



26 March 2009

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Senate Standing Committee on Economics  
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Dear Mr Hawkins

### **Inquiry into CPRS Exposure Draft Legislation**

The Australian Industry Group (Ai Group) welcomes this opportunity to make a submission to the Senate Economics Committee on the draft exposure Bills for the Carbon Pollution Reduction Scheme (CPRS). The CPRS is one of the most far-reaching initiatives of recent times. If enacted the CPRS will play a central role in a transformation of the domestic economy that is rightly compared with the transformations flowing from the suite of liberalising reforms embarked upon from the early 1980s.

We note that there has been very limited opportunity to date to explore with members and others the detail of the draft legislation and associated material. For this reason, this submission includes only some of the comments we will have on the draft exposure legislation. A fuller, though we suspect still incomplete, set of comments will be provided to the Department of Climate Change by 14 April 2009.

### **Background**

While Ai Group recognises that the current Inquiry is related narrowly to the legislation and not to policy matters, we include the following policy comments as background and for clarification.

Ai Group supports Australia putting in place a cap and trade emissions trading scheme capable of delivering the Australian contribution to a global effort to reduce the accumulation of greenhouse gases and reduce the risks of dramatic climate change.

An emissions trading scheme provides powerful incentives for business to search for the least-cost emissions reductions; it reduces the scope for bureaucratic and political meddling in investment decisions; and, in contrast to a carbon tax, is able to align directly with a national reduction target through the quantity of permits issued.

Ai Group's policy positions on climate change policy are guided by the following principles:

- The reduction of emissions at the lowest possible cost to the domestic economy;
- Provision of investment certainty;
- The requirement for a sensibly-paced start that gives business time to adjust;
- Effective protection of Australia's trade exposed businesses from the additional costs imposed relative to competitors abroad;
- Securing the supply of electricity; and,
- Keeping compliance costs to a minimum.

In the light of these principles, Ai Group's National Executive recently resolved the following points.

*The start date for the CPRS should be delayed until 2012*

There are considerable administrative difficulties imposed by the proposed 1 July 2010 start date that are becoming increasingly apparent. Not the least of these is the narrow window of opportunity for comments on the draft exposure legislation. Further, the detrimental impacts of the global financial crisis on the business environment - including in relation to the ability to undertake expenditure to reduce emissions – has set back businesses readiness. Both elements point to desirability of deferring the start date to 2012. We note that Australia is on track to meet our Kyoto targets and that the global slowdown will reduce the current emissions trajectory without the need for the CPRS to begin in 2010.

*Additional Measures for Trade Exposed Industries*

Ai Group believes there are further changes that can be made to the detail of the CPRS to reduce the potential impacts on trade exposed businesses. Areas that should be considered include:

- Broadening eligibility for emissions intensive trade exposed permits (for example by extending "Scope 3" emissions to incorporate such emissions related to feedstock on a more consistent basis than presently proposed, and lowering the emissions intensity threshold at which eligibility for permit allocation applies);
- Raising the quantity of permits allocated;
- Ensuring the Climate Change Action Fund has a particular focus on trade-exposed businesses; and
- Reducing the unilateral commitment as insurance against a break-down of international negotiations.

*Ai Group supports the passage in 2009 of legislation giving effect to the fundamental architecture of the CPRS*

Legislation this year is needed to provide a greater degree of certainty to business and assist in informing business decisions in key areas of investment.

*Ai Group maintains its opposition to the current Renewable Energy Target*

Ai Group is opposed to the current Renewable Energy Target because it is a comparatively expensive approach to emissions reduction; because it adds an additional layer of costs to business and because there is no current proposal to protect Australia's trade exposed businesses from these additional costs.

*Ai Group supports exploration and exploitation of the full range of abatement opportunities*

We recognise the importance of giving full recognition to genuine abatement and urge the Government to accelerate consideration of such abatement opportunities both within the Kyoto framework and in the domestic offset market. For example, the considerable opportunities in approaches to sequestration such as soil carbon should be explored.

## **Part 2 National Scheme Cap and National Scheme Gateway**

Ai Group supports an approach to the emissions trajectory that maps out national caps and medium-term gateways establishing a target range. We recognise this as an important mechanism through which greater certainty can be provided in order to facilitate investment decisions.

### *Unilateral Commitment*

Although there is a perception that a unilateral or unconditional commitment of reducing emissions to 5% below 2000 levels by 2020 is a small undertaking, this does not appear to take into account that, relative to our current trajectory, a target of 95% of 2000 levels will require a cut in emissions of in excess of 20%.

In Ai Group's view, in the event of a disappointing outcome to international negotiations, a unilateral commitment of this dimension could impose an onerous and uncompetitive burden - particularly on trade exposed businesses.

### *Annual Caps*

The proposal is to set, on a rolling basis, annual caps that are consistent with meeting medium-term target range. A number of factors will shape the extent to which the annual targets will deliver a trajectory that achieves reductions in emissions in excess of the unilateral commitment.

Importantly these include the extent to which other countries make commitments to reduce or restrain their own emissions. In Ai Group's view it is particularly important for the competitiveness of Australia's trade exposed businesses that this take precedence over other factors that must or may be considered in setting the national caps.

*"Voluntary Action"*

Ai Group does not understand what of substance is intended by including among the factors that may be taken into account in setting caps the "voluntary action which is expected to be taken to reduce Australia's greenhouse gas emissions" [*Part 2, clause 14(5)(c)(iv)*]. The term "voluntary action" is not defined and nor is there any indication of how the level of "voluntary action" might be ascertained.

The commentary on this part of the draft Bill suggests that "voluntary action" refers to actions voluntarily taken by Australian households to reduce Australia's greenhouse gas emissions. The commentary goes on to state that "Voluntary action to reduce greenhouse gas emissions can help ameliorate the economic implications associated with various levels of national scheme caps, making it more likely that more stringent caps can be set over time (page 88)."

If more stringent caps (and therefore more onerous burdens) can be imposed as a result of voluntary actions to reduce greenhouse gas emissions, it is vital that such actions be clearly delineated.

Our understanding is that an ETS (or a carbon tax) would encourage households and businesses to reduce emissions by imposing a price on greenhouse gas emissions both directly for liable businesses and, as costs are passed along supply chains, indirectly to non-liable businesses and households.

- A feature of these market-based instruments is that they do not mandate any particular actions that would reduce emissions. In that sense all reductions in emissions that are covered under an ETS (or carbon tax) are "voluntary".
- From another perspective, all emissions that are covered (whether directly or indirectly) are covered under the mandatory ETS (or carbon tax) and scheme so that in this sense all emissions reductions are involuntary.

We note further, that "voluntary action" does not appear to refer to actions taken in relation to emissions not covered directly or indirectly by the scheme. There is a separate provision [*Part 2, clause 14(5)(c)(v)*] that allows actions by households or businesses to reduce emissions that are not covered by the CPRS to be taken into account in setting annual caps. The voluntary action clause would therefore appear to refer to emissions that are covered by the scheme.

We note also that the concept of voluntary action undertaken in the covered sectors appears to conflict with the discussion of the voluntary carbon market in the Government's *White Paper* (Section 6.15) and in *The National Offset Standard Discussion Paper* (December 2008).

Ai Group submits that the concept of voluntary action should be removed from the list of factors that can be taken into account in setting caps. At a minimum, the term “voluntary action” should be clearly defined and there should be a clear indication of how the level of voluntary action may be ascertained.

### **Part 8 Emissions Intensive Trade Exposed Measures**

This part of the draft exposure legislation does not contain sufficient detail to allow businesses to assess the nature of the program. This detail will not be able to be provided until the regulations are made.

According to *Part 8, clause 167 (3)*, the Minister must take all efforts to make the relevant regulations to give effect to the EITE measures by 1 July 2010.

The EITE measures are a key element of the CPRS. They are the major means by which the potential anti-competitive impacts of the CPRS may be ameliorated. They are therefore a vital part of the CPRS equation and details need to be made available as soon as possible.

In the meantime businesses will not have certainty about whether they will be eligible for permits under the EITE program. This may not be until the date the scheme is scheduled to start. This information vacuum has the potential to deter investment in a wide range of emissions intensive industries.

### **Part 25 Independent Reviews**

Ai Group strongly supports the provisions for independent reviews with the power to take public submissions. We also support the provisions ensuring that the reports of the reviews and the Government’s responses to such reviews be tabled in Parliament. We further support the provisions that seek to ensure that the Government responds in a substantial way to the reviews.

Ai Group does not agree with the provision (*Section 361 (5) b*) which states that a person is not able to be appointed as a member of an expert advisory committee member if they were a director, officer or employee of a liable entity for any of the preceding five years. We feel that this restriction would rule out of consideration many people with up-to-date, first hand knowledge of the operation of the CPRS. Such people may be able to offer valuable expertise and insight as part of independent reviews.

Ai Group is not questioning the provision that a person cannot be a member of an expert advisory committee while currently a director, officer or employee or a liable entity.

## **Other Issues**

### *Climate Change Action Fund*

The absence of material relating to the proposed Climate Change Action Fund (CCAF), like the lack of information about the EITE measures, is an area of uncertainty that should be addressed as soon as possible.

### *Interaction with the National Greenhouse and Energy Reporting Scheme*

There is a number of concerns over the interaction between the CPRS and the National Greenhouse and Energy Reporting Scheme (NGERS).

One particular issue arises where the entity with reporting obligations under NGERS in respect of emissions in the 2008-09 year (and possibly the 2009-10 year) will not also be the liable entity under the CPRS from 2010-11. (The intention is that the liable entity under the CPRS will also have reporting obligations under NGERS.)

Unless the provisions that enable the parallel transfer of reporting responsibilities under NGERS are available very soon, entities that are likely to be able to transfer liabilities under the CPRS to another entity may nevertheless have to report under NGERS in respect of emissions in 2008-09. This will involve a very substantial expenditure on set up costs to report under NGERS for only one or two possibly years.

Yours sincerely,

**Peter Burn**

Associate Director – Public Policy