³ During the 2007 election campaign the then Labor opposition stated that a Rudd Labor Government would:

Ensure that Australia's international competitiveness is not compromised by the introduction of emissions trading.

Consult with industry about the potential impact of emissions trading on their operations to ensure they are not disadvantaged.

Establish specific mechanisms to ensure that Australian operations of emissions intensive trade exposed firms are not disadvantaged by emissions trading.²⁴

Coalition policy development

The development of Coalition policy on emissions trading occurred alongside increased public concern about climate change matters. In response to increased public concern, the then Coalition Government commissioned an inquiry in 2006 into the development of an Australian ETS. The report of this inquiry concluded that it would be in Australia's interests to develop a cap – and - trade style ETS, even if a global climate change agreement had not been reached. This scheme was recommended to commence trading by 2011, or at the latest by 2012.²⁵

In the subsequent election, official Coalition party policy stated:

To reduce domestic emissions at least economic cost, we will establish a world-class domestic emissions trading scheme in Australia (planned to commence in 2011). We

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21. K Thompson (Shadow Minister for Sustainability, the Environment and Heritage), *Labor's plan for environment and heritage*, ALP policy document, 6 October 2004, p. 10.
 22. J Fitzgibbon (Shadow Minister for Mining, Energy and Forestry), *Labor's plan for a secure, affordable and sustainable energy future*, ALP policy document, 7 October 2004, p. 5.
 23. K Rudd, P Garrett and C Bowen, *Labor's 2020 target for a renewable energy future*, Election 2007 policy document, ALP, October 2007, viewed 8 April 2009, http://www.alp.org.au/download/now/071030_renewable_energy_policy_xx.pdf.
 24. C Evans, *Labor's plan for a stronger resources sector*, Election 2007 policy document, ALP, October 2007, viewed 17 April 2009, http://www.alp.org.au/download/now/071122_labors_plan_for_a_stronger_resources_sector222_xx.pdf.
 25. Prime Ministerial Task Group on Emissions Trading, *Report of the prime ministerial task group on emissions trading*, Australian Government, Canberra, 31 May 2007, pp. 7 – 13.

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are also committed to capturing the opportunities from being among the first movers on carbon trading in the Asia–Pacific region.²⁶

Other commissioned reports

In 2004, Australian state and territory governments established the National Emissions Trading Taskforce (NETT) to develop ideas for a multi–jurisdictional ETS as part of a policy response to the challenge of reducing greenhouse gas emissions, and potentially to link Australia to international carbon markets. The NETT played a formative role in building Australian commitment to an ETS.²⁷ NETT’s final report strongly endorsed the establishment of a national emissions cap-and-trade scheme as soon as possible.²⁸

The Garnaut Climate Change Review was commissioned in April 2007 by the then Leader of the Opposition, Kevin Rudd, and by the premiers of the six states and the chief ministers of the two territories of Australia. The Commonwealth Government joined the Review in January 2008 after the change of government in the 2007 election. The Review was required to examine the impacts of climate change on the Australian economy, and to recommend medium– to long–term policies and policy frameworks to improve the prospects of sustainable prosperity.²⁹ Its draft and final reports, released in July and September 2008 respectively, also strongly recommended the establishment of an Australian cap and trade scheme.

Government reports and draft legislation

The Rudd government responded to these developments by releasing a Green Paper on an Australian ETS, which would be called the Climate Pollution Reduction Scheme (CPRS). This paper put forward a possible design for the proposed scheme and invited comments in July 2008.³⁰ This was followed by the release in October 2008 of detailed Treasury economic modelling of the Australian economy under a reference scenario and two scenarios incorporating assumptions consistent with the CPRS.³¹ The final government

26. Liberal Party of Australia, *Australia: strong prosperous and secure, National Progress*, 12 October 2007, p. 27, viewed 8 April 2009, http://australianpolitics.com/elections/2007/liberal-policy/07-10-12_AustraliaStrongProsperousAndSecure.pdf.

27. Garnaut Climate Change Review, *Emissions Trading Scheme Discussion Paper*, Canberra, March 2008, p. 10.

28. National Emissions Trading Taskforce, *Possible design for a national greenhouse gas emissions trading scheme: Final framework report on scheme design*, December 2007.

29. R Garnaut, *The Garnaut climate change review: final report*, p. xiii.

30. Australian Government, *Carbon Pollution Reduction Scheme – green paper*, Canberra, July 2008.

31. Australian Government, *Australia’s low pollution future – the economics of climate change mitigation*, Canberra, 30 October 2008.

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decisions on the broad outline of the proposed CPRS were released in a White Paper in December 2008.³² An exposure draft of the CPRS legislation and associated commentary was released on 10 March 2009, with comments invited by 14 April 2009.³³ In response to submissions and feedback on the draft legislation, the Government announced substantial changes to the CPRS on 4 May 2009,³⁴ before introducing the revised legislation into Parliament on 14 May 2009.

Outline of proposed scheme

The following outline includes the announced changes of 4 May 2009 as well as the changes to the Exposure Draft contained in the Bill itself.

Cap and trade

The proposed CPRS is a modified cap-and-trade scheme. Generally, in cap-and-trade arrangements:

- the government sets an annual limit for GHG emissions
- the government then either sells or issues emission permits (called, interchangeably, emission units) to liable entities or other parties
- liable entities may reduce their emissions in line with the number of emissions units they possess; sell surplus emissions units if their emissions are lower than their current number of units; or if they have insufficient units in relation to their GHG emissions, buy additional units on a secondary market
- each liable entity then surrenders the number of emissions units equal to its emissions over the relevant accounting period (for Australia this will be the standard financial year running from 1 July to 30 June the following year)
- entities who do not surrender sufficient emissions units in relation to their emissions are subject to a penalty, and
- there is generally no upper limit on the price of an emissions unit.

The proposed CPRS departs from the classical cap and trade model in respect of this last point as it sets a fixed price on an emissions permit for the first year and an upper limit on

32. Australian Government, Carbon Pollution Reduction Scheme – Australia’s low pollution future – white paper, Canberra, 15 December 2008.

33. Australian Government, Exposure Draft – Carbon Pollution Reduction Scheme Bill 2009, Canberra, 10 March 2009.

34. K Rudd (Prime Minister), W Swan (Treasurer) and P Wong (Minister for Climate Change and Water), *New measures for the carbon pollution reduction scheme*, joint media release, Canberra, 4 May 2009.

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the price for the following four years (see below). Significantly, it has been drafted to dovetail with the *National Greenhouse and Energy Reporting Act 2007* (NGER Act).

Emissions trajectories, caps and gateways

In order to meet the specified national emissions targets (see above) a trading scheme has to follow a set GHG emissions trajectory. The trajectory is governed by annual limits or caps on the total emissions that will be allowed. Following is the initial indicative national emissions trajectory that was proposed in the CPRS *White Paper* to meet Australia's target under the Kyoto commitment period:

- 109 per cent of 2000 greenhouse gas emissions in 2010–11
- 108 per cent of 2000 levels in 2011–12, and
- 107 per cent of 2000 levels in 2012–13.³⁵

Given the delayed start under the amended scheme and the fixed permit price in the first year, there will now be no emissions caps for the years 2010–11 and 2011–12, and Australia will need to achieve the above emissions reductions through other mechanisms to meet its Kyoto commitment (which may include purchasing international offsets).

Under the CPRS, emissions caps will be set in the Regulations. Specific emission caps for the years 2012–13 to 2014–15 are to be announced by 1 July 2010. Thereafter, national emissions limits will be specified at least five years in advance.³⁶ In addition, guidance may be provided for emissions limits for additional years beyond the five-year caps. This will be through 'gateways' that may be prescribed in the Regulations to specify upper and lower limits to the caps for each year in the extended period. The White Paper stated that the Government intends to provide up to ten years of gateways beyond the five-year caps.

The emissions limit for each annual period will be reviewed each year. There will be a strategic review of the scheme's gateways every five years. The Government reserves the right to adjust both the scheme's annual limits and gateways as circumstances change.

In the CPRS an emissions permit will be known as an 'Australian Emissions Unit' (AEU). The number of AEU's issued each year will be lower than the national emissions limits required to meet the specified emissions trajectory. This is because about 25 per cent of Australia's emissions sources are not covered by the scheme (see below)—principally the

35. Australian Government, *White paper*, p. 4–23.

36. The legislation states that the Minister is required to take all reasonable steps to ensure that the advance notice on caps as specified here is met. However, the Explanatory Memorandum notes that 'the phrase "take all reasonable steps" has been adopted in these provisions because, despite his or her best endeavours, a Minister cannot guarantee that regulations are made and not disallowed', p. 77.

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agricultural sector, facilities that emit less than 25 000 tonnes of CO₂e per year and emissions from deforestation.

Coverage

The CPRS will cover all six GHGs mentioned in Annex A to the Kyoto Protocol from the scheme's commencement.³⁷

Generally, direct obligations will apply to entities (i.e. companies, trusts, partnerships and the like), or individuals, that:

- have at least one facility that directly emits at least 25 000 tonnes CO₂e per year or an equivalent amount on a pro rata basis if the facility is not controlled by the entity through the whole of the relevant year
- the International Energy Agency says that average Australian emissions from coal-fired electricity and heat generation are about 1060 grams CO₂ per kWh.³⁸ This means that one large coal-fired power station (1000 MW capacity) may emit about 9.3 million tonnes of CO₂ per year, or about 370 times the 25 000 tonne threshold.
- import or manufacture synthetic GHGs of at least 25 000 tonnes of CO₂e or an equivalent amount on a pro rata basis, or
- have a landfill operation that directly emits at least 10 000 tonnes CO₂e per year and that facility is within a prescribed distance of another landfill facility accepting the same classification of waste, which itself emits at least 25 000 tonnes CO₂e per year

All major industrial sectors, excluding the exemptions outlined below, will be included in the scheme. Initially the scheme will cover about 75 per cent of Australian GHG emissions and about 1000 emitting facilities.³⁹

If an entity or individual has a facility, or facilities, that each emit less than the above limits, they are not liable under the proposed scheme, even if the combined total of GHG emissions from all facilities under their control exceeds 25 000 tonnes CO₂e per year.

Exemptions

Exemptions from the proposed scheme include:

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37. These are carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbons and perfluorocarbons
 38. International Energy Agency, *CO₂ emissions from fuel combustion*, 2008 edition.
 39. Australian Government, *White paper*, p. 6–1.

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- the agricultural sector. The government is disposed to include the agricultural sector directly in the scheme in 2015, but a final decision will not be made on this matter until 2013
- GHG emissions from the combustion of biofuels and biomass for energy, including emissions from the combustion of methane from waste land fill facilities
- emissions from landfill sites closed on or before 30 June 2008
- emissions from operating land fill sites due to waste deposited on or before 30 June 2008
- deforestation is not included in the proposed scheme. Forestry operators may opt into the scheme for reforestation credits but participation is not compulsory
- emissions from decommissioned underground coal mines, and
- offshore emissions from exported fuels and materials.

Basis of operation

After the first year of fixed permit prices, each directly covered participant will be required to purchase the necessary number of AEU's via an auction (save those who are eligible for direct assistance or compensation—see below). Auctions will be held monthly. Auctions are to commence in 2010–2011 for the 2012–2013 year. Each permit will cover the emission of one tonne of carbon dioxide or its equivalent in terms of global warming potential for non-CO₂ GHGs

AEU's (or an equivalent number of international emissions credits—see below) covering a participant's annual emissions must be surrendered by 15 December following the end of the preceding financial year. The first surrender of units will occur on 15 December 2012.

The AEU's bought at auction will be personal property with no limit on parties who may hold them (i.e. investment banks and individuals may buy and hold these permits and later sell them on a secondary market). These permits may also be banked (that is, held over for use in later years).

Liable entities may save unused AEU's from any one financial year for use in respect of a later financial year. They may borrow up to 5 per cent of their current year's obligations from the next year's entitlement. However, they have to 'make good' or repay this borrowed amount.

Free AEU's will also be issued in relation to participating eligible reforestation projects and the destruction of synthetic greenhouse gases. Should they choose to participate, forestry operators may begin to accumulate AEU's in relation to carbon stored in forestry projects from 1 July 2010.

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Individuals may request the cancellation of their AEU's and other emissions units. Alternatively, this may be done through the proposed Australian Carbon Trust (see below). Such requests will be granted providing they do not breach either the Regulations or Kyoto Protocol rules.

Penalties

It is proposed that the scheme's governing body—the Australian Climate Change Regulatory Authority (the Authority)—be provided with a range of compliance, anti-avoidance, investigative and enforcement powers and a range of mechanisms, including civil penalty and criminal provisions, to respond variously to non-compliance with the Scheme. Directors and officers of a company found to be in breach of certain provisions of the CPRS Act may also be fined. Fraudulent conduct in relation to the issuing of AEU's, may result in the offender being required to relinquish those units (see **Part 13** of the Bill). Anti-avoidance provisions are also proposed in relation to the exemptions from liability for small facilities (generally, those emitting less than 25,000 tonnes of CO₂e per year). These are designed to capture entities that pursue artificial means to keep their facilities below this threshold so as to avoid CPRS liability.

A limited financial penalty will apply if the required number of emissions units is not surrendered to the Authority by the appropriate time. In the first year (2011–2012) this penalty will be \$11 per unit. The penalty in later year will be fixed by regulation but will be limited to no more than 110 per cent of the average auction price for the particular financial year. Thus, liable entities have an incentive to buy any necessary units through a secondary market rather than simply paying a penalty if they do not surrender enough AEU's. These penalties will not be tax deductible. Alternatively a liable entity may undertake to surrender additional permits at a later date (the next year) if they do not surrender enough permits by 15 December in any one year (this is called a 'make good' provision).

AEU price cap

In 2011–2012 an unlimited number of AEU's will be available at a fixed price of \$10 per tonne CO₂e. Fixed price permits from the first year of the proposed scheme's operation cannot be 'banked' or saved for use in later years.⁴⁰

Scheme participants will have to pay the market price for permits from 1 July 2012—subject to the following price caps. In 2012–13, an AEU's price will not be above \$40 plus five per cent real growth for each of the years 2010–11 and 2011–12. The proportional increase in the price cap is known as the indexation factor. In each of the three years thereafter, the price cap will rise by this indexation factor for that particular year, applied

40. K Rudd (Prime Minister), W Swan (Treasurer) and P Wong (Minister for Climate Change and Water), *Carbon pollution reduction scheme: Support in managing the impact of the global recession*, joint media release, Canberra, 4 May 2009.

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to the previous year's price (**Subclause 89(1)**). The price cap for a particular year will apply until 15 December of the compliance year, and caps will cease on 15 December 2016.

The government will sell an unlimited amount of permits at the price cap to liable entities only. The permits sold under these arrangements cannot be resold or banked. They are automatically surrendered after issue and can only be used to acquit that entity's liability for that year.

International linkages

The proposed scheme will allow the unlimited acceptance of the following Kyoto Protocol emissions credits (or units) to acquit emissions obligations:

- Certified Emission Reduction Units (CER) generated under the Clean Development Mechanism (but not temporary or long term CERs)
- Emission Removal Units (ERUs) generated under the Joint Implementation Mechanism, and
- certain Removal Units (RMU).
- Notably, an Assigned Amount Unit (AAU) arising under the Kyoto Protocol will not be accepted for CPRS purposes.

AAUs are units corresponding to emissions allocated to Annex I countries under the Kyoto Protocol for the commitment period 2008–2012. The permits created under the CPRS and issued to Australian liable entities are domestic units, and are distinct from Australia's AAUs. The Authority will create both sets of units, but they will not be interchangeable. Furthermore, AAUs from other countries will not be accepted for compliance under the CPRS. This policy will be reviewed for further international commitment periods in the light of international developments.

Initially, other non–Australian emissions credits, such as those traded on the voluntary carbon market, will not be accepted for CPRS purposes. Nor will emission permits from other country's schemes, such as the New Zealand ETS or the European Union ETS. However, acceptance of these emissions credits or permits will be reviewed on a case by case basis.

Assistance to emissions–intensive trade–exposed industries

Assistance to emissions-intensive, trade exposed (EITE) industries will be dependent upon the assessed industry–wide weighted average emissions intensity of an activity. In February 2009, the Department of Climate Change released a Guidance Paper titled [Assessment of activities for the purposes of the emissions-intensive trade-exposed assistance program](#). According to this paper, and the changes announced to the CPRS

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announced on 4 May 2009, for the first year of the scheme emissions-intensive trade-exposed (EITE) industries will receive either:

- 94.5 per cent of required emissions permits free of charge
for activities that have an emissions intensity above 2000 tonnes CO₂e per million dollars in revenue or 6000 tonnes CO₂e per million dollars value added in the specific assessment period, or
- 66 per cent of required emissions permits free of charge
for activities that have an emissions intensity between 1000 tonnes CO₂e and 1999 tonnes CO₂e per million dollars of revenue or between 3000 and 5999 tonnes CO₂e per million dollars value added in the specific assessment period.⁴¹

About 25 per cent of the total pool of permits will be allocated to EITE industries, rising over time with EITE sector growth. There will be no upper limit on the share of free permits provided to EITE industries.⁴²

Rates of assistance will decline by 1.3 per cent per year from the second year onwards. Furthermore, the above assistance rates reflect changes announced on 4 May 2009 which boost assistance by five per cent for the most emissions intensive category (from 90 to 94.5 per cent) and 6 per cent for the less emissions intensive category (from 60 to 66 per cent). This boost (the ‘global recession buffer’) will cease after five years. The EITE assistance will be phased out completely if and when Australia’s major trade competitors also impose similar emissions restraints on their own industries, but five years advance notice of any changes will be given.

Trade exposure is to be assessed in relation to trade shares (being the ratio of traded quality of a product to domestic production) being greater than 10 per cent in any one of the years 2004–05, 2005–06, 2006–07 or 2007–08, or the existence of a demonstrated lack of capacity to pass through costs due to the potential for international competition.

Eligibility of activities for EITE assistance has not yet been assessed. The Government’s guidance paper called for industry information, which will be used in the Government’s

41. ‘Value added’ refers to the net contribution of an industry to the output in the economy, or the wealth created by the industry. It is calculated as earnings less costs of bought-in goods and services. See Australian Government, *Discussion paper: assessing emissions intensity using a value added metric*, viewed 12 June 2009, <http://www.climatechange.gov.au/emissionstrading/publications/pubs/assessing-emissions-intensity.pdf>

42. The Hon. Greg Combet AM MP, Address to the Minerals Council of Australia Annual Minerals week Conference, Sydney, 27 May 2009, p 7 & 8, viewed 9 June 2009 http://www.climatechange.gov.au/minister/parl_secretary/speeches/pubs/minerals_council_of_australia_speech.pdf.

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decision on EITE eligibility.⁴³ Final details of eligibility and rates of assistance will be provided in the Regulations.

The EITE assistance program will be subject to five-yearly reviews. The Expert Advisory Committee will consider a range of matters in conducting those reviews.⁴⁴

Assistance to coal fired power generators

The coal fired power generation industry will receive assistance contingent on whether individual facilities pass a power system reliability test and/or whether individual facilities make windfall profits in the 2013–2014 or 2014–2015 years. Such assistance will be available for five years after the commencement of the scheme (i.e. up until the financial year commencing 1 July 2016).

Other assistance

A \$2.75 billion Climate Change Action Fund will be established to ease transition costs for businesses, community sector organisations, workers, regions and communities changing to an operating environment that includes a price on carbon.

The coal industry will receive \$750 million in transitional assistance through the Coal Sector Adjustment Fund.

Petrol Fuel Excise and other taxes will be reduced to take account of the impact of the proposed ETS on petrol in the first three years of the scheme.

Low and middle income households, and social security benefit and pension recipients will received additional payments to offset the impact of the proposed ETS on utilities bills.

These measures will be implemented in separate legislation.

43. Department of Climate Change (DCC), *Assessment of activities for the purposes of the emissions-intensive trade-exposed assistance program: guidance paper*, DCC, February 2009, viewed 25 May 2009, http://www.climatechange.gov.au/whitepaper/assistance/pubs/guidance_paper.pdf.

44. For a list if these considerations, see: K Rudd (Prime Minister), W Swan (Treasurer) and P Wong (Minister for Climate Change and Water), *Carbon Pollution Reduction Scheme: Support in Managing Impact of Global Recession*, media release, 4 May 2009, p 4, viewed 25 May 2009, http://www.climatechange.gov.au/whitepaper/measures/pubs/mr_carbon_pollution_scheme.pdf.

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Voluntary Action

An Australian Carbon Trust will be established; comprising of a \$50 million Energy Efficiency Trust and a \$25.8 million Energy Efficiency Savings Pledge Fund. A particular feature of assistance available through the Energy Efficiency Trust is that it will provide loans for businesses to undertake energy efficiency measures. These loans would be repaid from the energy savings achieved by this investment.⁴⁵ Under the proposed Pledge Fund, individuals can calculate their savings from their investment in energy efficiency measures and buy/retire AEU from the scheme.⁴⁶ Contributions to the Pledge Fund will be tax deductible. Further, purchases of power from renewable sources (i.e. 'GreenPower') will be recognised under the proposed scheme. Limits on the annual issue of AEU will be reduced in recognition of voluntary purchases of GreenPower above 2009 levels.

Independent Review

An independent expert advisory committee will periodically undertake a public review of the CPRS.

Administration

The Australian Climate Change Regulatory Authority will be established to administer the proposed CPRS. This Authority will establish a register of all emissions units relevant to the CPRS scheme as well as other emissions units. The Authority will have related information gathering and inspection powers and enforcement powers as outlined above. Its decisions are subject to review by the Administrative Appeals Tribunal.

Market information

The Authority will be required to release market relevant information on the supply of AEU and liable entities' requirements for these units in a timely manner.

Date of commencement

The proposed scheme is to commence on 1 July 2011.

Basis of policy commitment

The proposed measures are based on the above mentioned government White Paper entitled *Carbon Pollution Reduction Scheme: Australia's Low Pollution Future* released by the Government on 15 December 2008.

45. This is similar to the way in which the United Kingdom's Carbon Trust operates.

46. K Rudd (Prime Minister), W Swan (Treasurer) and P Wong (Minister for Climate Change and Water), *Helping all Australians do their bit on climate change*, joint media release, Canberra, 4 May 2009.

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Generally, the Australian government's policy response to climate change comes under three broad categories:

- mitigation
- adaptation, and
- helping to shape a global solution.

The proposed CPRS is the main policy response under the 'mitigation' heading. The Government also argues that the CPRS contributes to shaping a global solution by indicating Australia's preparedness to make a firm commitment to emissions reductions as part of a global agreement. Others, however, argue that the proposed emissions reduction targets do not represent Australia's fair share in an ambitious global agreement or are overly conditional, and hence may inhibit the chances of such an agreement being reached. Other policy responses under the three headings include:

- an expanded national Renewable Energy Target (RET) requiring that 20 per cent of Australia's electricity supply come from renewable sources by 2020.
- increased investment in low emissions energy research and development, for example the Commonwealth has made a substantial contribution to the Global Carbon Capture and Storage Institute⁴⁷ and Cooperative Research Centre for Greenhouse Gas Technologies, and recently announced the Clean Energy Initiative⁴⁸
- increases in energy efficiency for buildings, transport and in other fields, for example through the Green Building Fund, the Retooling for Climate Change Program, and the Climate Ready Program
- adaptation measures such as the National Climate Change Adaptation Research Facility (this particular policy response is less advanced than other responses), and

regional and bilateral agreements for GHG emissions reduction action in support of the realisation of a global solution, such as the Indonesia/Australia Forest Carbon Partnership.⁴⁹

47. K Rudd (Prime Minister) and M Ferguson (Minister for Resources, Energy and Tourism), *Global carbon capture and storage initiative*, media release, Canberra, 19 September 2008.

48. See J Styles and A Talberg, 'Budget 2009–10: climate change and energy', Budget Review 2009–10, Parliamentary Library, Canberra, viewed 25 May 2009, http://www.aph.gov.au/Library/pubs/RP/BudgetReview2009-10/Climate_Energy.htm.

49. S Yudhoyono (President Republic of Indonesia), K Rudd (Prime Minister of Australia), *Australia Indonesia Joint Leaders Statement on Climate Change*, media release, Jakarta, 13 June 2008, viewed 15 April 2009, http://www.pm.gov.au/media/release/2008/media_release_0315.cfm#carbon.

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Committee consideration

The CPRS Bill and related bills have been referred to the Senate Standing Committee on Economics for inquiry and report by 15 June 2009. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_2_09/index.htm.

The Senate Standing Committee on Economics completed its inquiry and report on the Exposure Draft of this Bill on 16 April 2009. Details of the inquiry are at http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/info.htm.

The exposure draft legislation is also being considered under broader terms of reference by the Senate Select Committee on Climate Policy, which is due to report by 15 June 2009. Details of this inquiry are at http://www.aph.gov.au/SENATE/committee/climate_ctte/index.htm.

The Senate Select Committee on Fuel and Energy's terms of reference also include inquiry into the impact of an emissions trading scheme on the fuel and energy industry. The Committee released an interim report on 7 May, before its final report due by 21 October 2009. Details of the inquiry are at http://www.aph.gov.au/SENATE/committee/fuelenergy_ctte/index.htm.

The Joint Standing Committee on Treaties released its Report 100 on the Kyoto Protocol on 19 March 2009. The report gives recommendations relating to the extent and type of mitigation action and targets that Australia should adopt post-Kyoto. Details of the inquiry are at <http://www.aph.gov.au/HOUSE/committee/JSCT/25june2008/index.htm>.

Position of significant interest groups/press commentary

Throughout the legislation drafting process, comments from business and industry groups have been primarily negative, although progressively less so. Generally financial, insurance and investment organisations are in favour of the scheme, and for details and timetables to be finalised sooner rather than later. Renewable energy groups are strongly in favour of the proposed scheme.⁵⁰ Many carbon-intensive industry groups are also generally supportive of the scheme and its timetable; they cite the need to establish certainty for investment and forward planning.⁵¹

50. J Breusch, 'Business divided on climate change', *Australian financial review*, 30 April 2009, p. 7.

51. Senate Standing Committee on Economics, *Exposure draft of the legislation to implement the Carbon Pollution Reduction Scheme*, final report, April 2009, p. 10, viewed 3 June 2009, http://www.aph.gov.au/senate/committee/economics_ctte/cprs_09/report/report.pdf; Origin Energy, *Origin supports Carbon Pollution Reduction Scheme*, media release, 30 April 2009, viewed 1 May 2009, <http://www.originenergy.com.au/news/article/asxmedia-releases/1018>.

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Industry and business concerns

The **Business Council of Australia** (BCA) considers that any final design for an Australian ETS should have bipartisan support. The BCA is supportive of the amended legislation announced on 4 May 2009, but stresses that further alterations should be made to the exposure legislation with regard to the criteria for granting assistance to EITE industries. This should be broadened to include competitiveness measures. Compensation should also be increased for asset value loss for the coal fired power sector. Importantly, the BCA requests independent reviews of the scheme to be undertaken by the Productivity Commission, or a board that includes a member of this commission. The BCA urges the government to finalise the details of the scheme, and for the Senate to pass the proposed legislation to provide investor certainty.^{52 & 53}

The **Australian Industry Group** (AiG) supports the introduction of a cap and trade scheme and the swift passage of legislation in 2009 to provide investment certainty to business.⁵⁴ However, it would like to see broader eligibility criteria for firms to be classed as EITE to qualify for assistance, and increased amount of free permits issued to these firms. In particular, the AiG would support reducing the minimum target (i.e. the five per cent reduction by 2020) as an insurance against the breakdown of international negotiations.⁵⁵ It has flagged that it still needs to consider its position on the Coalition's call to delay the passing of legislation.⁵⁶

The **Australian Chamber of Commerce and Industry** (ACCI) also supports the introduction of an Australian ETS, and has noted that the changes announced on 4 May 2009 were 'much needed'. However, the ACCI has concerns that the proposed 25 per cent target may be too ambitious and has sought additional details on the assistance available for small and medium sized industries.^{57 & 58} Acting chief executive Greg Evans has stated

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52. Business Council of Australia, *Australia needs the right emissions trading scheme*, media release, 26 May 2009.
 53. Greig Gaiely, President of the Business Council of Australia, *Federal government announcement regarding changes to the proposed carbon pollution reduction scheme*, media release, Melbourne, 4 May 2009.
 54. Australian Industry Group, *Ai Group welcomes changes to CPRS*, media release, Canberra, 4 May 2009.
 55. Australian Industry Group, Submission to Senate Economics Committee, Inquiry into the exposure drafts of legislation to implement the Carbon Pollution Reduction Scheme, Canberra, 26 March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub90.pdf.
 56. Australian Industry Group, We need to work to get the best emissions trading scheme possible, media release, 26 May 2009.
 57. Australian Chamber of Commerce and Industry, *Carbon Emissions: Delay helpful but more work needed on costs*, media release, Canberra, 4 May 2009.

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that more needs to be done to assess the financial impacts to small businesses, in terms of energy costs.⁵⁹

- The **Minerals Council of Australia** (MCA) has several key reservations over the proposed CPRS. It claims that the scheme design is out of step with other schemes being implemented globally, is not calibrated with the availability of low emissions technologies, and will impose the world's highest carbon costs. It suggests that the proposed \$40 price cap for emissions permits is too high and will not prevent damaging carbon price volatility. It is concerned that these design features will make meeting the proposed 2020 target very challenging.
- Although the MCA welcomed certain aspects of the changes announced on 4 May, it is still concerned that the auctioning of AEU's will not be gradually introduced, and that the scheme will distort domestic economic activity by imposing different carbon costs on various sectors of the economy.⁶⁰ It is wary of a complex scheme design with critical elements (including the treatment of emissions-intensive trade-exposed firms) being dealt with in regulations, which adds uncertainty and imposes high compliance burdens.
- The Council has voiced concerns over results of modelling undertaken by Concept Economics showing that, under the proposed CPRS, almost 24,000 jobs would be lost from the minerals sector by 2020. In light of this, the Minerals Council believes that a 'phased approach to the introduction of full auctioning of permits' would save thousands of jobs while still delivering the required environmental benefits.^{61 & 62}

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58. Australian Chamber of Commerce and Industry, *ACCI Submission to Senate Standing Committee on Economics Inquiry into CPRS draft legislation*, Canberra, March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub124.pdf.
59. 'Business Reaction to CPRS delay', *ABC Radio National*, Australian Broadcasting Corporation, 28 May 2009, viewed 2 June 2009, <http://www.abc.net.au/rn/breakfast/stories/2009/2582792.htm>.
60. 'ETS delayed', *ABC Radio National*, Australian Broadcasting Corporation, 5 May 2009, viewed 2 June 2009, <http://www.abc.net.au/rn/breakfast/stories/2009/2560831.htm>.
61. Minerals Council of Australia, *Senate Economics Committee Inquiry Carbon Pollution Reduction Scheme Bill 2009 and associated legislation*, Submission, March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub69.pdf.
62. Minerals Council of Australia, 23,510 jobs lost in the minerals industry by 2020 under emissions scheme, media release, 22 May 2009.

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The **Australian Coal Association** considers that the announced changes are positive, but is seeking the coal industry's inclusion as an EITE industry so that it may access the proposed assistance measures.^{63 & 64}

The **Australian Petroleum Production and Exploration Association** (APPEA) and the **Australian Institute of Petroleum** (AIP) have concerns over the extensive use of regulations to provide additional details of the proposed CPRS' operation. The AIP considers the differing levels of assistance provided to the EITE sector unsatisfactory.⁶⁵ The APPEA would also like to see more assistance for the liquefied natural gas industry.^{66 & 67}

The **Australian Bankers Association** has also expressed concerns over the use of regulations to provide details of the proposed scheme (see main provisions section for further discussion).⁶⁸ Further, the association is concerned that the changes announced on 4 May 2009 will create additional complexity, uncertainty and costs for business and other market participants, as well as inhibit the development of carbon markets.⁶⁹

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63. Australian Coal Association, Submission to the Senate Economics Committee, *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 25 March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub106.pdf.
64. Australian Coal Industry Association, CPRS changes positive but leave Australia's largest export out in the cold, media release, 4 May 2009.
65. Australian Institute of Petroleum, Submission to the Senate Economics *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 27 March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub115.pdf.
66. Australian Petroleum Production and Exploration Association, Submission to the Senate Standing Committee on Economics *Inquiry into the Exposure Drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub111.pdf.
67. Australian Petroleum Production & Exploration Association Limited, *Progress made on CPRS – changes still required to deliver significant results*, media release, Canberra, 4 May 2009.
68. Australian Bankers Association, Submission to the Senate Standing Committee on Economics, *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 26 March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub107.pdf.
69. Australian Bankers Association, ABA comments on Federal Government's changes to the proposed Carbon Pollution Reduction Scheme, media release, Sydney, 4 May 2009.

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- The **Energy Supply Association of Australia** supports the introduction of an ETS as essential for promoting investor confidence, however it claims that even a five per cent emissions reduction target will cause several coal fired power stations to close or scale back power production. It feels that a five–year range of scheme emissions caps is too short for certainty for the power industry. It also suggests that the proposed assistance to strongly affected industries (i.e. coal fired power stations) is inadequate.⁷⁰

The **Australian Pipeline Industry Association** notes that the proposed legislation does not allow liable entities who have entered into long term contracts fixing the price of their product, to pass any cost increases arising from the CPRS through to their customers.⁷¹

Both the **Australian Aluminium Council (AAC)** and the **Cement Industry Federation (CIF)** are concerned about the gradual withdrawal of assistance to EITE industries over time, in the absence of similar emissions restraints being imposed on its major competitors. Further, the AAC wishes to see 90 per cent of the necessary permits being made available to all such industries (of which it is one) instead of between 60 and 90 per cent. The AAC notes that some activities necessary to its continued operation are not capable of receiving assistance as either strongly affected or EITE activities. The result of this is that the proportion of its free permits for the aluminium industry is well below the 90 per cent mark.⁷² The CIF proposes that highly EITE industries should all receive 100 per cent of permits free.⁷³

The **Australian Plantation Products and Paper Industry Council** noted potential shortcomings with the forestry related components of the proposed scheme. Principally,

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70. Energy Supply Association of Australia, Submission to the Senate Standing Committee on Economics, *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 23 March 2009, viewed 16 April 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub21.pdf.
71. Australian Pipeline Industry Association, Submission to the Senate Standing Committee on Economics, *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 26 March 2009, viewed 16 April 2009 http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub06.pdf.
72. Australian Aluminium Council, Submission to the Senate Standing Committee on Economics, *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 26 March 2009, viewed 16 April 2009 http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub59.pdf.
73. Cement Industry Federation, Submission to the Senate Standing Committee on Economics, *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 19 March 2009, viewed 16 April 2009 http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub14.pdf.

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certain aspects of the draft provisions may actually discourage forestry operators from opting to participate in the CPRS.⁷⁴

The **Australian Landfill Owners Association** (ALOA) has raised concerns that the measurement techniques for estimating GHG emissions from landfill operations is not yet sufficiently accurate, with possible error margins of 30 percent. Further, it argued that the inclusion of emissions from waste deposited in the past (legacy waste provisions) creates significant difficulties and unfairness for the sector and should be removed, and the scheme should be aimed at future behaviour.⁷⁵ These concerns have been largely addressed by the changes made to the exposure draft legislation in the CPRS Bill introduced into Parliament, and have been well received by the Australian Industry Group.⁷⁶

Environmental groups concerns

Some environmental groups feel that the proposed Australian targets are not consistent with Australia's 'fair' share on the overall global emissions reduction task and should be increased to at least an unconditional 25 per cent reduction on 1990 levels. They are also concerned over the proposed assistance to EITE, claiming it should be reduced and over time withdrawn altogether. Importantly, all environmental groups highlight the fact that the proposed scheme does not allow the achievements of voluntary or additional action by individuals, communities or states to reduce overall emissions limits.

Generally, environmental groups did not support the proposed CPRS as outlined in the exposure draft legislation. However in the wake of the changes announced on 4 May 2009 many environmental, social welfare and union groups, such as the Southern Cross Climate Coalition, now support the scheme and are calling for the passage of enabling legislation in 2009.⁷⁷ Other groups find the changes to the targets disingenuous and the slower start and increased compensation to EITE industries counter-productive.⁷⁸

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74. Australian Plantation Products and Paper Industry Council, Submission to the Senate Standing Committee on Economics, *Inquiry into the exposure drafts of the legislation to implement the Carbon Pollution Reduction Scheme*, Canberra, 26 March 2009, viewed 16 April 2009
http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub36.pdf.
75. Australian Landfill Owners Association, *Inquiry into the CPRS Exposure Draft Legislation, Submission prepared by the Australian Land Fill Owners Association*, 2009 viewed 16 April 2009,
http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub50.pdf.
76. H. Rideout, *CPRS landfill waste changes a victory for common cause*, media release, Australian Industry Group, 14 May 2009; J Breusch, 'Government compromises on landfill emissions', *Australian Financial Review*, 15 May 2009, p. 4.
77. The Southern Cross Climate Coalition consists of the Australian Council of Social Service, Australian Council of Trade Unions, the Climate Institute, and the Australian Conservation

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The **Total Environment Centre** has expressed concerns mainly over the proposed GHG emissions targets. It claims that in combination with unlimited use of non-Australian emissions permits they may see Australia's GHG emissions rise, instead of fall (initially this may well be the case). It is also concerned that as Australian emissions permits will be property rights there will be a massive transfer of wealth from the public to the private sector. Combined with the proposed assistance to the EITE industries (which it claims discriminates against recycling industries), polluters will achieve windfall profits. The Total Environment Centre also calls for emissions from all closed landfill sites to be included in the scheme and claims that proposed emissions measurement methods for landfill sites are inaccurate, and need improvement.⁷⁹

The **Australian Conservation Foundation** (ACF) shared many of these concerns and also considered that the draft legislation did little to promote renewable energy, energy efficiency and healthy eco systems.⁸⁰ The ACF did not support the introduction of the CPRS legislation to Parliament as outlined in the exposure draft, however, the ACF has changed its position following the changes announced on 4 May 2009.⁸¹ It continues to

Foundation. See WWF–Australia, *Time to move on climate action and the low carbon economic recovery*, media release, Sydney, 4 May 2009, viewed 9 June 2009, <http://wwf.org.au/news/time-to-move-on-climate-action/>.

78. Nature Conservation Council of NSW, *Joint statement to Prime Minister Kevin Rudd about the Carbon Pollution Reduction Scheme amendments*, 5 May 2009, viewed 9 June 2009, http://nccnsw.org.au/index.php?option=com_content&task=view&id=2798&Itemid=646; Greenpeace, *ETS still off target*, media release, 4 May 2009, viewed 9 June 2009, <http://www.greenpeace.org/australia/news-and-events/media/releases/climate-change/ets-still-off-target>.
79. Total Environment Centre, Submission to Senate Economics Committee: Inquiry into the exposure drafts of legislation to implement the Carbon Pollution Reduction Scheme, Canberra, 25 March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub79.pdf.
80. Australian Conservation Foundation, Submission to Senate Standing Committee on Economics: Inquiry into the exposure drafts of legislation to implement the Carbon Pollution Reduction Scheme, Canberra, 25 March 2009, viewed 16 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub141.pdf.
81. O Pascoe (Australian Conservation Foundation), Testimony before the Senate Standing Committee on Economics, Inquiry into the exposure drafts of legislation to implement the Carbon Pollution Reduction Scheme, *Proof Committee Hansard*, 24 March 2009, p 46. The reasons for this are that ACF view the targeted emissions reductions are too small, the number of free permits as excessive and the support for renewable energy and voluntary action as inadequate.

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push for amendments to the legislation but welcomes the new 25 per cent target and calls for the Senate not to delay passing the bills.⁸²

Generally, the **Climate Institute** (TCI) has been an ongoing supporter of an Australian ETS. It released a report detailing the effect of proposed climate policies on Australian jobs. The results of the modelling demonstrated that more than 26,200 jobs might be created by renewable energy projects.⁸³

TCI welcomed the 4 May change to the legislation enabling an Australian emissions reduction target to be set at 25 per cent reduction on 1990 levels, commensurate with an appropriate global agreement being reached. In its submission to the Senate Economics Committee inquiry into the exposure draft legislation, TCI also said that it would like to see EITE industries required to improve emissions performance by four per cent per annum, and for assistance to EITE industries to be automatically reduced once an effective international agreement enters into force. Also, TCI suggested that assistance be contingent on recipients publishing an annual, externally audited report on emissions abatement opportunities in their operations. It recommended the legislation should include a commitment to move towards full auctioning of all permits with resulting revenue channelled towards the following priorities: vulnerable low income communities; research, development and deployment of clean technologies; and support for adaptation and mitigation in developing countries.

Additionally, an organisation, such as the Productivity Commission, should be empowered to annually report to the Parliament on real, proxy and shadow carbon prices in competitor countries.⁸⁴

Coalition/Greens/Family First/Independent policy position/commitments

The Coalition

The Coalition remain wary about the proposed CPRS and along with Senator Xenophon, have expressed concern that the inquiry into the exposure draft legislation by the Senate Economics Committee was rushed. As a result, they say, it did not give proper

82. Australian Conservation Foundation, *Coalition climate targets are welcome, proposed delay is not*, media release, 26 May 2009.

83. Climate Institute, *Regional Australia is clean energy jobs winner*, media release, 25 May 2009, viewed 28 May 2009, http://www.climateinstitute.org.au/index.php?option=com_content&view=article&catid=39:media-releases&id=434:regional-australia-is-clean-energy-jobs-winnier&Itemid=36.

84. The Climate Institute, *Submission to the Senate Economics Committee, – Inquiry into the Exposure Draft Legislation to Implement the Carbon Pollution Reduction Scheme*, Canberra, March 2009, viewed 17 April 2009, http://www.aph.gov.au/Senate/committee/economics_ctte/cprs_09/submissions/sub105.pdf.

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consideration to alternative schemes which may be operationally superior such as: carbon taxes, baseline and credit schemes, hybrid and intensity based schemes based on the McKibbin–Wilcoxon Hybrid Model.⁸⁵ The Coalition also raised concerns about the cost impact of the CPRS and queried the accuracy of the Treasury modelling, suggesting that the impact on GDP had been underestimated, especially given the context of the global financial crisis.⁸⁶

The Coalition has decided to oppose the CPRS in its current form as they consider it to be poorly designed. However, the Coalition maintains that it supports well designed policy, including a market-based approach such as the CPRS, to significantly reduce Australia's and the world's GHG emissions.⁸⁷

The Coalition commissioned the Centre for International Economics to review the proposed CPRS. Its major findings in relation to the scheme include:

- the proposition that the CPRS generates abatement at lowest possible cost has not yet been demonstrated;
- there is no clear understanding of the transitional costs of the CPRS and there is a risk that, if these are not properly understood, unexpected transitional costs may derail the policy;
- the non-trade neutrality of the CPRS poses a major challenge for a number of important industries — this non-neutrality brings no environmental benefit; and
- the scheme potentially threatens the balance sheets in a number of key industries.

Importantly, however, from the information in the public domain, it is not clear that the proposed CPRS will produce higher net benefits than will other available alternatives. At the very least, more consideration should be given to complementary energy efficiency measures. Many of the major aspects of the CPRS have not been modelled and, therefore, neither have the tradeoffs inherent in particular design

85. See brief discussion under subsequent heading 'Alternative Approaches' in this Digest.

86. A Eggleston, D Bushby, B Joyce and E Abetz, 'Coalition Senators' Dissenting Report', *Exposure draft of the legislation to implement the Carbon Pollution Reduction Scheme*, Senate Standing Committee on Economics final report, April 2009, p. 125, viewed 3 June 2009, http://www.aph.gov.au/senate/committee/economics_ctte/cprs_09/report/report.pdf;

It is noted that the issue of whether the CPRS was an optimal choice by the government was given some consideration by the review undertaken by the Senate Select Committee on Climate Policy.

87. M Turnbull (Leader of the Opposition), *Leader of the Opposition address to the Federal Council - Liberal Party of Australia*, media release, 14 March 2009, viewed 14 April 2009, <http://www.liberal.org.au/news.php?Id=2748>.

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choices. There is no single *a priori* best approach, so sound benefit–cost analysis is appropriate.

None of these issues should ultimately be allowed to be an impediment to establishing a carbon price in Australia. There are a variety of options by which these issues can be resolved.⁸⁸

The Coalition has taken the above conclusions on board. However, their stance as at 26 May 2009, is to defer the CPRS legislation until after global UNFCCC negotiations in Copenhagen in December 2009.^{89&90} Furthermore, the Coalition has suggested that the Government ask the Productivity Commission to undertake a broad review of the CPRS. As at the time of writing this digest, the Government had rejected the Coalition’s proposal.

Australian Greens

The Australian Greens support the use of market based policies, such as the proposed CPRS, to reduce Australia’s GHG emissions. However, they wish to see no Australian GHG emissions by 2050 at the latest.⁹¹ They also call on the Government to rethink its plans to allocate compensation on what they see as the basis of lobbying power rather than sound economic theory and environmental policy. The Greens endorse the efforts of the Australian Greens Senators in highlighting the fundamental flaws in the CPRS and promoting the benefits of investing in energy efficiency, renewable energy, public transport and protecting forest carbon stores.⁹²

Their specific criticisms of the proposed scheme relate to the high level of assistance to EITE industries and coal-fired generators; the lack of recognition for voluntary action; and the unrestricted acceptance of certain international Kyoto credits.⁹³ The Greens were not

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88. Centre for International Economics, *Review of the proposed CPRS*, prepared for the Menzies Research Centre, April 2009, p. 74, viewed 3 June 2009, <http://www.liberal.org.au/docs/CIERReviewOfCPRS.pdf>.
89. M Turnbull (Leader of the Opposition) and A Robb (Shadow Minister Assisting the Leader on Emissions Trading Design), *Time to get it right on climate change*, joint media release, 4 May 2009, viewed 4 May 2009, <http://www.liberal.org.au/news.php?Id=3062>.
90. M Turnbull (Leader of the Opposition), *Turnbull doorstep – Rudd government’s rushed backflip on emissions trading scheme*, media release, 4 May 2009, viewed 5 May 2009, <http://www.liberal.org.au/news.php?Id=3059>.
91. The Australian Greens Website, *Policy C1: Climate Change and Energy*, viewed 14 April 2009, <http://greens.org.au/node/764>.
92. C Milne (Deputy Leader of the Australian Greens) and S Ludlam, *Greens National Council calls for CPRS rethink*, media release, 23 March 2009, viewed 14 April 2009, <http://christine-milne.greensmps.org.au/content/media-release/greens-national-council-calls-cprs-rethink>.
93. C Milne (Deputy Leader of the Australian Greens), ‘Australian Greens Minority Report’, *Exposure draft of the legislation to implement the Carbon Pollution Reduction Scheme*,

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impressed by the announced changes on 4 May 2009, but have written to the government offering to support the proposed scheme if satisfactory amendments are made to it.⁹⁴

Specifically, the Greens support an unconditional emissions reduction target of 25 per cent below 1990 levels by 2020, with a commitment to move to 40 per cent cuts by 2020 compared to 1990 emissions levels, depending on the outcome of the international climate change negotiations in Copenhagen in December 2009.⁹⁵ Given the inflexibility of the Government on these requests, the Greens' position as at 26 May 2009 is to oppose the legislation, and push for more targeted national initiatives towards renewable energies, energy efficiency and public transport.⁹⁶

Independents and Family First

In the House of Representatives, Mr Robert Oakeshott, supported by fellow independents Mr Tony Windsor and the Hon. Bob Katter, proposed amendments to the bill that called for an independent authority to be established to administer key components of the CPRS, analogous to the role of the Reserve Bank in delivering monetary policy.⁹⁷ Despite both the Government and Opposition acknowledging merit in the idea, the amendments were defeated. The Government argued that maintaining the administrative components such as caps and gateways in the Regulations allowed them to be subject to Parliamentary scrutiny, which is preferable to being set by an independent regulator.⁹⁸ The Opposition stated that they couldn't support the amendments given their position on deferring the vote

Senate Standing Committee on Economics final report, April 2009, p. 159, viewed 3 June 2009, http://www.aph.gov.au/senate/committee/economics_ctte/cprs_09/report/report.pdf.

94. C Milne, *Rudd gives \$2.2 billion more to big polluters; greens' offer still stands*, media release, 4 May 2009, viewed 4 June 2009, <http://christine-milne.greensmps.org.au/content/media-release/rudd-gives-22-billion-more-big-polluters-greens-offer-still-stands>.
95. C Milne, *Greens offer to deliver effective ETS; launch national TV campaign against existing CPRS*, media release, 4 May 2009, viewed 4 June 2009, <http://christine-milne.greensmps.org.au/content/media-release/greens-offer-deliver-effective-ets-launch-national-tv-campaign-against-existin>.
96. C Milne, *CPRS's imminent demise is opportunity for real climate action*, media release, 26 May 2009, viewed 4 June 2009, <http://christine-milne.greensmps.org.au/content/media-release/cprss-imminent-demise-opportunity-real-climate-action>.
97. R Oakeshott (Independent for Lyne), *Oakeshott calls for independent body to run emissions trading scheme*, media release, 4 June 2009.
98. G Combet, 'Carbon Pollution Reduction Scheme Bill 2009 – consideration in detail', House of Representatives, *Votes and proceedings*, 4 June 2009, p. 9.

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on the scheme.⁹⁹ Mr Oakeshott supported the passage of the bill through the House, while Mr Windsor and Mr Katter voted against the bill.

On the question of targets Senator Fielding has noted that ‘Family First supports a cautious approach to emissions trading and welcomes a less extreme initial target’.¹⁰⁰

It is not clear whether Senator Fielding is seeking a less extreme target for GHG emissions than the one proposed by the government, or by other parties in this debate. However, he has expressed concern that families will bear the brunt of the costs of the proposed scheme.¹⁰¹ In particular, he has noted that food costs will rise under the proposed scheme.¹⁰² He is reported as supporting a delay in the commencement date by six months, has expressed concerns about the prospect of jobs being relocated offshore and is doubtful that voluntary action by households would not, of itself, reduce GHG emissions.¹⁰³ He has also expressed doubts about the link between GHG emissions and climate change, and therefore questioned whether any emissions constraints are necessary.¹⁰⁴

Senator Xenophon has been reported as opposing the proposed CPRS.¹⁰⁵ He has suggested that an ETS based on the energy intensity of covered industries, similar to that proposed for Canada, is a more appropriate model for Australian conditions.^{106 & 107}

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99. A Robb, ‘Carbon Pollution Reduction Scheme Bill 2009 – consideration in detail’, House of Representatives, *Votes and proceedings*, 4 June 2009, p. 8.
100. S Fielding, *Rudd government must allow Senate inquiry into carbon scheme*, media release, SF.419, 15 December 2008, viewed 4 June 2009, http://www.stevefielding.com.au/news/details/rudd_government_must_allow_senate_inquiry_into_carbon_scheme/.
101. S Fielding, *Families bear the brunt of emissions trading*, media release, SF/354, 16 July 2008, viewed 4 June 2009, http://www.stevefielding.com.au/news/details/families_bear_the_brunt_of_emissions_trading/.
102. S Fielding, *Massive food price hikes under emissions trading scheme*, media release, SF.347, 10 July 2008, viewed 4 June 2009, http://www.stevefielding.com.au/news/details/massive_food_price_hikes_under_emissions_trading_scheme/.
103. S Peatling, ‘Fielding urges delay on emissions trading’, *The land*, 12 March 2009, viewed 4 June 2009, <http://theland.farmonline.com.au/news/nationalrural/agribusiness-and-general/general/fielding-urges-delay-on-emissions-trading/1457012.aspx>.
104. S Fielding, ‘I kept an open mind on the road to Washington’, *The Australian*, 8 June 2009, viewed 12 June 2009, <http://www.theaustralian.news.com.au/story/0,25197,25601203-7583,00.html>.
105. C Kerr, ‘Nick Xenophon declares emissions trading scheme doomed in Senate’, *The Australian*, 16 March 2009, viewed 4 June 2009, <http://www.theaustralian.news.com.au/story/0,25197,25192813-11949,00.html>.

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Senator Xenophon's view of the exposure draft legislation, is that it will prove ineffective in creating 'sustainable domestic reform in the realm of climate change policy' and therefore reducing emissions.¹⁰⁸ He believes it is high cost with numerous transitional issues that have not been adequately modelled economically.¹⁰⁹

The changes announced on 4 May 2009 to the proposed CPRS have not altered Senator Xenophon's attitude toward the proposed scheme.¹¹⁰ However, he does not support the Coalition's motion to defer until after the UNFCCC Copenhagen discussions in December. He has stated that while the Senate should be given until the Spring sitting period to properly consider the proposed legislation, a suspension until after December cannot be justified. Senator Xenophon's position on this issue is critical, given that Senator Fielding's vote is likely to support the delay.¹¹¹

Any consequences of failure to pass

Given both the short- and long-term implications of the proposed CPRS, this Bill is one of the most significant pieces of legislation to come before Parliament in recent times. Its implications are nothing less than a re-configuration of the Australian economy towards a low GHG emissions stance. Where there is a deadlock between the House of Representatives and the Senate, section 57 of the Australian Constitution provides for a double dissolution (of the House of Representatives and the full Senate) as a procedure to resolve such a deadlock, subject to certain conditions being met.¹¹² Should the

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106. For a brief on the proposed Canadian Emissions Trading Scheme see the Parliamentary Library's, 'Canadian emissions trading scheme', viewed 14 April 2009, <http://www.aph.gov.au/library/pubs/ClimateChange/governance/foreign/canadian.htm>. Do not feel this is an adequate citation without an author, and giving its complex location on a website is just confusing... does this follow a standard form?
107. ABC Radio, 'The battle for the emissions trading scheme heats up', PM, 16 December 2008, viewed 14 April 2009, <http://www.abc.net.au/pm/content/2008/s2448166.htm>.
108. N Xenophon, 'Minority Report by Senator Nick Xenophon', *Exposure draft of the legislation to implement the Carbon Pollution Reduction Scheme*, Senate Standing Committee on Economics final report, April 2009, p. 159, viewed 3 June 2009, http://www.aph.gov.au/senate/committee/economics_ctte/cprs_09/report/report.pdf.
109. 'Minority Report by Senator Nick Xenophon'.
110. N Xenophon, *Xenophon rejects government changes to lame duck carbon scheme*, media release, 7 May 2009, viewed 4 June 2009, <http://www.nickxenophon.com.au/media.php?id=4>.
111. C Kerr, 'Xenophon seeks emissions trading scheme vote before Copenhagen conference', *The Australian*, 26 May 2009, viewed 27 May 2009, <http://www.theaustralian.news.com.au/story/0,24897,25540748-601,00.html>.
112. Section 57 provides: 'If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of

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Government be unable to get the Bill passed by Parliament and its various rejections satisfy the constitutional requirements of section 57, it would offer the government a trigger for a double dissolution election. Once the requirements for a double dissolution are met, the government does not have to use the double dissolution trigger immediately. The government has up until six months before the maximum term of the House of Representatives expires. Thus in theory, a double dissolution election on this issue could take place as late as 16 October 2010.¹¹³

Financial implications

The following table outlines the potential financial impact on the federal budget of the proposed scheme.

Table 1: Potential CPRS impact on Federal Budget (\$bn)

Year	2010–2011	2011–2012	2012–2013
Revenue from selling permits	n.a.	4.5	13.0

Source: Explanatory Memorandum¹¹⁴

The size of these revenue impacts are less certain than usual as the proposed scheme may be subject of extensive amendment before being passed by Parliament and the price of AEU is uncertain in the 2012–2013 and later years.

The government intends to recycle all revenue generated by the selling of AEU to assist both households and business adjust to the introduction of the proposed scheme.¹¹⁵ The overall project fiscal outcome after this redistribution is shown in the following table.

Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor–General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.’

113. See further Antony Green, ‘An Early Double Dissolution?’, *ABC Elections*, May 14 2009, viewed 10 June 2009, <http://blogs.abc.net.au/antonygreen/2009/05/by-announcing-i.html>;

Rob Lundie, *Australian elections timetable*, Background Note, 4 June 2008, Parliamentary Library, 2008, viewed 10 June 2009, http://www.aph.gov.au/Library/pubs/BN/2008-09/Aust_elections.pdf.

114. Australian Government, *Explanatory Memorandum to the Carbon Pollution Reduction Scheme Bill 2009* (hereafter ‘Explanatory Memorandum’), 15 May 2009, p. 24.

115. Explanatory Memorandum, p. 23.

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Table 2: Net projected fiscal impact of CPRS (\$bn)

Year	2009–2010	2010–2011	2011–2012
Net impact on Federal Budget	-0.3	0.8	-0.5

Source: Explanatory Memorandum

Key issues

There are several key issues that emerge from the above background in respect of the proposed scheme. Briefly, they are:

- whether a cap and trade scheme is the best instrument to achieve Australia's emissions reduction targets, in concert with the government's other measures
- in the light of the identified criticisms of the proposed scheme, whether to proceed and pass legislation this year or redesign Australia's approach to GHG emissions control
- if the proposed scheme is to be legislated what is the appropriate commencement date, 1 July 2011 or some later date
- what are the appropriate targets for Australian GHG emissions reduction?
- will the proposed scheme cause significant carbon leakage—that is, the movement of industrial activities/additional investment in emissions intensive activities to a location that is not subject to emissions constraints
- related to the previous point, does the proposed scheme provide the right amount of transitional assistance to EITE and the coal fired power industries? Should the range of industries being classed as EITE be expanded, most notably to include certain coal mines and coal-fired electricity generation
- does the scheme have appropriate coverage
- should there be an explicit link between the level of GHG emissions abatement achieved through voluntary action and the annual emissions caps set by the relevant Minister
- should there be any limits on the use of Kyoto protocol compliant emissions credits in the proposed CPRS, and
- what is the appropriate level of delegated legislation to be included in the proposed scheme. That is, how much detail of the proposed scheme's operation should be left to regulation?

A further issue is whether undue harm to the prospects of the conclusion of an effective international emissions control agreement would occur if Australia attended the relevant negotiations at the end of 2009 without a Scheme in place.

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Pros and cons of a cap and trade scheme

Advantages

- the cap fixes an overall limit for emissions – this is a major difference between a cap and trade scheme and all other approaches
- potentially delivers emissions control and reduction at the least overall cost
- allows for unforeseen reductions in emissions across the economy¹¹⁶
- provide the greatest incentive for further technical innovation¹¹⁷
- avoids heavy handed direct regulation, instead allow participants to tailor their own emissions abatement programs to their own particular circumstances
- is more flexible, allowing firms to react quickly to unexpected developments, such as changes in required overall emissions reductions levels as a result of better measurement of actual emissions produced
- emissions trading copes with uncertain demand and supply responses for emissions permits without overt government intervention
- emission trading schemes allow the signalling of future emissions permit prices through a forward contract system. This allows participants to potentially fix their costs in advance
- allows firms to be rewarded for emissions reductions by enabling their unused permits to be sold to other market participants (that is, provides a positive incentive for emissions reduction, as well as a negative incentive), and
- such schemes appear to be the favoured approach for emissions control. Without an emission trading scheme Australia would forego the benefits of eventually linking its emissions control efforts to those of other countries or an evolving international emissions trading scheme

an international emissions trading arrangements already exists under the Kyoto Protocol arrangements through the trading of the emissions credits generate by projects under the Clean Development and Joint Implementation mechanisms.¹¹⁸

116. For example, in Europe the first trading period for the European Emissions Trading Scheme saw unexpected reductions in carbon dioxide emissions in Eastern Europe by the simple expedient of using hard black coal in power stations that were previously fired by brown coal. Nobody saw this coming!

117. Concrete evidence for this particular claim is scant. See DM Driesen, 'Does Emissions Trading Encourage Innovation?', *Environmental Law Reporter*, Vol. 32, January 2003. However, it is early days yet for most cap and trade schemes and early emissions reductions are likely to be due to changes in operations and fuel switching as much as from more costly technical innovation. The alternative argument is that over time, the economic incentives could be hoped to lead to the development of such measures.

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Disadvantages

- they are complex to design and administer
- the design of such schemes must be very carefully thought out to minimise adverse market distortion and economic impacts
- the initial emissions permit allocation decision may be open to either state or economic sector bias
- their implementation has long lead times, often requiring a slow start in target emissions reduction. So significant results do not appear to be achieved over the short term
- there is some concern that emissions trading provides additional avenues for profit to large financial institutions, and
- a related concern is that emissions trading may lead to unjustified third party hoarding of emissions permits.

Alternative Approaches

Economic theory suggests that a government may control efficiently the price of emissions, or their quantity, but not both at the same time.¹¹⁹ Broadly, approaches to GHG emissions control have favoured either controlling prices, or quantities – but not both at the same time. The cap and trade approach controls the emissions quantity. Other such approaches are:

- the emissions intensity approach, where a benchmark emissions intensity of particular production processes is set, in say tonnes of CO₂e per unit of output. Then the government legislatively reduces the permitted emissions intensity for liable parties over time¹²⁰
- the hybrid approach, where each country establishes their own emissions trading scheme without any explicit international target for emissions reduction. Each scheme features both short term and long term emissions reductions targets. Individual

118. L Nielson, *Emissions – Who is trading what?*

119. M Weitzman, 'Prices vs Quantities', *The Review of Economic Studies*, Vol. 41, Issue 4, October 1974, pp. 477–491.

120. The proposed Canadian emissions trading scheme is the only potential example of an emissions intensity based trading scheme on a national scale. See Canadian Government, Environment Canada, *Turning the Corner – Regulatory Framework for Industrial Greenhouse Gas Emissions*, March 2008. For a briefing on the proposed Canadian Emissions Trading Scheme see Parliamentary Library, Climate Change Website, Governance and Policy, Foreign Government Action, Canadian Emissions Trading Scheme, viewed 14 April 2009, <http://www.aph.gov.au/library/pubs/ClimateChange/governance/foreign/canadian.htm>.

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countries may then link their schemes if they wish and each scheme features a cap on the price of its particular permits. In the short term the cap may be breached if the price of the emissions permits exceeds a certain pre set level.¹²¹ After its fixed permit price in the first year, the proposed CPRS has this feature in the next four operating years.

- the baseline and credit approach where the emphasis is on offsetting emissions made rather than reducing such emissions¹²², and
- the regulatory approach, where the government simply sets targets for emissions and fines those entities whose emissions breach the set targets.

Of course, the major alternative for raising the price of GHG emissions is the imposition of an emissions tax. As the cost of making such emissions is raised then the emitter has greater incentive to reduce these emissions.

Assessment of alternatives

Briefly, a significant weakness of the emissions intensity, baseline and credit and emissions tax approach is that they lack sufficient assurance that GHG emissions will actually be reduced. A second problem is that while it is not impossible to link these types of approaches with other countries schemes, it is more difficult given the prevalence of the 'cap and trade' approach (see following section). Lastly, the regulatory approach lacks any potential incentive for liable parties to pursue technical innovation to reduce their emissions beyond that required by the regulatory limit imposed.

Other schemes

Internationally, the trend in emissions control regimes has been toward implementing classical 'cap and trade' schemes. The most prominent example has been the European Emissions Trading Scheme. Other examples include the sectoral based Acid Rain Program in the United States and the regionally based schemes in North America.¹²³ It may be far

121. W McKibbin and P Wilcoxon, 'Building on Kyoto: Towards a realistic climate change agreement', *Working Paper 13/2008*, Australian National University Centre for Applied Macro Economic Analysis, June 2008.

122. An example of the baseline and credit approach is the NSW Greenhouse Gas Abatement Scheme. This scheme will cease trading operation when the proposed CPRS commences.

123. For a short summary of existing and proposed schemes see L Nielson, *Emissions – Who is trading what?*, background note, Parliamentary Library, Canberra, 15 August 2008, viewed 8 April 2009, <http://www.aph.gov.au/library/pubs/BN/2008-09/emissions.htm>. There have been further developments since this paper was written. For example the new American President has requested that Congress forward cap and trade emissions trading legislation for his consideration. Drafts of such legislation are now being considered by the US Congress.

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easier to link the proposed CPRS to other existing and proposed cap and trade schemes in other countries and regions, than it would be to link alternative schemes.

Timing and targets

The emissions reduction targets to which the caps in the CPRS must aim are between five and 25 per cent by 2020 compared to 2000 levels (minimum unconditional five per cent target, with higher targets conditional on international agreements being reached), and 60 per cent by 2050 compared to 2000 levels. It is important to note that the CPRS will not be solely responsible for these proposed reductions, but will be supported by other complementary or transitional measures, particularly in the initial years of the scheme before it becomes fully operational. This section aims to provide additional detail on implications of the proposed and alternative timing of the scheme and various targets.

What is required for either a 15 or 25 per cent target to be adopted?

The 15 per cent reduction target will only be adopted if the following occur.¹²⁴

- global action to stabilise atmospheric GHG concentrations between 510 and 540 ppm CO₂e
- emissions reductions in advanced economies that aggregate to within the range of 15 to 25 per cent below 1990 levels
- substantive measurable, reportable and verifiable commitments and actions by major developing economies, supported by international financing and technology transfer – but which may not deliver significant emissions reductions until after 2020, and
- progress towards inclusion of forests (reduced emissions from deforestation and forest degradation, REDD) and land sector in an international agreement as well as deeper and broader international carbon trading and low carbon development pathways.

For Australia to adopt a target of a 25 per cent reduction requires a comprehensive international agreement to reduce emissions such that atmospheric GHGs stabilise at 450 ppm CO₂e or lower. Such an agreement must specifically include¹²⁵:

- comprehensive coverage of GHGs, sources and sectors, including forests (REDD) and the land sector (i.e. soil carbon and biochar if scientifically demonstrated)
- a nominated early deadline for peak global emissions no later than 2020

124. K Rudd (Prime Minister), W Swan (Treasurer) and P Wong (Minister for Climate Change and Water), *A new target for reducing Australia's carbon pollution*, media release, Canberra, 4 May 2009.

125. K Rudd (Prime Minister), W Swan (Treasurer) and P Wong (Minister for Climate Change and Water), *A new target for reducing Australia's carbon pollution*.

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- emissions reductions in advanced economies that aggregate to at least 25 per cent below 1990 levels by 2020
- slowing and reduction of emissions in major developing economies, with a combined reduction of at least 20 per cent below business-as-usual levels by 2020 and a nominated emissions peaking year for individual major developing economies, and
- the development of fully functional global carbon markets facilitated by the mobilisation of financial resources from developed and major developing economies.

To achieve this 25 per cent target the government has indicated that it would purchase up to five per cent of the required reductions in the form of international emissions trading. Under such an international agreement, the Government would also seek an election mandate to increase its 2050 emissions reduction target.

Targets – comment

It can be argued that the conditions for the adoption of the 25 per cent target are, at the time of writing, unlikely to occur. However, the advantage of this approach is that overseas participants in the UNFCCC negotiations have greater clarity of Australia's intentions and requirements in this area. Given Australia's positive population growth rate, committing to a 25 per cent reduction in emissions would translate into a comparatively larger reduction in per capita emissions. However, Australia's per capita emissions would still be higher than those of most other advanced economies and the rest of the world in general.

What are the global emissions reductions required to avoid dangerous climate change?

Climate change impacts have been projected under various mitigation scenarios as well as under a no-mitigation reference scenario. Two mitigation scenarios commonly considered target GHG stabilisation levels of 450 and 550 ppm CO₂e, respectively (by mid-next century in the 450 case, and by 2100 in the 550 case). These scenarios correspond to warming by 2100 of about 2°C and 3°C, respectively.¹²⁶ The projections under these scenarios suggest that limiting the amount of warming by 2100 to 2°C or less would be highly desirable in order to reduce the risks of damaging and potentially catastrophic climate change impacts.¹²⁷ There have also been suggestions that 450 ppm CO₂e and 2°C are too high, and that we should be aiming for a stabilisation target of 350 ppm CO₂e and limiting warming to less than 1.5°C.¹²⁸ Stabilising GHG concentrations at 450 ppm CO₂e

126. IPCC, *Climate change 2007: mitigation of climate change*, Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, Cambridge, 2007, p. 229.

127. IPCC, *Climate change 2007: mitigation of climate change*, p. 230; R Garnaut, *The Garnaut Climate Change Review: final report*, p. 102; J Styles, *Climate change: the case for action*.

128. Ad Hoc Working Group on Long-Term Cooperative Action Under the Convention, *Fulfilment of the Bali Action Plan and components of the agreed outcome*, United Nations

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is estimated to give a 50 per cent chance of limiting warming to 2°C above pre-industrial levels.¹²⁹ Atmospheric GHG concentrations currently stand at over 450 ppm CO₂e, so achieving a 350 or 450 target will mean substantial and rapid cuts in emissions, and even then will require initial overshooting of the target.¹³⁰

The amount and duration of overshooting will influence the likelihood of irreversible climate change impacts being initiated; for example, one event that is thought to be particularly vulnerable to ‘tipping points’ in the climate is irreversible loss of the Greenland ice sheet, which may be initiated under relatively moderate warming scenarios and which would contribute an estimated seven metres of sea level rise over several centuries.¹³¹

Of all developed countries, Australia is perhaps the most vulnerable to the impacts of climate change. Australia’s climate is naturally highly variable and this together with its limited water resources already place ecosystems and communities under stress. Australia also has strong economic ties with surrounding developing nations in the Asia–Pacific region, and the adverse impacts of climate change on these nations would impact Australia through effects on trade and socio–political issues.

The Australian Government has stated its support for a global stabilisation target of 450 ppm CO₂e or lower, recognising that this would be in Australia’s interests. Minister Penny Wong has said that its climate change strategy is formulated with this target in mind:

In formulating our approach to climate change, the Australian Government recognises it is in our national interest to seek a fair and effective global agreement delivering deep cuts in emissions, so as to stabilise concentrations of greenhouse gases in the atmosphere at around 450 parts per million or lower, by mid-century.¹³²

Australia’s emissions trajectories under various mitigation and reference scenarios

Australia’s various proposed and recommended 2020 emissions reduction targets have in general been stated with respect to 2000 emission levels. The following table illustrates how they translate to reductions with respect to 1990 levels (which is the baseline year under the Kyoto Protocol), to 2008–12 levels (the Kyoto commitment period, during which Australia has committed and is on track to limit its emissions to 108 per cent of

Framework Convention on Climate Change, 18 March 2009, viewed 6 May 2009, <http://unfccc.int/resource/docs/2009/awglca5/eng/04p02.pdf>.

129. R Garnaut, *The Garnaut climate change review: final report*, p. 43.

130. IPCC, *Climate change 2007: mitigation of climate change*, p. 102.

131. R Garnaut, *The Garnaut Climate Change Review: final report*, p. 102.

132. P Wong (Minister for Climate Change and Water), *China and Australia: shared interests in finding a solution to climate change*, Speech to the Australia–China Climate Change Forum, the Australian National University, Canberra, 15 April 2009.

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1990 levels), and the reduction in emissions these targets represent compared to the business-as-usual scenario.

Table 3: Equivalent 2020 emissions reduction targets relative to different baseline years

Baseline year/s	Baseline year emissions ^a (Mt CO ₂ e)	To achieve equivalent 2020 reduction targets (%)				
		5	10	15	25	40
2000	552.7	5	10	15	25	40
1990	546.3	4	9	14	24	39
2008–12	590.0	11	16	20	30	44
2020 BAU ^b	774.2	32	36	39	46	57

^a Based on Kyoto Protocol accounting rules, from the Australian Greenhouse Emissions Information System, ‘National Greenhouse Gas Inventory—Kyoto Protocol Accounting Framework’, Department of Climate Change website, <http://www.ageis.greenhouse.gov.au/>.

^b 2020 BAU is the business-as-usual emissions projection for 2020 as modelled by the Australian Treasury in its report *Australia’s low pollution future: the economics of climate change mitigation*, October 2008. This ‘reference’ scenario includes policy measures in place in 2008 (i.e. it does not include the expanded renewable energy target, the CPRS or the Government’s 2050 emissions reduction target of 60%).

Source: Compiled by the Parliamentary Library using data from the Department of Climate Change and the Australian Treasury.

As the table illustrates, the rate at which Australia’s GHG emissions must be reduced from current (2008–12) levels is well above the nominal rate generally cited (with respect to 2000 or 1990 emissions). The emissions reductions below the business-as-usual (BAU) scenario are much higher again. Since 1995 the trend growth in Australia’s GHG emissions has been 1 per cent per year, though it has increased by as much as five per cent in any one year.¹³³ The Treasury BAU scenario projects an average annual increase of two per cent per year from 2005 to 2020. In contrast, a five per cent emissions reduction target by 2020 relative to 2000 levels will require an average annual reduction in emissions of 1.3 per cent per year from 2011 to 2020. The equivalent annual reductions required for other 2020 targets are shown in table 4 below.

133. Australian Government, *White Paper*, p. 4–6.

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Table 4: Annual emissions reductions required for various 2020 targets

2020 emissions reduction target (from 2000 levels)	5%	10%	15%	25%	40%	BAU
Annual reductions required from 2011 to 2020 ^a	-1.3%	-1.8%	-2.4%	-3.6%	-5.7%	+2.0%

^a Calculated for mitigation scenarios assuming emissions in 2010 are 108% of 1990 levels, or 590.0 Mt CO₂e. For the BAU scenario the figure is from the Treasury modelling.

Source: Compiled by the Parliamentary Library using data from the Department of Climate Change and the Australian Treasury.

With business-as-usual emissions projected to continue increasing, it is clear that if the mitigation scheme for a given 2020 emissions reduction target is delayed, much steeper annual reductions will be required to meet the target. This means that the economy wide costs of the scheme on its introduction may increase the longer it is delayed, no matter what particular target is chosen. Generally, the higher the rate of reduction, the greater the cost of those reductions to the economy as a whole.

What represents Australia's fair contribution to global emissions reduction commitments?

Recommendations of the Garnaut Climate Change Review

The Garnaut Climate Change Review found that it would be in Australia's interests to pursue a global agreement to stabilise GHG concentrations at 450 ppm CO₂e, and that Australia's proportionate contribution to such an agreement would be a commitment to reduce its emissions by 25 per cent compared to 2000 levels by 2020.¹³⁴

Garnaut's alternative recommendations for Australian 2020 emissions reduction targets in the absence of such an ambitious global agreement were five per cent reduction on 2000 emissions unconditionally, 10 per cent reduction conditional on a global agreement for GHG stabilisation at 550 ppm CO₂e, or between 10 and 25 per cent reduction if a global agreement is achieved for a stabilisation target between 450 and 550 ppm CO₂e.¹³⁵

As a party to the United Nations Framework Convention on Climate Change, Australia has agreed that developed countries have a responsibility to take the lead in committing to climate change mitigation measures. This means that to achieve the global emissions reductions required for a particular GHG stabilisation target, developed countries will need to implement much higher reductions than the global goal, to allow the economies of developing countries to continue to expand. For example, stabilisation at 450 ppm CO₂e

134. R Garnaut, *The Garnaut Climate Change Review: final report*, pp. 278–279.

135. R Garnaut, *The Garnaut Climate Change Review: final report*, pp. 279–283.

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will require global emissions reductions of 50 per cent by 2050 relative to 2000 levels. Based on the per capita ‘contract and converge’ principle advocated by Garnaut, this would require a much steeper reduction target of 86 per cent for developed countries, while developing countries would on average reduce their emissions by only 14 per cent in this time.¹³⁶ The 2020 targets for developed and developing countries consistent with a 450 ppm CO_{2e} stabilisation target under this allocation principle would be –31 per cent and +85 per cent, respectively, compared to 2000 levels. Garnaut’s assessment of Australia’s proportionate contribution to a 450 stabilisation target is a reduction from 2000 levels of 25 per cent by 2020, and 90 per cent by 2050.

It is worth noting that Garnaut’s recommended 2020 and 2050 targets for Australia are lower than other developed nations when stated in reference to 2000 or 1990 levels, but are roughly comparable when the Kyoto commitment period of 2008–12. This means that under Garnaut’s allocation scheme, Australia is not penalised for being one of the few developed countries that was allowed to increase its emissions under the Kyoto Protocol.

Alternative views of Australia’s fair contribution

In the 4 May amendments to the scheme, the Government announced it would adopt an emissions reduction target of 25 per cent below 2000 levels under certain conditions. This change in policy reconciles the apparent discord that had existed between the Government’s stated support for a GHG stabilisation goal of 450 ppm CO_{2e} and its previous maximum emissions reduction target of 15 per cent. However, the Government has attached additional conditions to its adoption of the 25 per cent target regarding the nature of the international agreement (see earlier). These conditions have been criticised as unrealistic and in violation of the agreed differentiation of responsibilities between developed and developing countries embodied in the UNFCCC and Kyoto Protocol.¹³⁷ In addition, specific individual and aggregate developed country targets that have been proposed for post–Kyoto commitment periods are generally higher than the 25 per cent that the Government is conditionally nominating.¹³⁸

136. R Garnaut, *The Garnaut Climate Change Review: final report*, p. 209.

137. A Morton, ‘China slams Rudd’s climate “u–turn”’, *Age*, 16 May 2009, viewed 26 May 2009, http://parlinfo.aph.gov.au/parlInfo/download/media/pressclp/KXKT6/upload_binary/kxkt60.pdf; C Milne, *China exposes Rudd’s 25% climate fig leaf*, media release, 16 May 2009.

138. Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol, *A proposal for amendments to the Kyoto Protocol pursuant to its Article 3, paragraph 9*, UNFCCC, 14 May 2009, viewed 26 May 2009, <http://unfccc.int/resource/docs/2009/awg8/eng/07.pdf>.

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The Government has argued that an equitable division of emissions reduction commitments should also consider the economic costs of mitigation, as well as the impact of reductions when compared to present-day emissions and on a per capita basis.¹³⁹

Australia's per capita emissions are the highest among the developed nations, and among the highest in the world. In addition, unlike most other developed countries, Australia's population is projected to continue to grow. This means that absolute emissions reductions translate to relatively higher per capita emissions reductions for Australia compared to other developed countries.¹⁴⁰

International comparisons

Australia is not alone in setting targets for the reduction of GHG emissions. A comparison with other country targets is shown in the table below. The table illustrates the 2020 targets in absolute reductions compared to 1990 levels, as well as per capita reductions compared to 1990 levels. Long-term targets (2050 absolute reduction targets) are also shown relative to 1990 levels. Where a target range is indicated, the low end of the range is an unconditional commitment, while the high end is a commitment conditional upon the realisation of an international agreement with comparable commitments from other developed countries and implementation of emissions reduction measures from developing countries.

139. Australian Government, *Economic cost as an indicator of comparable effort*, Submission to the AWG-KP and AWG-LCA, March 2009, viewed 26 May 2009, http://www.climatechange.gov.au/international/publications/Australia_Economic-Cost.pdf; Australian Government, *Australia's national ambition*, Submission to the AWG-LCA and AWG-KP, March 2009, viewed 26 May 2009, http://www.climatechange.gov.au/international/publications/australian_national_ambition.pdf.

140. R Garnaut, *The Garnaut Climate Change Review: final report*, pp. 209–210.

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Table 5: Absolute and per capita emissions reduction targets for different countries and the EU with respect to 1990 levels

Entity	Stated 2020 target	2020 absolute target below 1990 levels	2020 per capita target below 1990 levels	2050 absolute target below 1990 levels
Australia	5–15% or 25% below 2000 levels	3–14% or 24%	30–38% or 45%	60%
European Union	20–30% below 1990 levels	20–30%	28–37%	60–80%
United Kingdom	34–42% below 1990 levels	34–42%	42–49%	80%
Germany	40% below 1990 levels	40%	41%	
Canada	20% below 2006 levels	Increase of 24%	8%	60–70%
United States	14% below 2005 levels ^a	6%	27%	80%
	20% below 2005 levels ^b	8%	32%	80%

Notes: Compiled by the Parliamentary Library. Conversions to 1990 baseline were calculated based on UNFCCC total GHG emissions including LULUCF inventory data (<http://unfccc.int/di/DetailledByParty.do>); with population data and projections from the UN Population Division Population Database (<http://esa.un.org/unpp/index.asp>). EU per capita reductions are based on the 15 EU member states that have combined and internally reallocated their commitments under the Kyoto Protocol. Individual country commitments are from various sources.¹⁴¹

^a Target outlined in Barack Obama's 2010 budget proposal.

^b Waxman–Markey bill (the American Clean Energy Security Act of 2009) currently under consideration, economy-wide emissions reduction target.

141. EU: European Commission, European Environment Agency Website, *EU action against climate change – leading global action to 2020 and beyond*, brochure, 2008, viewed 20 April 2009, http://ec.europa.eu/environment/climat/pdf/brochures/post_2012_en.pdf; UK: HM Treasury, *Budget 2009: Building Britain's future*, 22 April 2009, UK Government, p. 8, viewed 30 April 2009, http://www.hm-treasury.gov.uk/d/Budget2009/bud09_completereport_2520.pdf; Germany: *Federal Environment Minister Gabriel launches 400 million Euro climate protection programme*, media release, no. 139/08, 19 June 2008, viewed 30 April 2009, http://www.bmu.de/english/current_press_releases/pm/41999.php; Canada: Environment Canada, 'Canada's Action Plan', viewed 30 April 2009, <http://www.ec.gc.ca/cc/default.asp?lang=En&n=D80B0B3A-1>; US: Office of Management and Budget, *A new era of responsibility: renewing America's promise*, Executive Office of the President of the United States, 2009, p. 21, viewed 3 June 2009, http://www.whitehouse.gov/omb/assets/fy2010_new_era/A_New_Era_of_Responsibility2.pdf.

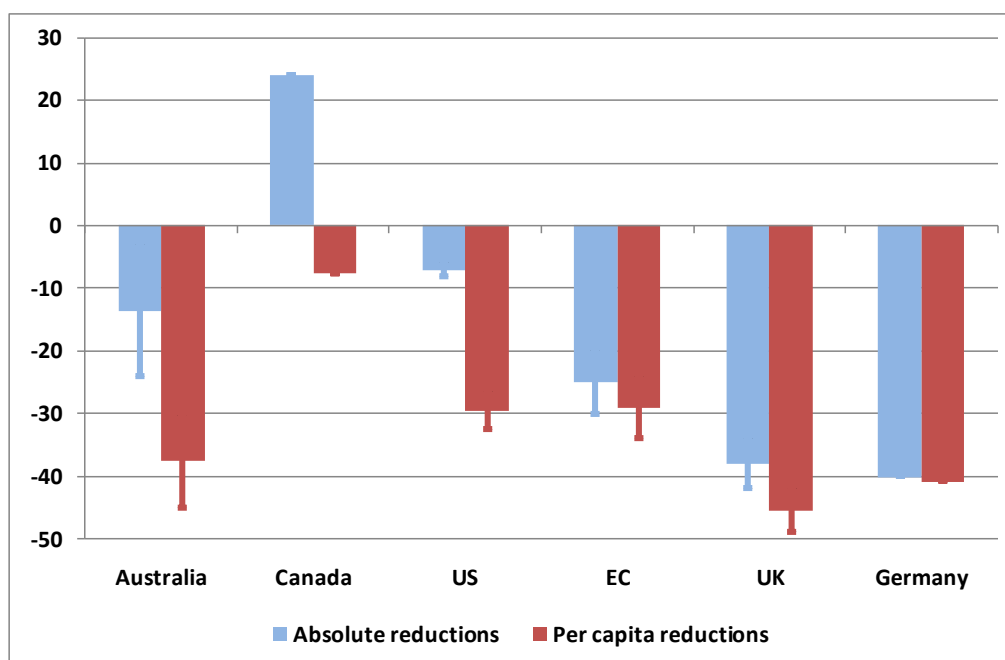
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The following figure provides a graphical illustration of the different targets with respect to 1990 levels of the countries/communities listed in Table 5.

Figure 1: Absolute and per capita emissions reduction targets for different countries and the EU with respect to 1990 levels



Notes: Produced by the Parliamentary Library from sources noted in Table 5. The ‘error bars’ indicate the range of targets for each country or community, with the main bars indicating the middle of that range. The range for the US covers President Obama’s budget proposal and the proposed targets in the Waxman–Markey bill currently under consideration.

In considering the comparisons in Table 5 and Figure 1, three relevant points should be noted:

- unlike the other countries listed, Australia was allocated an increase in emissions under the Kyoto Protocol. This means although Australia’s 2020 emissions reduction targets are significantly lower than targets of European countries when referred to the 1990 baseline, the difference is less pronounced when expressed as a reduction relative to current emission levels (both Australia and the EU are on track to meet their Kyoto commitments).
- Australia’s absolute targets are lower than those of European countries, but more ambitious than the current US and Canadian targets. Australia’s economic structure more closely resembles those of the US and Canada than those of EU countries. Australia, the US and Canada are all large, resource–rich countries that are relatively sparsely populated. European countries, on the other hand, are much more densely

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populated and their economies are generally more service-oriented. These differences are largely responsible for the difference in energy efficiency and greenhouse gas intensity relative to growth and population of the two groups of countries.

- The per capita emissions reduction targets are not as disparate as the absolute targets. The populations of Australia, the US and Canada are projected to increase by between 34 and 39 per cent between 1990 and 2020, while those of the European Community will on average increase by only six per cent.¹⁴² Hence, a given absolute emissions reduction will require much steeper reductions per person in the countries with expanding populations.

Carbon Leakage

Briefly the term carbon leakage refers to either:

- the relocation of emissions intensive industries away from regulatory environments that control those emissions, and/or
- the direction of investment funds to facilities in regulatory environments that do not include controls on GHG emissions or have less stringent controls.

The emissions continue to be made, or increase, in the alternative location, rather than being reduced or controlled in the original site. These relocations occur due to the activity losing a competitive advantage in international trade. Concerns about carbon leakage are behind the EITE assistance package.

Should a company or sector find itself vulnerable to carbon leakage, and the associated falling profits, then it may decide to relocate its activities to a jurisdiction that is not subject to an ETS. In no particular order some of the considerations when relocating may be:

- whether a facility is the highest cost facility in a globally integrated industry. For example, the global aluminium industry is dominated by a few major multinational companies with aluminium smelters in many locations. Such companies would relocate production from the highest cost smelters first
- the availability of an alternative location with the necessary physical attributes, particularly for achieving the necessary scale of production if establishing a new facility
- whether the alternative location can physically expand production if the activity in question is already present? For example, this may require the establishment of additional power stations

142. United Nations Population Division, *World population prospects: The 2008 revision*, Population Database, viewed 1 May 2009, <http://esa.un.org/unpp/p2k0data.asp>.

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- the availability of less expensive energy in the alternative location
- the availability of a trained workforce in the alternative location
- if there are strong nearby markets with low import barriers. This is particularly important for products where transport costs to markets are a major cost. Transport costs are not so important for low volume high value commodities such as aluminium
- whether there is a stable government willing to host the activity in question without extracting a disproportionate ‘rent’ in the form of fees and charges
- whether there are less stringent tax and environmental regimes in the alternative location, both now and over the economic life of the new investment

as the income of developing countries increases, they may well demand enhanced environmental controls. Further, participation in any new international agreement to limit GHG emissions may radically affect the decision to relocate

- whether it is less expensive to upgrade an existing facility compared to the investment required to relocate, and
- whether by relocating, a company risks a major negative impact on its reputation.¹⁴³

The answers to these questions will be different for each particular firm and activity. But the important point is that a decision to relocate an activity due to the impact of emissions trading is not a simple decision. Some firms may choose to absorb the additional costs and continue operating within a region subject to an ETS.

Representatives of heavy industry have argued that the proposed CPRS will lead to carbon leakage. Some doubts have been raised whether Australian emissions-intensive industries are really vulnerable to carbon leakage under the proposed CPRS. Recent Treasury modelling suggests that there may be a minor amount of carbon leakage at most expected permit prices. Where carbon prices are double the highest expected price range, significant leakage may occur. Treasury also concluded that recent concerns raised about carbon leakage, based on private economic modelling, may be exaggerated.¹⁴⁴

However, these conclusions reflect Treasury’s modelling assumptions. One important assumption is that other countries also adopt GHG emissions control measures within a few years of the start of the Australian ETS in 2011. In this scenario, the scope for carbon

143. Points sourced from J Reinaud, International Energy Agency, ‘[Issues behind competitiveness and carbon leakage – Focus on heavy industry](#)’, *IEA Information Paper*, October 2008, p. 43 and following; J P M Sijm, O J Kuik, M Patel, V Oikonomou, E Worrell, P Lako, E Annevelink, G J Nabuurs and H W Elbersen, ‘Spillovers of Climate Policy – An assessment of the incidence of carbon leakage and induced technological change due to CO2 abatement measures’, *Netherlands Research Program on Climate Change, Report 500036 002*, December 2004, Appendix C, p. 160.

144. Australian Government, White paper, pp. 169–170.

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leakage is lower. Treasury did not model the outcome in respect of carbon leakage should other countries fail to adopt GHG emissions control measures.

Recent equity analysis reports on the impact of the proposed ETS on Australia's largest companies (including Woodside) suggest that its impact should not have a significant effect on their financial positions.¹⁴⁵ This conclusion was repeated in the wake of the release of the Australian Government's white paper outlining the final design of the proposed Australian ETS.¹⁴⁶ The changes announced on 4 May 2009, which increase the assistance given to EITE facilities, are likely to reinforce these conclusions.

The above analysis does not appear to apply to the aluminium smelting industry. The Garnaut Climate Change Review noted that Australia's aluminium smelting industry may well eventually decline due to the introduction of an ETS in Australia. The review suggested that this industry would relocate to take advantages of cheaper energy in Africa, Asia and the island of New Guinea.¹⁴⁷

Assistance to EITE Industries

As noted above there will be a considerable amount of assistance in the form of free AEU's to facilities that fall into this category. The government has published an initial list of industries that potentially qualify for assistance as EITE, they are:

- aluminium refining and smelting
- ammonia production
- carbon black production
- newsprint, printing paper, cardboard and carton board manufacturing
- lime, caustic soda and chlorine gas and soda ash production
- cement clinker and coke production
- copper, magnesia, zinc, synthetic rutile, titanium oxide, silicon and pig iron refining and smelting/production
- ethanol and methanol production

145. The Climate Institute, *Clearing the Air – Clean energy investments to power a low carbon future – and the myths polluters sue to stall progress*, Sydney, December 2008, p. 12, viewed 1 June 2009, <http://www.climateinstitute.org.au/images/clearingtheair.pdf>.

146. Paul Gravey, 'Minimum impact on the worst polluters', *Australian Financial Review*, 17 December 2008, p. 5.

147. R Garnaut, *Garnaut Climate Change Review: final report*, p. 497; Additional discussion of this topic can be found in L Nielson, *What makes a carbon leak?*, Background Note, Parliamentary Library, Canberra, 23 December 2008, viewed 7 April 2009, <http://www.aph.gov.au/library/pubs/BN/2008-09/carbonleaking.htm>.

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- float glass production
- nitric acid and ammonium nitrate production
- ethylene/polyethylene production, and
- petroleum refining.¹⁴⁸

Of course, whether an individual facility in the above industries is covered by the proposed scheme, let alone qualifies for assistance under the EITE program, depends on whether its emissions exceed the specified limits. Assistance given under the EITE program would decline over time.

Generally environmental groups would prefer that this assistance be reduced as quickly as possible. Most business groups appear to advocate that all emissions-intensive trade-exposed industries be sheltered from the full effects of the proposed CPRS until major competitors have comparable emissions controls.

European comparison

From 2013 at least 50 per cent of the emissions permits issued under European Union's Emissions Trading Scheme will be auctioned. This proportion rises to 70 per cent by 2020, and to 100 per cent by 2027.

The exceptions to this policy are industrial sectors (not facilities) that are considered to be at risk of relocating outside the European Union. All of their allowances, issued within the declining overall number of permits issued, will be allocated free of charge. Thus, the amount of permits issued in this fashion will decline over time. A list of industry sectors considered to be at risk of relocation will be published at the end of 2009.

This policy will be reviewed in the light of any international agreements reached on emissions control and in particular any international agreements reached in respect of particular sectors. For example, governments may negotiate a separate agreement concerning emissions control for the aluminium sector.¹⁴⁹

US comparison

The *American Clean Energy and Security Act of 2009*, currently under consideration in the US Congress (known as the 'Waxman–Markey bill' after the members who introduced it), also provides transitional assistance to EITE industries. The Waxman–Markey bill

148. Australian Government, Department of Climate Change, *Assessment of activities for the purposes of emissions-intensive trade-exposed assistance program; Guidance Paper*, Canberra, February 2009, p. 8 and additional material on Department of Climate Change website.

149. European Commission, *Questions and Answers on the revised EU Emissions Trading System*, media release, MEMO/08/796, Brussels, 17 December 2008.

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provides up to 100 per cent free permit allocations to eligible EITE industries to cover their direct and indirect costs imposed by the scheme, subject to maximum limits on the percentage of free allocations out of the total permit pool. This continues for as long as 70 per cent of global output in the relevant sector is produced in countries with similar emissions constraints. The maximum limits on the free allocations may reduce the level of assistance below the 100 per cent compensation level. These limits start at 15 per cent of the permit pool in the first year of industry liability (2014), and reduce by 1.75 per cent per year from 2015 to 2020, then by 2.5 per cent per year from 2021 to 2025. The eligibility criteria for EITE assistance under the Waxman–Markey bill appear to be more stringent than under the CPRS, and petroleum refining is explicitly excluded from eligibility (unlike under the CPRS).¹⁵⁰

Coverage

Synthetic greenhouse gases

In 2006, synthetic GHG emissions accounted for one per cent of Australia's total greenhouse gas emissions in CO₂e, or 20 per cent of Australia's industrial emissions.¹⁵¹ However, there are currently no entities that import or manufacture more than the liability threshold of 25,000 tonnes CO₂e of synthetic greenhouse gases.¹⁵²

The synthetic greenhouse gases are hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆). These gases have a much greater global warming potential per tonne than CO₂ (ranging from 1000 to 23 000 times more potent over a 100-year timeframe). Emissions of many of these gases have been rapidly increasing, as they are used as substitutes for ozone-depleting substances controlled under the Montreal Protocol. They are used or produced in numerous industrial processes, mainly as:

- Refrigerants for refrigeration and air conditioning equipment
- Foam-blowing agents for some thermal insulation applications
- Propellants in some aerosols
- Extinguishing agents in some systems
- Insulation gas in electrical switchgear

150. The Waxman–Markey bill, which, while not yet passed, is also known in the US as the American Clean Energy and Security Act of 2009, Sections 782, 765, 767, 764; J Styles, *The US Waxman–Markey climate change bill*, Background note, 2008–09, Parliamentary Library, Canberra, 2009, viewed 15 June 2009, <http://www.aph.gov.au/Library/pubs/BN/2008-09/ClimateChangeBill.pdf>.

151. Department of Climate Change, *National Greenhouse Gas Inventory*, 2006, June 2008.

152. Australian Government, *White paper*, December 2008, p. 6–43.

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The CPRS does not cover additional synthetic greenhouse gases that are emerging as potentially significant contributors to global warming. There are several such gases whose use is rapidly expanding in such areas as the electronics industry, and as replacements for other more potent greenhouse gases that are controlled under either the Kyoto or Montreal Protocols. Several of these gases are being considered for inclusion in a post-Kyoto international emissions control agreement, with the support of the Australian Government.¹⁵³

Reforestation/ deforestation

The CPRS covers reforestation activities on a voluntary basis. It does not cover emissions resulting from deforestation.

The Government has already established tax deductions for establishment of forests for the purposes of carbon sequestration. The implications of encouraging such activities through tax incentives apply equally to the incentive provided under the CPRS, and are discussed more fully in the Parliamentary Library research paper ‘Tax deductible carbon sink forests?’¹⁵⁴

Reforestation under the CPRS is as defined for the first commitment period of the Kyoto Protocol. However, the international accounting rules for land use, land use change and forestry are currently under negotiation, and the Scheme allows for a revision of the crediting rules for reforestation to remain consistent with international accounting. Under the current scheme, forest harvests are counted as emissions. Therefore, a forest that is planted for non-harvest purposes will be allocated more permits for emissions removals than a harvested forest, and the Government expects that non-harvest forests will be more likely to participate in the Scheme:

...Scheme participation might not be beneficial for single-rotation plantations, such as those owned through managed investment schemes, because of the risk that the cost of obligations under the Scheme for harvest emissions would exceed the value of permits received for sequestration. The Government therefore expects that most forests established as a result of the Scheme will be not-for-harvest forests grown on marginal or less productive farm land, rather than plantations. This reduces the risk

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153. UNFCCC, Ad Hoc Working Group on Further Commitments from Annex I Parties under the Kyoto Protocol (AWG-KP), ‘Compilation of technical information on the new greenhouse gases and groups of greenhouse gases included in the Fourth Assessment Report of the Intergovernmental Panel on Climate Change’, viewed 7 May 2009, http://unfccc.int/national_reports/annex_i_ghg_inventories/items/4624.php; Australian Government, *View on the coverage of greenhouse gases and other relevant methodological issues*, Submission to the AWG-LCA and AWG-KP, November 2008, viewed 12 June 2009, <http://www.climatechange.gov.au/international/pubs/081121-gases.pdf>.
154. L Nielson, ‘Tax deductible carbon sink forests?’, *Research paper*, No. 4, 2008–09, viewed 11 May 2009, <http://www.aph.gov.au/library/pubs/rp/2008-09/09rp04.pdf>.

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that plantation forests would be maintained for carbon, while native forests are subject to additional harvesting.¹⁵⁵

Natural disturbances such as bushfires and pest attacks can result in large transitory emissions from forests. The CPRS makes allowance for natural disturbances in its coverage of reforestation activities. Under the policy positions laid out in the White Paper, those engaged in forestry activities that are intended to act as carbon sinks will be required to provide an emissions estimation plan based on intended management practices (including scheduled harvests). To account for the risks of emissions resulting from natural disturbances such as fire, wind-throw, insect attack, storms or severe drought, the number of emissions permits allocated to a forest will be reduced by an amount commensurate with the risk. Under this approach, the forest manager is not required to surrender permits in the event of a natural disturbance.¹⁵⁶

There have been various concerns expressed about allowing credits for reforestation activities, including that

- it may cause agricultural production to be replaced with forest plantations, thereby potentially impacting rural livelihoods and food security
- it may encourage harvesting to be shifted from plantation forests to native forests, to allow plantation forests to grow for longer and thus gain more credits
- it may impact water resources, as forests have high water use which may reduce water availability elsewhere in the catchment, and
- it doesn't make sense to include reforestation in the Scheme if deforestation is not also covered, and the land use sector should be treated in an integrated manner to encourage responsible and accountable land management practices

The Australian Bureau of Agricultural and Resource Economics (ABARE) modelled the economic potential for establishment of forests on cleared land under the two CPRS 2020 emissions reduction targets of five and 15 per cent, as well as under a reference scenario (without the CPRS).¹⁵⁷ The study found that under the higher carbon pricing of the 15 per cent target scenario, by 2050 timber plantations are projected to increase by 4.5 million hectares (with further growth limited by distance to processing infrastructure), and environmental or not-for-harvest plantings increasing by 21.8 million hectares. Forestry

155. Australian Government, *White paper*, p. 6–48.

156. Australian Government, 'Section 6.13: Reforestation, Chapter 6: Coverage', *Carbon Pollution Reduction Scheme: Australia's low pollution future*, White Paper, December 2008, p. 6–46.

157. K Burns, J Vedi, E Heyhoe and H Ahammad, *Opportunities for forestry under the Carbon Pollution Reduction Scheme (CPRS): an examination of some key factors*, Australian Bureau of Agricultural and Resource Economics, March 2009, viewed 12 May 2009, http://www.abare.gov.au/publications_html/ins/insights_09/a1.pdf.

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plantations currently cover 1.9 million hectares, while the total forest area in Australia is about 149 million hectares.

The additional plantation areas projected under the CPRS would replace 6.2 per cent of existing farm area. Most would occur on marginal agricultural land, with existing agricultural land uses remaining economic on higher productivity land. This is consistent with others' suggestion that most Australian farms do not make optimal use of their land, and that 10 to 15 per cent of farmland could be revegetated to absorb carbon without substantially affecting farm productivity.¹⁵⁸

The ABARE modelling also suggests that, in contrast to the Government's expectation (see quote above), plantation forestry, including short-rotation plantations, would expand under the Scheme, though not to the extent of environmental plantings. This suggests that existing native forests may not be unduly threatened by transference of logging from plantations to native forests.

Deforestation currently accounts for about 11 per cent of Australia's emissions.¹⁵⁹ Given that it is a substantial emissions source and Australia is liable for emissions from deforestation under the Kyoto Protocol, there is an argument for its inclusion in the CPRS. However, due to the intermittent and often small-scale nature of deforestation and the large number of landholders involved, the Government has decided that it would be impractical to include it in the Scheme, and to instead explore alternative incentive-based mechanisms to reduce emissions from deforestation.¹⁶⁰

Agriculture

Agriculture represented about 16 per cent of Australia's net greenhouse gas emissions in 2006, making it the second largest emissions sector.¹⁶¹ The main sources of agricultural emissions are methane emissions from enteric fermentation (during the digestive process) in livestock and nitrous oxide emissions from soils (associated with application of fertilisers). Additional emissions occur from manure management (during decomposition of manure), rice cultivation (from decay of plant material in flooded fields), and burning of crop residues and pastures. Agricultural emissions are projected to increase by nearly 15 per cent by 2020.¹⁶²

158. P Cosier, Wentworth Group of Concerned Scientists, Testimony before the Senate Select Committee on Climate Policy, Reference: Emissions trading and reducing carbon pollution, Proof Committee Hansard, 15 April 2009, p. CP74.

159. Department of Climate Change, National greenhouse gas inventory 2006.

160. Australian Government, *White paper*, p. 6–61.

161. Department of Climate Change, National greenhouse gas inventory 2006.

162. Department of Climate Change, *Agenda paper: options for coverage of agriculture*, Emissions trading stakeholder roundtable, Canberra, 5 June 2008, viewed 11 May 2008,

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Agricultural emissions are currently not covered under the CPRS, but the Government has stated its preference to include the sector by 2015. The Government intends to develop a work program in consultation with the agricultural industry and make a decision on coverage of the sector in 2013.¹⁶³

The main argument for the inclusion of agriculture is the fact that it is responsible for such a large proportion of Australia's GHG emissions, and its omission means that there is no incentive for changes in agricultural management practices to be adopted to minimise emissions. There have been many mitigation measures identified within the agricultural sector that could substantially reduce emissions at low or zero cost,¹⁶⁴ but it is less likely that such measures would be implemented in the absence of the direct incentive provided by a price on emissions or equivalent incentives. It has been suggested that land management to optimise soil carbon sequestration in agricultural soils together with reforestation on farmland could contribute 25 per cent of the mitigation activity required to meet Australia's contribution to a 450 ppm CO₂e stabilisation target.¹⁶⁵

Arguments against inclusion of agriculture in the scheme are based on excessive compliance costs because the bulk of emissions in the sector are produced by small farm businesses that each emit much less than the 25,000 tonnes CO₂e threshold that the CPRS sets for other sectors. There are around 130,000 such farm businesses in total.¹⁶⁶ A very low threshold would need to be set for the agricultural sector to cover a reasonable proportion of the emissions, as illustrated in table 6 below. The Department of Climate Change estimates that covering 80 per cent of direct emissions from the beef, sheep, dairy and wheat industries would involve liability imposed upon about 45,000 farm

<http://www.climatechange.gov.au/emissionstrading/consultation/pubs/ets-roundtable4-paper2a-agriculture.pdf>.

163. Australian Government, *White paper*, p. 6–46.
164. See IPCC, 'Chapter 8: Agriculture', *Climate change 2007: mitigation of climate change*, Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge University Press, Cambridge, 2007; United Nations Framework Convention on Climate Change, *Challenges and opportunities for mitigation in the agricultural sector*, Technical Paper, 21 November 2008, p. 5, viewed 11 May 2009, <http://unfccc.int/resource/docs/2008/tp/08.pdf>; McKinsey and Company, *An Australian cost curve for greenhouse gas reduction*, February 2008.
165. P Cosier, Wentworth Group of Concerned Scientists, Testimony before the Senate Select Committee on Climate Policy, Reference: Emissions trading and reducing carbon pollution, Proof Committee Hansard, 15 April 2009, p. CP74.
166. Department of Climate Change, Agenda paper: options for coverage of agriculture, p. 3.

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businesses.¹⁶⁷ The Government is also considering coverage of the sector through upstream (indirect) liability or a combination of upstream and downstream liability.¹⁶⁸

Table 6: Farm numbers and emissions coverage for various emissions thresholds in the agricultural sector

	Emissions threshold (kt CO ₂ e)			
	25 kt	3 kt	2 kt	1 kt
Number of farms	47	2700	4500	18 400
Percentage of agricultural emissions covered	2%	21%	26%	52%

Source: M Ford, A Gurney, C Tulloh, T McInnes, R Mi and H Ahammad, *Agriculture and the Carbon Pollution Reduction Scheme (CPRS): Economic issues and implications*, Australian Bureau of Agricultural and Resource Economics, March 2009, Table 2, p. 10.

The farming industry is against inclusion of agriculture in emissions trading at any time, due to the complexity of monitoring and verification in the sector, as well as the negative impact the industry will suffer from increased fuel and energy costs, even without being directly included in the scheme. Chief Executive Officer of the National Farmers Federation Ben Fargher, has suggested that the industry is prepared to contribute to emissions mitigation, but that the best means for it to do so may be through alternative, complementary measures rather than inclusion in the CPRS.¹⁶⁹

Domestic offsets

The CPRS allows for offset credits to be created in sectors not covered by the scheme. However, from the commencement of the scheme until 2013, these can only be generated through the Clean Development Mechanism in developing countries (see section on treatment of international credits below), and can not be generated in Australia (other than through reforestation activities as described above). Therefore, the current market in voluntary domestic offsets will not be incorporated into the Scheme at its commencement.¹⁷⁰

167. Department of Climate Change, Agenda paper: options for coverage of agriculture, p. 3.

168. Department of Climate Change, Agenda paper: options for coverage of agriculture.

169. B Fargher, National Farmers Federation, Testimony before the Senate Select Committee on Climate Policy, Reference: Emissions trading and reducing carbon pollution, Proof Committee Hansard, 15 April 2009, p. CP3.

170. The Voluntary Carbon Market Association (VCMA) states that 'Australia has developed an active, vibrant and innovative carbon market that has been supporting a growing number of dynamic businesses to date'. It has expressed disappointment in the exclusion of the voluntary carbon market, and has called for voluntary domestic action to be counted as

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The Government has stated that it was committed to facilitating participation of indigenous Australians in carbon markets and would consider including offsets from reductions in emissions from savanna burning under indigenous management practices.¹⁷¹ There are currently projects underway to reduce GHG emissions from bushfires through prescribed burning and management activities (for example in the Northern Territory's tropical savannas).¹⁷² Such projects are designed to provide marketable offsets to emissions in other sectors, so that they can be formally incorporated into a carbon trading scheme.

The Explanatory Memorandum to the CPRS Bill states that the scope for domestic offsets will be considered in 2013.¹⁷³

Treatment of voluntary mitigation action

The issue of whether voluntary abatement action would be able to contribute to emissions reductions over and above the targets in the CPRS has been prominently debated in recent months. One of the issues that fuelled the debate was the Government's second stimulus package introduced in February, which included \$3.8 billion for the Energy Efficient Homes Package.¹⁷⁴ The Government claimed that this would reduce greenhouse gas emissions by nearly 50 million tonnes CO₂e by 2020. Though it is true that potential energy savings in households resulting from the package could correspond to emissions reductions in the household energy sector below business as usual levels, critics have claimed that this would not result in a net emissions reduction for Australia as a whole, because it would merely free up additional emissions permits to be used elsewhere by

abatement under the CPRS. See VCMA, *CPRS amended to include voluntary action but further changes needed*, media release, 5 May 2009, viewed 12 June 2009, <http://www.vcma.org.au/?p=205>; VCMA, *CPRS can readily accommodate voluntary action*, media release, 3 May 2009, viewed 12 June 2009, <http://www.vcma.org.au/?p=217>.

171. Australian Government, 'Section 6.15: Offsets, Chapter 6: Coverage', Carbon Pollution Reduction Scheme: Australia's Low Pollution Future – White Paper, December 2008, viewed 1 June 2009, <http://www.climatechange.gov.au/whitepaper/report/index.html>, p. 6–62.
172. See Tropical Savannas Cooperative Research Centre, 'The West Arnhem Land Fire Abatement Project (WALFA)', viewed 11 May 2009, http://savanna.cdu.edu.au/information/arnhem_fire_project.html; and CSIRO, 'Carbon dynamics in Australia's tropical north', viewed 11 May 2009, <http://www.csiro.au/science/SavannaCarbonDynamics.html>.
173. Explanatory Memorandum, Carbon Pollution Reduction Scheme Bill 2009, p. 89.
174. See R. Webb, S. Kompo–Harms and J. Styles, Appropriation (Nation Building and Jobs) Bill (No. 1) 2008–09, *Bills Digest*, no. 95, Parliamentary Library, Canberra, 2009, viewed 10 June 2009, <http://www.aph.gov.au/library/pubs/bd/2008-09/09bd095.pdf>.

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industry emitters.¹⁷⁵ The same argument applies to other voluntary or assisted energy efficiency or abatement measures, including installation of solar panels on the roofs of homes, as well as state and community-level initiatives.

The Government has argued that such measures will reduce the overall cost of the CPRS to the economy, and this reduction in cost is beneficial to everyone, including householders, because it would limit the increase in energy prices under the CPRS. The CPRS bill also allows for the abatement from voluntary measures to be taken into account when setting the annual caps.¹⁷⁶ However, as the caps are set at least five years in advance, there is an inbuilt lag time in any response to such considerations. The Senate inquiry into the exposure draft CPRS legislation recommended that the legislation be amended so that in relation to setting the emissions caps the Minister 'shall have regard' to voluntary action, rather than 'may have regard'.¹⁷⁷ This recommendation was not adopted. However, the Government recently announced that it would hold public consultation workshops across the country to determine how voluntary action can be taken into account when setting CPRS caps.¹⁷⁸

Under the May 4 changes, the Scheme now provides for the establishment of an Australian Carbon Trust, which includes an Energy Efficiency Savings Pledge Fund and an Energy Efficiency Trust. These would operate as follows:

- the Pledge Fund will be established to enable individuals to buy carbon pollution permits to reflect the energy savings from their individual energy efficiency measures. These permits would then be retired under the CPRS, hence reducing the overall number of permits available to industry, and
- the Energy Efficiency Trust is to fund energy efficiency investments in commercial buildings that would be paid back by the business through its energy cost savings. There are currently no provisions in the bill for the resulting emissions abatement to cancel permits under the CPRS.

175. Richard Denniss, Executive Director of the Australia Institute, has been one of the most vocal critics of the CPRS treatment of voluntary or household energy efficiency measures. See for example R. Denniss, 'Fixing the floor in the ETS', *Research Paper*, No. 59, The Australia Institute, November 2008, viewed 10 June 2009, https://www.tai.org.au/file.php?file=fixing_the_floor_in_the_ets.pdf.

176. Part 2, clause 14(5)(c)(iv).

177. Senate Standing Committee on Economics, *Exposure draft of the legislation to implement the Carbon Pollution Reduction Scheme*, April 2009, Recommendation 4, pp. 73–74.

178. P Wong (Minister for Climate Change and Water), *Public consultation on voluntary action*, media release, 7 June 2009, viewed 9 June 2009, <http://www.environment.gov.au/minister/wong/2009/mr20090607.html>.

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The changes also included a commitment to GreenPower purchases after 2009 when setting the annual emissions caps.¹⁷⁹

The 4 May changes do not address the essential criticism of the treatment of voluntary action in the CPRS. The emissions abatement from individual households that install solar panels on their roofs, for example, does not impact the annual caps under the changes any more than was provided for in the draft legislation through the Minister having regard to such savings. In fact, the Pledge Fund may be somewhat counter to the efficacy of such mechanisms, as it suggests that individuals should spend their money buying permits to be cancelled, instead of recouping the costs of their investment in energy efficiency measures and potentially investing in further measures. The resulting reduction in permits available to industry could also potentially lead to higher energy costs for the individual by increasing the cost of permits overall. The impact of the Pledge Fund on the carbon market may in reality be minimal due to low participation and low overall emissions abatement in the voluntary sector in comparison to the annual reductions required under the Scheme. The provision of a price cap for four years also limits any such influences (the Pledge Fund will not buy and cancel permits during the first year of fixed prices).

It is also worth noting that the exposure draft legislation and the bill as introduced already allow for purchase and cancellation of permits by individuals. However, the Pledge Fund is likely to make this process more accessible by providing a simple purchasing procedure, and will overcome any limitation on minimum purchase quantities required at auction.

It is widely accepted that energy efficiency measures should be an essential component of any climate change mitigation program, and such measures have the potential to produce substantial emissions reductions at little or no cost.¹⁸⁰ Energy efficiency measures are expected to account for some of the emissions reductions that are to be achieved by liable industries under the CPRS, but there are substantial energy efficiency opportunities outside these industries that may require additional incentives to fully realise. At the Council of Australian Governments' (COAG) meeting on 30 April 2009, COAG signed a Memorandum of Understanding (MOU) on energy efficiency and released a draft National Strategy for Energy Efficiency. The MOU notes:

179. Though the text of the bill remains unchanged from the exposure draft on the treatment of voluntary action, the Explanatory Memorandum details the intended extent of the regard to be accorded voluntary action as revised in the 4 May changes. In particular, it discusses the treatment of GreenPower purchases and trends in uptake of energy efficiency measures such as energy efficient appliances, fuel efficiency of vehicles, and the proportion of new or renovated houses achieving a six star rating. See Explanatory Memorandum, pp. 80–81.

180. See for example McKinsey and Company, *Pathways to a low-carbon economy*, Version 2 of the Global Greenhouse Gas Abatement Cost Curve, 2009; and McKinsey and Company, *An Australian Cost Curve for Greenhouse Gas Reduction*, 2008. The latter report identifies several household and commercial energy efficiency measures that deliver carbon abatement at negative cost (i.e., measures that save money while reducing emissions).

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A carbon price alone... will not realise all the potential cost-effective opportunities to improve energy efficiency across the Australian economy. Market barriers, such as split incentives, information failures, capital constraints, early mover disadvantage and transaction costs need to be addressed to remove impediments to investment in energy efficiency by households and business.¹⁸¹

It is generally considered important that individuals, communities and businesses be able to contribute to and be involved in a national strategy to mitigate climate change, in order to facilitate the behavioural transformation that will be required to allow our societies and economies to adjust to a carbon-constrained world. It is not clear that the CPRS encourages such involvement, but as noted in COAG's MOU above, there may be more appropriate or effective means of encouraging voluntary and energy efficiency measures external to the CPRS, for example through enhanced regulation of energy efficiency standards, rebates, feed-in-tariffs and tax incentives. The Senate inquiry into the exposure draft legislation also recommended that complementary policies be developed alongside the CPRS to encourage voluntary action.¹⁸²

Treatment of international credits

The CPRS allows for unlimited import of certain international Kyoto credits. This provision has been criticised for its potential to reduce the initiative to abate domestically if cheaper mitigation measures are available abroad.¹⁸³ Since climate change is a global problem, however, the inclusion of international units can be seen as a sensible provision within the framework of working towards a global solution. Just as the emission of one tonne of CO₂ has the same effect whether it occurs in Australia or Indonesia, the removal of one tonne of CO₂ has the same effect regardless of where it occurs. The Government has indicated a desire to explore linking opportunities with other emissions trading schemes in the future, by prescribing non-Kyoto international emissions units, for use under the CPRS.

The provision is also consistent with the aim of achieving a given mitigation target at lowest possible cost, though it requires the mitigation target to be defined more broadly as mitigation for which Australia is responsible, rather than mitigation of Australian emissions *per se*. A cap on the import of international credits may negatively affect abatement by reducing its cost-efficiency. This is because mitigation will happen first where it is cheapest. Similarly, carbon credits will be bought at the cheapest available

181. Council of Australian Governments, *National strategy on energy efficiency 2009/2020: Memorandum of Understanding*, 30 April 2009, viewed 6 May 2009, http://www.coag.gov.au/coag_meeting_outcomes/2009-04-30/docs/National_strategy_energy_efficiency_MOU.pdf.

182. Senate Standing Committee on Economics, *Exposure draft of the legislation to implement the Carbon Pollution Reduction Scheme*, April 2009, Recommendation 3, p. 73.

183. R Taylor, *Australia's Greens want import limits on CO₂ offsets*, *Reuters*, 18 March 2009.

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price. If the international credits represent the lowest price, then they will set the domestic price of carbon. Conversely, if the domestic price lies below the international price of carbon, there will be no imports. It is likely however, at least in the first year of the Scheme while a low fixed price of \$10 exists, that no international carbon credits will enter the market.

Main provisions

The CPRS Bill is lengthy and complex. Consequently, only the main operative provisions will be covered by the following section.

Part 1—Preliminary matters (Targets)

Clause 3 sets out the objects of the Bill. These are divided into three main themes:

- to give effect to Australia's obligations under the Climate Change Convention and the Kyoto Protocol: **subclause 3(2)**
- to support the development of a global response to climate change: **subclause 3(3)** and
- to set targets for the reduction of emissions in Australia: **subclause 3(4)**.

Australia is aiming to reduce its GHG emissions on either of the following bases:

- if Australia **is** a party to a comprehensive international agreement that is capable of stabilising atmospheric concentrations of greenhouse gases at around 450 parts per million of carbon dioxide equivalence or lower the target is:
reducing net greenhouse gas emissions to 25% below 2000 levels by 2020: **paragraph 3(4)(a)** and
- if Australia **is not** a party to such a comprehensive international agreement the target is:
reducing net greenhouse gas emissions to 60% below 2000 levels by 2050: **subparagraph 3(4)(b)(i)**, and
reducing net greenhouse gas emissions to between five and 15 per cent below 2000 levels by 2020: **subparagraph 3(4)(b)(ii)**.

Proposed **paragraph 3(4)(c)** specifies that these targets are to be reached in flexible and cost-effective way.

Clause 9 provides that Commonwealth, state and territory governments (the 'Crown') are bound by the Bill, However, with some exceptions, there are not liable to a pecuniary penalty or to be prosecuted for an offence. This protection does not extended to government authorities (as opposed to government departments, or the Executive, for example), nor

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does it apply to governments for penalties in relation to, for example eligible emission unit shortfalls (see clause 133).

Part 2—National scheme cap and national scheme gateway

Clause 14 introduces two important terms—the *‘national scheme cap’* and the *‘national scheme cap number’*. The *‘national scheme cap’* is a quantity of GHG that has a carbon dioxide equivalence (CO₂e) of a **specified** number of tonnes. **Subclause 14(1)** empowers the relevant Minister to declare, by regulation, the *‘national scheme cap’*, for a financial year, except for the financial year commencing 1 July 2011.¹⁸⁴ This is then referred to as the *‘national scheme cap number’* for that financial year.

The *‘national scheme cap number’* may be less than Australia’s total GHG emissions for that year. The Minister must take all reasonable steps to set the *‘national scheme cap numbers’* for the financial years commencing 1 July 2012–2014 before 1 July 2010: **subclause 14(2)**.

Subclause 14(3) requires the Minister to take all reasonable steps to declare the *‘national scheme cap number’* in respect of the financial year beginning on 1 July 2015 at least five years before the end of *‘the eligible financial year’*. The definition of *‘eligible financial year’* in **clause 5** is either the financial year beginning on 1 July 2011, or a later financial year. In the context of **subclause 14(3)** it is not clear at what point the Minister must have declared the *‘national scheme cap number’* for the financial year beginning on 1 July 2015. However, paragraph 14(3)(b) does require the *‘national scheme cap number’* to be declared five years in advance.

Clause 15 introduces the term *‘national scheme gateway’* which will only apply from the eligible financial year beginning on 1 July 2015. Essentially this means that the *‘national scheme cap’* must be no more than the uppermost level of the national scheme gateway and no less than the lowest level of the national scheme gateway in an eligible financial year as declared by regulation: **subclause 15(2)**.

In making the regulation about the *‘national scheme gateway’* the Minister **must** have regard to Australia’s international obligations under the UNFCCC and the Kyoto Protocol to that convention: **paragraph 15(4)(a)**.

In addition, the Minister, in making these regulations, **may** have regard to:

- if a report has been presented by the expert advisory committee (see **Clause 354**), that report to the extent that it deals with either the national scheme cap number or the above-mentioned gateways: **paragraph 15(4)(b)**

184. During the financial year commencing on 1 July 2001 an unlimited number of AEU’s will be sold at a price of \$10 per unit.

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- the stabilisation of GHG in the atmosphere at 450 part per million: **subparagraph 15(4)(c)(i)**
- the development of comprehensive global action to restrain GHG emissions: **subparagraph 15(4)(c)(ii)**
- the economic implications of setting either the annual national scheme cap number and the emissions gateways, including the effect on the ‘carbon price’¹⁸⁵: **subparagraph 15(4)(c)(iii)**
- voluntary action which is expected to reduce Australia’s GHG emissions: **subparagraph 15(4)(c)(iv)**
- estimates of GHG emissions not directly covered by the proposed CPRS, such as emissions from the rural sector: **subparagraph 15(4)(c)(v)**, and
- any other relevant matter, such as past levels of voluntary action (including action at the household level) that have not as yet been taken into account for the setting of the national scheme cap number: **subparagraph 15(4)(c)(vi.)**

On or as soon as practicable after any clause 15 regulations have been tabled, the Minister must also table a written statement setting out the Minister’s reasons for making his or her relevant recommendation to the Governor-General regarding the regulations: subclause 15(6).¹⁸⁶

Part 3—Liable entities

One of the essential components of any ETS is the precise rules defining which entities are covered by the scheme and which are not. **Part 3** deals with these matters in respect of the proposed CPRS.

As noted above, liability under the proposed CPRS is on a facility by facility basis.

General liability

Clauses 17 and 18 formally make all facilities¹⁸⁷ (other than landfill facilities) emitting GHG ‘*liable entities*’ in an eligible financial year under the proposed CPRS whether they are controlled by either a collective entity (such as a corporation) or an individual.

185. The term ‘carbon price’ is not otherwise defined but may be assumed to be the price of an Australian Emissions Unit.

186. It should be noted that such regulation would be disallowable by either House of Parliament in accordance with the *Legislative Instruments Act 2003*.

187. The term ‘*facility*’ is defined in clause 5 as having the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*. According to subsection 9(1) of that Act, a ‘*facility*’, is an activity, or a series of activities that involve the production of greenhouse gas emissions, the production of energy or the consumption of energy and that:

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Subclauses 17(4) and **18(4)** exempt individual facilities from the scheme if they emit less than 25 000 tonnes CO₂e in a financial year. Special rules apply to landfill sites (see below). There are also separate provisions covering fuels (see below).

Landfill sites

Clause 5 defines the term '*landfill facility*' as a facility for the disposal of solid waste as landfill, and includes a facility that is closed for the acceptance of waste. **Clauses 20** and **21** impose a liability under the proposed CPRS on landfill facilities, managed by either collective entities or individuals, that emit over 25 000 tonnes of CO₂e per year. If the landfill facility is within a certain distance of another site that accepts a similar type of waste the emissions threshold is 10 000 tonnes of CO₂e per year: **subclauses 20(13) and 21(13)**.

Subclauses 20(6), 20(8), 21(6) and 21(8) exempt the following landfill facilities from proposed CPRS obligations:

- land fill facilities that have not accepted waste since 30 June 2008, and
- emissions coming from waste accepted before 1 July 2011.

Application of the NGER Act

Clauses 24 and **25** apply the provisions of the *National Greenhouse and Energy Reporting Act 2007* (NGER Act) to the measurement and reporting of GHG emissions from a facility.

Synthetic greenhouse gases

For CPRS Bill purposes a synthetic greenhouse gas is defined in **clause 5** as having the same meaning as in the NGER Act. This definition is to be inserted as new **section 7B** of the NGER Act by **item 146** of the proposed Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009. Briefly, this proposed definition includes each of the following gases as a synthetic greenhouse gas:

- sulphur hexafluoride
- a hydrofluorocarbon of a kind specified in the table in new subsection 7B(2) of the NGER Act, and

form a single undertaking or enterprise and meet the requirements of the regulations or are declared by the Greenhouse and Energy Data Officer to be a facility under section 54 but does not include an activity, or a series of activities in the exclusive economic zone, except to the extent that it is an oil or gas extraction activity or a series of oil or gas extraction activities.

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- a perfluorocarbon of a kind specified in the table in new subsection 7B(3) of the NGER Act.

Clauses 26 and 27 impose a liability under the CPRS Bill on importers, manufactures and suppliers of synthetic greenhouse gases where the amount of imported or manufactured gases is 25 000 tonnes or more of CO₂e per year. This amount is calculated by subtracting the **‘netted out number’** from the amount of gas an importer or manufacturer is responsible for in an eligible financial year.

For an importer a **‘netted out number’** under **subclause 26(7)** is:

- if the person’s imports exceed their exports of these gases – the amount of gas exported, otherwise
- the amount imported.

For a manufacturer the **‘netted out number’** under **subclause 27(7)** is:

- if the amount manufactured exceeds the amount exported – the amount exported, otherwise
- the amount manufactured.

The above definitions of **‘netted out numbers’** do not address situations where:

- a person’s imports of these synthetic greenhouse gases are less than their exports, and
- the amount manufactured is less than the amount exported.

These situations may arise where a person is both a manufacturer and simultaneously an importer and exporter of these gases. The proposed legislation is silent on the calculation of a **‘netted out number’** in these circumstances.

Importers, producers and supplies of eligible upstream fuels and liquid petroleum fuel

Clause 5 defines the term **‘eligible upstream fuel’** to include liquid petroleum fuel and gas, black and brown coal, coke, natural gas, ethane, coal seam methane and other fuels in both their processed and unprocessed forms. Generally, the fuels covered by this scheme are those on which either import duty, or excise, is payable.

It is important to note that the general 25 000 CO₂e emissions threshold does not apply in these cases. All the embedded emissions in these fuels are covered by the proposed CPRS. That is, all the potential greenhouse gas emissions that could be released from the combustion of these fuels are covered by the CPRS rules.

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Clauses 31 and 32 impose a CPRS liability on importers and producers of liquid petroleum fuel. **Clause 5** defines *‘liquid petroleum fuels’* as being, amongst other things, ‘excisable goods’ within the meaning of the *Excise Act 1901* or the *Excise Tariff Act 1921*.

Clauses 33–39 impose a liability for an eligible financial year under the proposed CPRS on those who import, refine or supply *‘eligible upstream fuels’*. That is, the importer, refiner or supplier of such fuels is liable under the scheme in respect of the embedded CO_{2e} in those fuels. This amount is known as the *‘provisional emissions number’*.

However, the provisional emissions number is reduced by the netted out number of these fuels. This term refers to the embedded CO_{2e} of the fuels supplied to another party. This party then assumes the liability of the embedded CO_{2e} in the fuel in question.

Thus the liability of an importer, producer or supplier of an eligible upstream fuel would equal:

- the provisional emissions number minus – the netted out number, plus
- any emissions occurring due to that party’s own use of the fuel and, if appropriate, any emissions occurring in the production of that fuel.

The result of the above calculation cannot be less than zero.

Obligation transfer numbers

One of the key administrative tools in administering the proposed CPRS is the *‘obligation transfer number’* (OTN). This number is issued by the CPRS administering Authority to those who are liable, or who may be liable, under the proposed CPRS: **subclause 44(2)**. A person or liable entity may apply for an OTN: **clause 42**, or it is issued by the Authority to those who it believes will need it: **clause 45**.

The OTN is designed to give effect to the CPRS obligations between the upstream suppliers of fuel and the direct emitters so as to prevent double-counting of emissions and gaps in coverage. This is achieved by making it possible for CPRS obligations to be transferred from upstream suppliers of fuel and GHGs to intermediate suppliers and end users. If an entity quotes a valid OTN to an upstream supplier, the supplier is relieved of liability for the relevant supply, and the potential liability is transferred to the entity that quoted the OTN. For example, when a fuel is supplied to another party, such as by a refiner to a distributor, the refiner quotes the distributor’s OTN. That number, together with the details of the fuel supplied, is then given to the administering Authority. The supplying entity’s net emissions are calculated using this information plus that reported under the NGER Act.

Clauses 52–55 set out the circumstances in which the quotation of an OTN by a recipient of an *‘eligible upstream fuel’* to a fuel supplier is mandatory.

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- In particular, **clauses 53 to 55** require the quoting of an OTN by a recipient to a **supplier** where:
 - the recipient is a retailer of natural gas
 - the recipient either re-supplies natural gas or is a liquid petroleum gas marketer

clause 5 defines a liquid petroleum gas marketer to be a person or entity who is supplied liquid petroleum gas from various types of bulk storage for the purposes of re-supply,

- where the liquid petroleum gas is used a feedstock to another process (such as fertiliser manufacture)

regardless of the amount supplied or the emissions of the facilities using these eligible upstream fuels.

Clauses 56–64 allow a recipient of the supply of various types of eligible upstream fuels or synthetic greenhouse gases to quote the OTN to the supplier. However, quoting of this number in these circumstances is not mandatory. Generally these circumstances do not include the combustion of the fuel in question. They also include the export of these fuels or gases.

Comment—Possible confusion with OTN

The circumstances referred to in **clause 58** appear to overlap with the requirements to quote the OTN in **clause 55**. In the latter clause, it is required to quote the OTN where liquid petroleum gas, propylene, or ethane is used as a feed stock for another product. In the former clause the quoting of the OTN is voluntary where the eligible upstream fuel is used in manufacturing other products. Liquid petroleum gas, propylene, and ethane fuel are all eligible upstream fuels.

The difference between the use of, for example, liquid petroleum gas as a feed stock and its potential use in the manufacturing of other products is not clear from reading the legislation. Thus there may be an unintended conflict between the requirement to quote the recipient's OTN in **clause 55** and the voluntary quotation of this number in **clause 58**.

Liability transfer certificates

The CPRS Bill provides exceptions in relation to liability transfer certificates, which permit transfer of liability under the CPRS Bill and transfer of reporting obligations under the NGER Act. Because the CPRS Bill is designed to apply to both individuals and constitutional corporations, the NGER Act will be amended to require all relevant entities to meet reporting obligations.¹⁸⁸ The CPRS Bill provides two circumstances in which the

188. These changes will be effected by the Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009.

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liability for a particular facility can be transferred from one entity to another by means of a *'liability transfer certificate'*:

- (i) within a corporate group: this will allow the transfer of CPRS liability from the controlling corporation to another member of the controlling corporation's corporate group. This is of practical benefit, allowing a change of law or carbon cost to be relayed via a clause in a contract which the subsidiary is party to, on the basis that such a clause could not be used if the liability were placed solely on the controlling corporation:¹⁸⁹ **clause 69**
- (ii) from a person who has *'operational control'* of a facility to an entity with financial control:¹⁹⁰ **clause 73**.

Such circumstances may include where a mine or pipeline is operated under contract. Normally, the entity which has operational control would be liable under the proposed CPRS. However, should that entity lack the financial resources to meet its CPRS obligations, it would be appropriate for the CPRS liability to be transferred to another entity.

Under **Clauses 70** and **74** such transfers may only occur with the written consent of the controlling corporation of the corporate group.

According to **Clauses 72** and **76** such certificates must only be issued where the Authority is satisfied that:

- the relevant transfer tests in clauses 69 and 73 are met, and
- the applicants are likely to continue to have the capacity, the access to information and the financial resources to meet the requirements of:
 - the proposed CPRS scheme and relevant regulations, and
 - the NGER Act.

Comment—Liability transfer certificates

At the time when the CPRS commences there will be existing contracts between parties which will be affected by the scheme. Those parties who are directly liable under the CPRS will, presumably, wish to pass the costs they incur onto their customers. Other parties in the supply chain who are not directly liable under the CPRS but who will face cost increases themselves may also wish to pass on all or part of those costs to their customers.

From a customer's viewpoint, the best protection is a fixed price contract.

189. This is referred to as the Category A transfer test.

190. This is referred to as the Category B transfer test.

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However there are two types of clauses which are contained in contracts which may allow for the increased prices to be passed on. They are referred to as a 'change in law' clause which, essentially, allows for a variation in a contract price when there has been a change in the law; and a 'pass through' clause which, depending on how broadly it is drafted, may allow cost increases to 'pass through' a supply chain.

The liability transfer certificate is designed to trigger the operation of these clauses in existing contracts.¹⁹¹ However, a 'change in law' provision generally only allows the passing through of costs that the subsidiary incurs 'as a result' of a change in law. Because the liability transfer envisaged by the CPRS Bill will only take place if the subsidiary applies for a liability transfer certificate from the Authority, it may be that the subsidiary will not be incurring the liability as a result of a 'change in law' but as a result of its voluntary decision to apply for the certificate.

Further, it is unclear why minority shareholders in a partly owned subsidiary would wish to take on the liability that would normally be borne by the majority shareholder's group and so, where they are able to veto such a move, they will most likely do so, thus stopping the subsidiary from applying for a liability transfer certificate. This is despite the fact that the subsidiary may be best placed to manage the facility's emissions and pass on the associated carbon cost to its customers.

This anomaly arises, because the CPRS imposes primary liability not on the entity that has '**operational control**' over the emitting facility but on that entity's controlling corporation. This seems to derive from the approach taken by the national greenhouse and energy reporting scheme under the NGER Act, where reporting obligations are best left to the controlling corporation level. However, the same logic does not necessarily apply to the imposition of liabilities under the CPRS. Perhaps it would better serve the object and purpose of the CPRS to require that a subsidiary with operational control over a facility, be made responsible for making an application for a liability transfer certificate unless the controlling corporation otherwise agrees. This would result in the costs associated with the CPRS liability being imposed by law on the subsidiary, thereby enabling it to take advantage of any 'change in law' provision in its sale contracts.

The Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 proposes amendments to the NGER Act that clarify which corporation has '**operational control**' in the situation of partnerships, joint ventures and trusts. In such circumstances the Authority has the power to issue a declaration. Where the Authority does not issue a declaration, it falls on the entities to nominate which of them has '**operational control**'. If the entities do not so nominate, they will be subject to a penalty. This means that a nominated joint venturer carries all of the credit risk of the other joint venturers. This proposed arrangement may also impose a disproportionate share of liability of smaller joint venture participants. Perhaps a commercially more realistic and fairer arrangement

191. Explanatory Memorandum, paragraph 1.254, p. 68.

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would be to impose CPRS liability on each of the joint venturers in proportion to their joint venture interests.

As it stands, the Bill fails to contemplate that more than one entity may have financial control over a facility. In that case there will be uncertainty as to which entity is entitled to assume the CPRS liability for the facility.

Part 4—Emissions Units

Part 4 is about the issue of Australian Emission Units (AEUs) and the acceptance of emissions credits generated by the Kyoto Protocol flexible mechanisms for CPRS purposes.¹⁹² It is these AEUs and Kyoto protocol units that are traded and accepted for the acquitting of a CPRS liability.

Clause 86 allows the Authority to issue AEUs for a particular financial year at any time before 15 December following the end of that year – thus for the financial year covering the period 1 July 2011 to 30 June 2001, the AEUs must be issued by 15 December 2012. Liable entities must surrender their AEUs or other emissions credits by 15 December following the end of the relevant financial year under the proposed scheme: **clause 132**. Under **Clause 85** the relevant financial year for which an AEU was issued is the ‘vintage year’.

Clause 88 specifies the circumstances under which an AEU can be issued. These circumstances are:

- as the result of an auction conducted by the Authority
- issued under **clause 89** at a fixed price
- as assistance to EITE or coal fired power stations
- to eligible reforestation projects, or
- as a result of the destruction of synthetic greenhouse gases.

As noted above the Authority will issue AEUs at a fixed price under **clause 89**. The table in **subclause 89(1)** sets out the charge per unit for five separate periods. The effect of this subclause is to cap the price of an AEU for CPRS purposes until 15 December 2016. The maximum number of AEUs that can be issued to a person is worked out using the formula in **subclause 89(2)**.

192. The Kyoto Protocol flexible mechanisms are the ‘Clean Development Mechanism’, the ‘Joint Implementation Mechanism’ and ‘Emissions Trading’ of Assigned Amount Units (AAUs) between countries. Only emissions credits generated by the first two flexible mechanisms will be accepted in the proposed CPRS – but see later discussion.

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Subclause 89(7) defines the *'indexation factor'* for a particular eligible financial year by way of a prescribed formula. The factor is calculated by taking the index number of the March quarter immediately preceding the start of an eligible financial year and dividing it by the index number for the March quarter 12 months before that, and then adding 1.050 to the result.

Under **subclause 89(5)** the units issued under **clause 89** procedures are automatically surrendered once they have been issued. They cannot be traded or saved for later use. **Subclause 129(5A)** also has this effect.

Subclause 89(10) specifies that the *'index number'* for these purposes is the All Groups Consumer Price Index number calculated by the Australian Bureau of Statistics.

Subclause 89(11) requires the publication of the fixed price charge for a particular financial year before the start of that year, from 1 July 2012.

Under **clause 93** the total number of AEU's issued in any one vintage year from auctions and as a result of the assistance measures must equal the *'national scheme cap number'* of that year.¹⁹³ However, this provision does not include the number of units issued as a result of reforestation activities and the destruction of synthetic greenhouse gases. Thus the total number of AEU's issued in any one year may be above the national scheme cap number.

Clause 94 specifies that an AEU is personal property that is able to be transmissible to another party. **Clauses 95–98** set out the conditions by which an AEU may be transferred.

Under **clause 103** the relevant Authority may, by legislative instrument, decide the policies, procedures and rules for the auction of AEU's.

Kyoto units and non-Kyoto international emissions units

In **clause 5** a *'Kyoto unit'* is defined to mean:

- an assigned amount unit (AAU)
- a certified emission reduction unit (CER)
- an emission reduction unit, (ERU), or
- a prescribed unit issued in accordance with Kyoto Rules
- a removal unit (RU).¹⁹⁴

193. The *'national scheme cap number'* is defined in clause 14.

194. For more information on the Kyoto Protocol accounting methods see A Talberg, *The Kyoto Protocol accounting rules*, Background Note, Canberra, 21 January 2009, viewed 22 April 2009, <http://www.aph.gov.au/library/pubs/BN/2008-09/KyotoAccRules.htm>.

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These emission reduction units arise from the activities conducted under the Kyoto protocol to the UNFCCC. Australia's ratification of the Kyoto Protocol obliges it to set up mechanisms to handle these units within Australia. **Clauses 104–116** achieve this aim by allowing these units to be entered in the register of emissions units kept by the Authority and allowing the transfer of these units to and from various parties.

As noted above, only some of the above Kyoto units will be generally accepted for CPRS purposes.

In **clause 5** a '*non-Kyoto international emissions unit*' is defined as:

- 'a prescribed unit issued in accordance with an international agreement (other than the Kyoto Protocol), or
- a prescribed unit issued outside Australia under a law of a foreign country'.

The first point refers to emissions units that are issued under either a successor to the Kyoto Protocol or some under international agreement such as Australia's proposed 'Forest Carbon Market Mechanism'.¹⁹⁵ The last point refers to emissions units that may be issued under another country's emissions trading scheme, for example New Zealand's emissions trading scheme.

Clauses 117–121 enable the Authority to enter a '*non-Kyoto international emissions unit*' in its emissions units register.

Clause 122 allows regulations to make provision for, or in relation to, prohibiting the surrender of non-Kyoto international emissions units for CPRS purposes. As already mentioned, initially, these non-Kyoto international emission units will not be accepted for the proposed scheme's purposes.

Part 5—Emissions number

Briefly, a liable entity's emission number is the number of AEU's and/or eligible international emissions units (collectively known as eligible emissions units) that they are obliged to surrender by 15 December each year in respect of the immediately previous financial year.

Clause 125 defines a person's '*emissions number*' as being made up of:

- the total of a person's provisional emissions numbers

195. See P Wong (Minister for Climate Change and Water), *Building confidence towards and effective global climate change agreement – an Australian perspective*, Address to the Peace Institute, New York - USA, 27 March 2009, viewed 22 April 2009, <http://www.environment.gov.au/minister/wong/2009/sp20090327.html>.

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- a person's provisional emissions numbers are defined generally in **Part 3** as the amount of tonnes of CO₂e emitted from facility(s) under the person's control in a particular financial year, and
- the person's 'make good number' (if any)
- a person's '**make good number**' is defined in **clause 142** to be shortfall between the number of eligible emissions units surrendered and the number that is required to be surrendered for a particular eligible financial year if the person is also a liable entity for the following financial year.

A person's emissions number for any year can be reduced by the number of AEU's surrendered to the Authority in the previous financial year above that required to meet their CPRS liability: **subclause 125(2)**.

Part 6—Surrender of eligible emissions units

Banking of AEU's

Clause 129 specifies that eligible emissions units may be surrendered electronically to the Authority, and which units can be surrendered, as follows:

- AEU's surrendered for a particular eligible financial year are to be surrendered in respect of that particular year, or earlier eligible financial years
- this provision allows a liable entity to save, or bank, unused AEU's issued in respect of a particular eligible financial year for use in later years. There is no requirement for the surrender of a particular vintage year's AEU's in respect of the corresponding eligible financial year
- a Kyoto unit must not be surrendered if it is in breach of regulations: **subclause 129(6)**
 - a Kyoto Protocol Removal Unit or an Emissions Reduction Unit that has been converted from a Removal Unit during the Kyoto Protocol's first commitment period (2008–2012) must not be surrendered to the Authority in relation to a financial year beginning on 1 July 2013 or later years; and
 - a non-Kyoto international emissions unit must not be surrendered if that action would breach regulations made under **clause 122**.

Borrowing of AEU's from next financial year

Subclause 130(4) allows a liable entity to borrow up to five per cent of a current financial year's emission number (effectively the liable entity's emissions) from the next financial year, for surrender in relation to the current eligible financial year.

Clause 132 requires a liable entity to surrender enough eligible emissions units by 15 December following the end of an eligible financial year so that they do not have a shortfall of units in respect of that year.

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Clause 133 imposes a financial penalty according to the number of required emissions units not surrendered in respect of a financial year. For the financial year beginning on 1 July 2011 the penalty per unit will be \$11 (compared to the fixed price of \$10 per unit). In later years the penalty per unit not surrendered to the Authority will be fixed by regulation, or failing that, will be 110% of the benchmark average auction price for the previous financial year.

Subclause 133(2) limits the penalty per emission unit to 110 per cent of the average auction price for such units during the relevant financial year.

The amount payable under clause 133 becomes payable on 31 January in the next eligible financial year: **clause 134**. Under **clause 135** if an amount of penalty calculated under clause 133 remains unpaid past the due date, then the person becomes liable to pay an additional amount calculated at the rate of 20 per cent per annum or some lower rate which may be specified in the regulations.

Part 7—National Registry of Emissions Units

The National Registry of Emissions Units (the Registry) currently exists and is operated by the Commonwealth. **Clause 145** gives the Registry a statutory, rather than just administrative, basis and provides that it will be operated by the Authority. It will have the dual function of being:

- the registry for AEU's, and
- the registry for Kyoto units.

Clause 146 allows a registry account to be opened in the name of a person. This means that a registry account can be opened in an individual's, as well as a corporate entity's, name.

Clause 150 identifies a number of different types of Kyoto units and specifies that these units cannot be transferred or surrendered for CPRS purposes.

Part 8—Emissions-intensive trade-exposed assistance program

Clause 167 enables the relevant Minister to implement the proposed Emissions-intensive trade-exposed (EITE) assistance program by regulation. This clause requires the Minister to take all reasonable steps for these regulations to be made before 1 July 2010.

Comment—Use of regulations and Parliamentary scrutiny

Significantly, a great deal of the detail relating to the CPRS is to be provided for by way of regulations which are due to be made available for public comment in June 2009. For example, detailed scheme cap numbers for each relevant financial year. It is expected that these will be consistent with the 2020 and 2050 national emissions targets. The Minister is

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required to take all reasonable steps to ensure that regulations are made to set the scheme caps within the range specified for the relevant year before the start of that particular year under **clauses 14-15**.

The EITE assistance program will also be created by way of regulations. The regulations will set out the Government's decisions relating to the eligibility of activities and the allocative baselines for eligible activities. Regulations will also set out the rate at which assistance may be reduced. Regulations will also be the source for details relating to the administration of the Registry as it relates to Kyoto units.

It is common for Acts of Parliament to delegate to the executive government, the power to make regulations which supplement and help give operational effect to the primary Act. While such regulations are not required to be passed by both Houses of Parliament, either House may disallow them. A member of Parliament has 15 sitting days—from the date of tabling—in which to give a notice to move a disallowance motion in relation to them. If the motion is passed, or alternatively has not been withdrawn or otherwise disposed of within a further 15 sitting days after the notice was given, the regulations cease to have effect from the date the motion is passed or the expiry of the second 15 sitting day period. Actions done under the authority of the regulation or other disallowed instrument before the actual or deemed date of disallowance remain legally valid.¹⁹⁶

Part 9—Coal-fired electricity generation

Clause 176 authorises the issue of AEUs free of charge to coal-fired power generators who hold an eligibility certificate for such assistance for the financial years commencing on 1 July 2011 to the year commencing 1 July 2015.

This clause also contains a formula to determine the annual number of AEUs issued to eligible generators over this period (see **clause 186** for additional formulas for these purposes).

For the first two years of the scheme's operation (2011–2012 to 2012–2013) the annual number of free AEUs given to coal fired power generators will be capped at 26 140 000: **subclause 176(2)**. Otherwise the formulae contained in this clause will be used to calculate the amount of free permits issued to each eligible generator. It is likely that the actual number of emissions permits given to generators in these two years will be less than this upper limit.

Clause 177 imposes a 180 day limit¹⁹⁷ after the commencement of this particular section on persons applying for an eligibility certificate for coal-fired generation assistance. Only

196. *Legislative Instruments Act 2003, Section 42.*

197. Extendable to 210 days in certain circumstances under **subclause 177(8)**.

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those owning, controlling or operating coal-fired power generation facilities may apply for these certificates: **subclause 177(2)**.

Clause 181 specifies the criteria for the issue of such certificates. An operating power generation complex will qualify for a certificate if any one of its generating units met any one of the following criteria:

- it was in operation at any time during June 2007: **subparagraph 181(2)(a)(i)**
- if it was not in operation in June 2007 there was a plan to re-commence operation before the end of 2007: **subparagraph 181(2)(a)(ii)**
- if it was not in operation during June 2007 due to restricted access to cooling water supplies there was a plan to return it to operation when this problem was overcome: **subparagraph 181(2)(a)(iii)**.

Additional criteria for being granted these certificates are:

- at least 95 per cent of power generated by the complex during the financial year commencing 1 July 2006 came from coal combustion: **paragraph 181(2)(b)**, and
- at any time during the financial year commencing 1 July 2006 the generation complex was connected to an electricity grid with a capacity of at least 100 megawatts: **paragraph 181(2)(c)**.

Subclause 181(3) provides that power generation projects that:

- were in existence but not yet completed, and
- were fully committed¹⁹⁸ as at 3 June 2007, where 95 per cent of the power was to be generated by coal combustion and would be connected to a grid with a capacity of 100 megawatts also qualify for these assistance certificates.

Clause 183 allows the relevant Minister, before 1 August 2014, to declare that a specified generation asset will not receive further free AEU's, if a windfall gain declaration is in force.

One of the most telling criticisms of the operation of the European Union Emissions Trading Scheme during its first two trading periods (2005-2007 and 2008-2012) is that power generators received windfall profits from the large scale allocation of free emissions permits to them. The Australian government has addressed this issue in the design of the CPRS.

198. **Paragraph 181(3)(b)** sets out the matters to be considered in determining whether a project was 'fully committed'.

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Clause 185 requires a person who has received free AEU's in respect of a power generation asset to make a submission to the Authority in respect of windfall profits before 30 September 2013.

Clause 186 empowers the Authority to make a windfall gain declaration in respect of a power generation asset, if that asset passes the windfall gain test.

Clause 187 specifies that a power generation asset passes the '*windfall gain test*' if:

- it is likely that the total value of assistance to the particular asset will be greater than the likely projected long term net revenue loss, or
- it is likely that there will be a projected long term net revenue gain from the particular generation asset.

For the purposes of the above clause the total value of assistance is the market value of free AEU's with vintage years beginning between 1 July 2011 and 1 July 2013 plus the projected market value of free AEU's issued with vintage years beginning on 1 July 2014 and 1 July 2015: **subclause 187(3)**.

Clause 188 specifies that no free AEU's will be given in respect of a generation complex (and not a particular power generation asset within that complex) that does not pass the power system reliability test.

Clause 189 specifies the '*power system reliability test*' that generation complexes have to pass in order to receive free AEU's is:

- as at 1 September in the eligible financial year the person who either owns, controls or operates the generation complex is registered under either a Commonwealth or State law regulating energy markets
- as at 1 September of an eligible financial year the nameplate rating in megawatts of that complex was not less than the same rating as at 3 June 2007, or
- if there is a reduction in the nameplate rating of the generation complex the appropriate energy market operator certifies that this reduction is unlikely to breach power system reliability standards, or
- if before 1 September in any eligible financial year the person's registration under the appropriate Commonwealth or State law ceased to be in force the appropriate energy market operator certifies that it is unlikely that the relevant power system reliability standard will be breached in the following two years.

Clause 5 defines the term '*nameplate rating*' to generally mean the maximum continuous electrical generation capacity in megawatts of the generation complex, or the proposed generation complex.

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Part 10—Reforestation

In respect of privately held land the provisions of this part apply to eligible reforestation projects established on property held under the Torrens land title system.¹⁹⁹

Clause 191 requires the Authority to issue free AEU to the holder(s) of a certificate of reforestation as soon as practicable after the day that certificate was issued.

Subclause 191(2A) requires that certificates issued during the 2011–2012 financial year are to have a vintage year beginning on 1 July 2012. This means that such units cannot be surrendered during the first year of the scheme’s operation (2011–2012). They may, however, be traded.

Under sections 40-1000 to 40-1025 of the *Income Tax Assessment Act 1997* a limited tax deduction is available to land holders who establish a forest for the purposes of carbon sequestration. The issue of free AEU may not be the only benefit available to persons undertaking a reforestation project influenced by this part.

Clause 192 requires the applicant for a certificate of reforestation to provide a reforestation report in respect of an eligible reforestation project for a particular reforestation reporting period. Such certificates are not transferable: **clause 197**.

Clause 195 specifies the conditions under which a certificate of reforestation may be issued. Amongst these conditions are:

- the recipient is a recognised reforestation entity: **paragraph 195(2)(a)**
- the recipient holds a carbon sequestration right in relation to the relevant reforestation project²⁰⁰: **paragraph 195(2)(b)**
- the recipient is not required to hand back AEU arising from another reforestation project and is not required to pay amounts in relation to this requirement: **paragraph 195(2)(c)**, and
- the number of tonnes of GHGs removed by the project is greater than the amounts of AEU issued in respect of that project: **paragraph 195(2)(e) and subclause 195(3)**.

Clause 201 generally requires that, amongst other matters, a reforestation entity be a ‘fit and proper person’ before the Authority will grant recognition as a reforestation entity. This requires that they not have been convicted of an offence involving dishonesty the

199. The Torrens land title system operates in every state and territory in Australia. It replaced the cumbersome General Law system of land whereby property was transferred by deed and placed an unreasonable chain of title search burden on the purchaser, with a requirement that property is transferred by way of registration of title.

200. **Clause 240** contains the definition of carbon sequestration right.

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conduct of business under Commonwealth, State or Territory law, and not have contravened certain other laws such as the restrictive trade practices provisions of *Trade Practices Act 1974*.

Subclause 209(4) allows the Authority to declare a project an '*eligible reforestation project*' if:

- if the Torrens land title system applies—the area is held under a single title: **paragraph 209(4)(b)**
- the applicant is a recognised reforestation entity: **paragraph 209(4)(c)**
- the applicant holds a carbon sequestration right in relation to the project: **paragraph 209(4)(d)**
- each of the following has consented, in writing to the making of the application in relation to the project area(s): the holder of an estate in fee simple; the holder of the forestry right; any mortgagee registered in accordance with a law of a State or Territory: **paragraph 209(4)(e)**
- if the project area(s) is not Crown land in a State or Territory and the applicant is not a State or Territory, then the principal Minister of the State or Territory, must certify in writing that the application holds the carbon sequestration right in relation to the project and that the State or Territory will not deal with the project's area(s), and will not allow any other person to deal with the said area(s), in a manner that is inconsistent with the carbon sequestration right: **paragraph 209(4)(f)**, and
- the project meets any relevant requirements made under the regulations: **paragraph 209(4)(g)**.

Other criteria for the recognition of an eligible reforestation project will be specified in regulations. The Authority or the applicant may vary, or revoke, the recognition of an eligible reforestation project on the same grounds as mentioned in **clause 201**.

An eligible reforestation project can also occur on Crown Land that is not under the Torrens system of title.

Each eligible reforestation project is to be given a '*reforestation unit limit*'. This number is one of the upper limits on the number of AEU's that can be issued in relation to a particular eligible reforestation project under **clause 196**. The other upper limit is the net total number of tonnes of greenhouse gases removed minus one. That is, the AEU's issued in respect of a particular project must be at least one tonne less than the amount of GHG removed by that project.

Clause 220 defines the '*reforestation unit limit*' to be the projected net greenhouse gases removal number for the project less the sum of:

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- the number that, under the regulations is the ‘non-CPRS greenhouse gases removal sales number’ for the project, and
- the number that, under the regulations, that is the ‘2008 carbon stock baseline number’ for the project.

These latter two terms are not elsewhere defined in the Bill. However the Explanatory Memorandum notes that

The calculation of the unit limit will also take into account the 2008 carbon stock baseline for the project and any sale of abatement from the reforestation project to schemes or projects outside of the Carbon Pollution Reduction Scheme.²⁰¹

Clause 225 requires a person holding a carbon sequestration right in relation to an eligible reforestation project immediately before the end of a reforestation reporting period under **clause 223** to provide a reforestation report. The information required in this report and the manner and form in which it must be provided will be set out in regulations.

Clause 226 requires person’s holding a forestry right to maintain that forest stand to the extent that it is reasonable to expect that, when the trees reach maturity, the net number of tonnes of GHG removed will equal or exceed the net total number of AEU’s issued in relation to that project.

Clause 240 defines a ‘*carbon sequestration right*’ to be estate or interest in the eligible reforestation project that is the exclusive legal right to obtain the benefits of the sequestration of carbon dioxide by that project.

For private land this estate or interest has to arise under the Torrens system of land title. The same requirement does not arise in relation to Crown land that is not Torrens system land.

The precise definition of a ‘*carbon sequestration right*’ is very important as only holders of these rights may obtain free AEU’s arising from eligible reforestation projects.

Clause 241 defines a forestry right to be the estate or interest in the reforestation project that gives a person the exclusive legal right to establish, manage and maintain a forest on the project area or areas.

Again, for private land this right must arise under the Torrens system of land title: **subclauses 241(1) and (2)**. This requirement does not apply to Crown land that is not Torrens system land: **subclauses 241(3) and (4)**.

201. Explanatory Memorandum, paragraph 6.58, p. 170.

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Part 11—Destruction of synthetic greenhouse gases

In the context of the UNFCCC Clean Development Mechanism (CDM) the destruction of one of the synthetic greenhouse gases, hydrofluorocarbon (HFC), has been accomplished at a very low cost.²⁰² While Australia cannot host CDM projects under the current Kyoto Protocol rules, this outcome indicates that these GHGs may be disposed of at little marginal cost in Australia.

Clause 245 requires the Authority to issue free AEU to the holder of a certificate of eligible synthetic greenhouse gas destruction as soon as practicable after that certificate has been issued. These certificates are not transferable: **clause 252**.

Under the provisions of **clause 246** a person may, within four months of the end of an eligible financial year, apply for the issue of a certificate of eligible greenhouse gas destruction if:

- they are a recognised synthetic greenhouse gas destruction customer, or
- the operator of an approved synthetic greenhouse gas destruction facility.

Clause 251 provides a formula for working out the number of AEU to be issued. This formula makes reference to the ‘*destruction efficiency factor*’ for the destruction of these gases to be specified in regulations.

The criteria for the issue of a certificate of eligible greenhouse gas destruction are set out in **clause 250**. Briefly, these criteria are:

- the destruction event occurred during the relevant eligible financial year: **subparagraph 250(2)(a)(i)**
- the applicant was a recognised synthetic greenhouse gas destruction customer: **subparagraph 250(2)(a)(ii)**
- the destruction occurred at an approved facility authorised under the Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995, and complied with those regulations: **subparagraph 250(2)(a)(v)–(vi)**
- the applicant incurred expenditure in respect of this destruction: **subparagraph 250(2)(a)(iv)**, and

Operators of approved synthetic greenhouse gas destruction facilities may also apply for certificates: **subclause 250(3)**.

202. United Nations Environment Project (UNEP), ‘Capacity Development for Clean Development Mechanism (CD4CDM) and EcoSecurities BV’, *Guidebook to financing CDM projects*, UNEP RISOE Centre, Denmark, 2007, p. 77, viewed 23 March 2009, <http://www.cd4cdm.org/Publications/FinanceCDMprojectsGuidebook.pdf>.

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The Bill is silent on the amount of expenditure required to qualify for the issue of AEU's under the above clause.

Clause 256 requires that a synthetic greenhouse gas destruction customer be a 'fit and proper person' having regard to, amongst other things, whether they have been convicted of a dishonesty offence under Commonwealth, State, or Territory laws.

Part 12—Publication of information

All markets work on the basis of information. The better the quality and scope of the information available, the better the market works. An ETS is no exception to this rule. It is arguable that the lack of timely and comprehensive information was a major contributor to the problems experienced by the European ETS during its first operating period (2005–2007).²⁰³

Clause 261 requires the Authority to establish and maintain a 'Liable Entities Public Information Database'. This database is to be kept electronically and will be available for inspection on the Authority's website. This database will include the following information:

- liable entities under the scheme: **clause 262**
- liable entity's emission number: **clause 263**
an entity's emissions number is defined in **clause 125** and is the total quantity of emissions in tonnes for which the entity is responsible
- a liable entities' unit short fall (**clause 130**), is the difference between their emissions number for a particular year and the number of AEU's surrendered in respect of that particular year
- the number of eligible emissions units surrendered by a liable entity for a particular year: **clause 266**
an eligible emission unit, in **clause 5**, includes both AEU's and eligible international emissions units
- the number of eligible emissions units that have been voluntary cancelled: **clause 267**.

In addition, the Authority is required to publish additional information, including:

- the prices paid for units and the number of units sold at these prices within 7 business days of conducting an AEU auction: **clause 270**

203. For further information on the European Emissions Trading Scheme see L Nielson, *The European Emissions Trading Scheme – lessons for Australia*, Research paper, no. 3, 2008–09, Parliamentary Library, Canberra, 20 August 2008, viewed 1 May 2009, <http://www.aph.gov.au/library/pubs/rp/2008-09/09rp03.pdf>.

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- information about the auctions results of the previous 6 months: **clause 271** within 7 business days after the end of May 2012 through to 2014 and November 2012 and 2013
- information on AEU's issued at a fixed charge under **clause 89** as soon as practicable after the 15 December for the years 2012 to 2016: **clause 272**
- information on the distribution of free AEU's to EITE industries, coal fired power stations and as a result of reforestation projects and the destruction of synthetic greenhouse gases as soon as practicable after their issue: **clause 273**
- reports about the issue of free AEU's in the previous quarter as soon as practicable after the end of each quarter: **clause 274**
- information on the surrender of borrowed and banked AEU's as soon as practicable after 15 December: **clause 275**
- the total number of Kyoto Protocol derived Certified Emissions Reductions Units (CERs) and Emissions Reduction Units (ERUs) for which there are entries in its Registry accounts, and this information must be kept up to date: **clause 276**
- the total of all liable entities' emissions numbers for the eligible financial year and the total number of liable entities unit shortfalls in relation to that year as soon as practicable after 15 January: **clause 277**, and
- a concise description of the characteristics of AEU's and each other type of eligible emissions unit 24 hours before the authority conducts the first AEU auction: **clause 278**.
- In addition, **clauses 278A–278F** require the publication of information about the number of AEU's and Kyoto Units voluntarily cancelled or relinquished as soon as practicable after these events occur.

Part 13—Fraudulent conduct

Clause 280 allows a court to order the relinquishment of AEU's issued as a result of a conviction for fraudulent conduct under specified sections of the *Criminal Code Act 1995*. The conviction may be for an offence occurring before the coming into force of the CPRS legislation, as long as it took place after 15 December 2008.

Part 14—Voluntary cancellation of emissions units

Under the proposed CPRS, individuals are able to purchase AEU's and other emissions units. They may choose to cancel these units for environmental purposes. It is interesting to note that in the United States the Acid Rain Retirement Fund purchases emissions units

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issued under that country's Acid Rain Emissions Trading Scheme. This fund simply 'banks' these emissions trading units, thereby taking them out of circulation.²⁰⁴

Clauses 282 to 284 allow a person holding either AEU, Kyoto units or non-Kyoto international emissions units to request that they be cancelled. Generally, providing that these requests would not breach any Kyoto Protocol rules or regulatory provisions, they must be acted upon.

Part 15—Relinquishment of Australian emissions units

This part contains administrative provisions for the relinquishment of AEU.

Part 16—Notification of significant holding of AEU

The possibility that an emissions trading market may be manipulated is a significant general weakness of cap and trade schemes. One way in which this manipulation may possibly occur is through the hoarding of emissions permits. This Part contains provisions that require scheme participants to notify the Authority when they hold a significant number of units.

Clauses 293 and 294 require either a controlling corporation or a non-group entity to notify the Authority within five business days after they become aware of holding a significant number of AEU. The Authority must publish such notifications on its website.

Subclauses 293(7) and 294(7) define a '*significant holding*' of AEU as being 5 per cent or more of the national scheme cap number for a particular vintage year.

The national scheme cap number for a particular vintage year is defined in **clause 14** as being the quantity of CO₂e in tonnes declared in regulations for an eligible financial year. Under **clause 93** the number of AEU issued in any one vintage year must not exceed this number. Thus a significant holding for a particular vintage year is 5 per cent or more of the AEU issued for a particular vintage year.

Contravention of the '*significant holding*' notification requirements may subject the entity to a Part 21 civil penalty. Such penalties are discussed later in the main provisions section of this Digest.

Should a scheme participant hold a significant amount of AEU as defined above it is not clear what, if any, action (apart from notifying the market) the Authority will take in response.

204. For further information see Acid Rain Retirement Fund website, viewed 1 May 2009, <http://www.usm.maine.edu/~pos/arrf.htm>.

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Part 17—Information gathering powers

Clause 296 gives the Authority power to gather information and documents that are relevant to the operation of the enabling legislation for the proposed scheme. The Authority can gather this information from anyone it wishes, not just scheme participants. It must have reasonable grounds for the exercise of this power. A person is required to comply with any information request made by the Authority.

Clause 300 specifies that a person cannot refuse to provide this information or document on the grounds of self incrimination. However, in case of an individual, any information or document is not, with limited exceptions, admissible as evidence in a civil proceeding against them in respect for the recovery of a penalty. Similarly, except for prosecutions for providing false or misleading information, any information or document is not admissible as evidence in a criminal proceeding against the relevant individual.

Part 18—Record keeping

It is proposed that the current record-keeping obligations under the NGER Act will be expanded by amendments set out in the draft Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009.

Clause 302 provides for detailed record keeping obligations to be made by way of regulations. Basically, the regulations mandate the similar requirements in keeping records as those under the Australian taxation regime, including the requirement that relevant information be kept for a period of five years.²⁰⁵ This level of rigor is required to enable the Authority and auditors to review the accuracy and completeness of information.

Clauses 303 and **304** require fuel suppliers and recipients to keep records for five years of relevant information on the use of Obligation Transfer Numbers (OTN) (see **clauses 52** to **64** for OTN provisions).

Part 19—Monitoring powers

Clause 308 provides for an inspector to enter premises with either the consent of the occupier, or under a monitoring warrant, for compliance purposes or to substantiate information provided for CPRS purposes.

Clause 309 gives the inspector a wide variety of powers to carry out these tasks. **Clause 311** gives the inspectors powers to ask questions and require the production of relevant documents. Under **clause 312** self-incrimination is not an excuse for failing to answer a question or produce a document. A failure to comply with clause 311 carries a maximum penalty of 6 months imprisonment, or 30 penalty units (\$3 300), or both.

205. Explanatory Memorandum, paragraph 9.19, p. 216.

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If a premises is inspected under a monitoring warrant the occupier has the right to observe this inspection under **clause 319**, but, under the provisions of **clause 320**, they must provide the inspector with all reasonable facilities and assistance. These warrants must be issued by a magistrate under **clause 321**.

Part 20—Liability executive offices of bodies corporate

Subclauses 324(2)-324(3) define the degree of negligence and recklessness that an executive officer must manifest in relation to a contravention of the CPRS by a body corporate so as to attract personal liability for Part 21 civil penalty. The meanings of negligence and recklessness are taken directly from Division 5 of the *Criminal Code Act 1995*. The NGER Act will also be amended so as to expose all the corporation's executive officers to such liability on the same terms as under the CPRS Bill. Provisions establishing personal liability for corporate executive officers are not uncommon in Commonwealth environment-related legislation.

Part 21—Civil penalty orders

Civil penalties are imposed by courts, but are not criminal offences, and hence only require the court to be satisfied on the 'balance of probabilities' (rather than the criminal standard of 'beyond reasonable doubt') that the relevant contravention occurred. From this perspective, it may make an alleged contravention easier to prosecute.

Clause 327 sets out how the relevant court determines the amount of a pecuniary penalty under the civil penalty provisions of the Bill. These relate to the particular circumstances of the case. **Subclause 327(4)** sets an upper limit for corporations of 10,000 penalty units (\$1.1 million), except in certain situations where the court can estimate the corporation has benefited from the contravention. In that case a penalty of three times the value of the benefit can be imposed. **Subclause 327(6)** provides that for an individual, the upper limit is 2,000 penalty units. **Clause 338** deals with penalties for continuing contraventions and caps the daily penalties that apply for most continuing contraventions of the CPRS Bill at five per cent of the maximum penalty for the contravention. This is a change from the proposal under the exposure draft legislation, where the daily penalty could be the same as the maximum penalty for the contravention.

Part 24—Review of decisions

Clause 346 lists which of the decisions under the Act are '*reviewable decisions*'. Where a decision is listed, and the decision was made by *delegate* of the Authority, a person affected by the relevant decision can ask the Authority to reconsider the decision. If after that, the person is still not satisfied, they may apply to the Administrative Appeals Tribunal for a review: **subclause 350(1)**. If the original decision was made by Authority (rather than a delegate), the application for review is to be made direct to the Administrative Appeals Tribunal: **subclause 350(2)**.

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Part 25—Independent reviews

Clause 353 requires that periodic reviews of the proposed CPRS are conducted by an expert advisory committee covering various matters, including:

- the effectiveness and efficiency of the scheme
- whether national emissions targets should be changed
- regulations to be made for the purposes of **clause 14** (national scheme cap) and national scheme gateway (**clause 15**)
- the policies and procedures for AEU auctions
- the surrender of AEU and other eligible emissions units
- governance, functions and powers of the Authority, and
- other such matters that are specified by the relevant Minister.

The relevant expert advisory committee must include public consultation as part of the review process: **subclause 353(5)**.

The first review must be completed by 30 June 2014 and each subsequent review must be completed within five years after the Commonwealth's response to the previous review was tabled in Parliament: **subclause 353(4)**. Under **clause 354** the report of these reviews must be tabled in Parliament, as must the Commonwealth's response to any recommendations arising from these reviews. The Commonwealth must table a response to the report within six months of receiving it.

Clause 355 provides for special reviews to be undertaken by the expert advisory committee on matters specified by the relevant Minister. The report of these special reviews must also be tabled in Parliament within 15 sitting days of the Minister receiving these reports. As soon as practicable after receiving these reports the relevant Minister must respond to any recommendations and table that response within 6 months of receiving the report in question.

Under **clause 357** the Minister may establish expert advisory committees. **Clause 360** requires that the members of such committees have substantial knowledge of and significant standing in at least one of a number of relevant fields, including:

- law and/or economics
- Australian industry, financial markets and/or trading environmental instruments
- climate science, energy and/or greenhouse gas measurement and reporting
- greenhouse gas abatement.

Under **clause 361** an expert advisory member's term must not exceed five years.

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Concluding comments

The proposed CPRS has been subject to critical comment from a number of sources. The positions of significant interest groups, as well as those of the non-government political parties and independents, are summarised to the extent possible on pages 25-37 of this Digest. Additional information is available from the reports of the various Parliamentary Committees mentioned on page 25.

Whatever scheme is eventually adopted will be somewhat of a compromise between various factors and thus likely to continue to attract some amount of criticism. However, perhaps what is most important is that the relevant legislation, and accompanying policy settings, contains an appropriate balance between:

- flexibility (so as to accommodate matters such as developments in international cooperation and agreements on emissions targets, and future economic cycles, technology developments etc, and progressive revisions in climate change projections and associated environmental impacts that may demand tougher or more immediate action), and
- certainty (in particular to allow economic and social investment to be planned and carried out with reasonable confidence).

Achieving this balance will be extremely difficult. However, the extensive policy development process, combined with the evidence garnered through the activities of the Parliamentary Committees, as well as the wide range of Australian and international climate change activities, does provide Parliament with extensive information on which to base its deliberations on this important and complex issue

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