8 April 2009

Mr John Hawkins
Committee Secretary
Senate Select Committee on Climate Policy
PO Box 6100
Parliament House
Canberra ACT 2600

By email: climate.sen@aph.gov.au

Dear Mr Hawkins

Submission to the Senate Select Committee on Climate Policy

BlueScope Steel Limited and OneSteel Limited welcome the opportunity to make a submission to the Senate Select Committee on Climate Policy.

Under the banner of BOSMA (The Bureau of Steel Manufacturers of Australia Ltd) both companies have been proactively engaging with government throughout the development of its proposed Carbon Pollution Reduction Scheme (CPRS).

The global financial crisis and economic downturn aside, the introduction of a domestic emissions trading scheme is the single most important public policy issue currently facing the Australian iron and steel industry. We expect that the CPRS, as currently proposed, will severely disadvantage the competitiveness of the Australian iron and steel industry for potentially a worse environmental outcome. We believe that changes to the design of the scheme and its timing are necessary if the Government is to meet its own environmental and economic objectives.

We also believe it is important to take the time required to get this complex policy reform right. This is particularly important in the present global economic downturn when the Australian iron and steel manufacturing industry is facing extraordinarily severe conditions.

We have detailed our views on climate policy in the enclosed submission. We have not sought to address every aspect of the Committee's terms of reference but have focused mainly on the CPRS as proposed by the Government and its expected economic and environmental impact on the Australian iron and steel industry.

We would welcome the opportunity to appear before the Committee in hearings.

Yours sincerely

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Executive Summary

Steel is a fundamental building block of the nation's infrastructure and demand for this product is driven by the needs of a modern economy and community.

OneSteel and BlueScope Steel are the leading firms in the Australian iron and steel industry. Together, the two companies employ approximately 20,000 people in Australia and exported over $1.6 billion in steel products in the last financial year.

The global economic crisis and the possibility of domestic recession aside, the Government's approach to climate change is the single most important public policy issue currently facing the Australian iron and steel industry.

We support the Australian Government's stated public policy objectives for the Carbon Pollution Reduction Scheme (CPRS); that is, to reduce greenhouse gas emissions while maintaining the competitiveness of Australian emissions-intensive trade-exposed (EITE) industries.

However, there is a clear danger that the CPRS as currently designed will fail to meet the Government's environmental and economic objectives, and instead severely disadvantage the Australian iron and steel industry for potentially a worse environmental outcome.

It is highly unlikely that the world's largest steel manufacturing countries, such as China, will impose comparable carbon costs in the short to medium term. Even in the European Union, under the current second phase of the EU emissions trading scheme, iron and steel manufacturers receive 100% free permits for their direct emissions until at least 2012.

The assistance measures for EITEs outlined in the White Paper will not adequately mitigate the impact of the CPRS on the iron and steel industry. Under the CPRS as currently designed, the Australian steel industry will face new and material costs from July 2010, ahead of its major international competitors:

- Although the precise steelmaking activities that will be eligible for assistance are currently the subject of discussion with government, in all probability the effective rate of assistance (i.e. the proportion of the industry's total emissions covered by free permits) will be significantly less than the headline rate of 90% as significant portions of the businesses will not receive any assistance;
- This assistance will decline each year thereafter at a faster rate than our technical ability to reduce emissions;
- Assistance provided for costs passed on by suppliers of raw materials, services and consumables (Scope 3 emissions) is inadequate and excludes emissions associated with the extraction of metallurgical coal, the iron and steel industry's most significant source of Scope 3 emissions; and
- The Renewable Energy Target (RET) scheme will further increase costs.

The CPRS would impose unsustainable costs on the domestic iron and steel industry. Even after taking account of the proposed EITE assistance, these costs could be in the hundreds of millions of dollars in the early years alone, when Scope 3 costs are included. These major new costs will not be borne by our far larger international competitors for many years, perhaps decades. The CPRS will thus promote carbon leakage, contrary to the scheme's objectives. It will stifle further investment in the Australian iron and steel industry, including on abatement. It will put Australian jobs at risk.

We believe that the assistance measures for EITE industries in the CPRS should be amended to reduce this unbearable cost burden on the domestic iron and steel industry and meet the original intentions of the Australian Government's policy.

If Australia is to take a leadership position on climate change policy, in order to encourage other countries to act, it must not be at the expense of Australia's EITE industries. One of the fundamental flaws in the

CPRS is that it does not adequately shield such industries from the competitive disadvantage that will be caused by Australia acting ahead of international competitors. This is all the more important given that demand for steel is driven by the economy's needs in such areas as infrastructure, housing, manufacturing and resource development.

Accordingly, we could only support the introduction of an emissions trading scheme (ETS) if the system does not alter the competitiveness of the Australian iron and steel Industry. The system should be redesigned to:

- Be affordable and sustainable;
- Only impose costs on Australian EITEs in tandem with, and not ahead of, our larger competitors;
- Recognise the technological constraints on emissions abatement in steel making;
- Provide incentives for investment in abatement;
- Take account of the current global and economic crisis;
- Minimise the risks to competitive, trade-exposed Australian manufacturing industry, investment and jobs; and
- Include appropriate transitional mechanisms

We believe that any emissions trading scheme should not be introduced before the design of the scheme is right, the required administrative arrangements are satisfactorily developed, and the economy begins to recover from the global economic downturn so that companies can afford abatement expenditure. The cumulative emissions reduction associated with the current economic downturn helps provide the Government with this additional time.

1. Overview

BlueScope Steel Limited and OneSteel Limited welcome the opportunity to make this submission to the Committee.

OneSteel (Sydney-based) and BlueScope Steel (Melbourne-based) are the leading firms in the Australian iron and steel industry, servicing customers in the manufacturing, infrastructure, agriculture and building & construction sectors. Together, we employ approximately 20,000 people in Australia across several hundred sites, and contribute over $1.6 billion per annum in export sales.

The two companies' manufacturing facilities are predominantly in regional Australia, including the Illawarra, Newcastle, Mornington Peninsula and Whyalla, and in the western suburbs of Sydney and Melbourne.

The manufacture of iron and steel creates greenhouse gas emissions, both directly e.g. from such processes as from the conversion of iron ore and coal to iron and steel, and indirectly from the consumption of electricity. Steel manufacture accounts for approximately 3% of Australia's annual greenhouse gas emissions.

The global economic crisis and the possibility of domestic recession aside, the introduction of a domestic emissions trading scheme is the single most important public policy issue currently facing the Australian iron and steel industry.

We support the Australian Government's stated public policy objectives for the Carbon Pollution Reduction Scheme, that is, to reduce carbon pollution while maintaining the competitiveness of Australian trade-exposed emissions-intensive industry and sustaining jobs in Australia.

However, the policy framework as proposed in the Carbon Pollution Reduction Scheme White Paper will impose substantial new costs on the Australian iron and steel industry that are not faced by our major international competitors. This will constrain our ability to invest and, over time, may well cause carbon leakage and a net increase in global emissions.

We note the draft CPRS Bills contain minimal detail about the measures the government will adopt to offset the loss of competitiveness faced by EITE industries. We understand that some of this detail – such as the definitions of which activities will qualify for EITE assistance – will be included in regulations, to be released by mid-2009. The EITE assistance measures are of vital importance to the Australian iron and steel industry. In the absence of such detail, it is difficult to fully assess the likely impact of the CPRS.

In this context, we are also concerned that Treasury modelling of the CPRS, released last year, does not provide adequate insight into the likely economic impact of the scheme. It contains puzzling results, flawed assumptions (such as that the entirety of both companies' operations will qualify for assistance at an effective 90% level), a high degree of aggregation across industry, and very optimistic assumptions - including assumptions about developing countries committing to action on climate change and assumptions about the costs of abatement. In particular, we note that modelling has not been released on one of the most likely outcomes from the Copenhagen 2009 negotiations – that is, the government's unilateral adoption of a 5% emissions reduction target in the absence (likely, in our view) of either a comprehensive global agreement or substantial commitments from major economies.

Australian steelmakers are prepared to reduce their emissions but can only fund major abatement expenditure if they remain economically competitive.

Australian blast furnaces are efficient by world standards. Blast furnaces are a mature technology, and the laws of chemistry impose significant technical limits on how far the steel industry can reduce its emissions. The Australian steel industry is sponsoring research and development in Australia and overseas into new low-carbon iron and steelmaking technologies. However, any technological breakthrough is likely to be decades away.

Given these technical constraints, most of the opportunities to cut emissions relate to improvements in energy efficiency (such as reusing waste gases to generate electricity by cogeneration) that would lead to a net reduction in indirect (Scope 2) emissions from electricity generation. These opportunities are very capital intensive and typically deliver relatively small, incremental reductions in emissions.

Australia is a small iron and steel producer in global terms, accounting for just 0.6% of global production. China accounts for about 38% of global raw steel production, with the 'BRIC' countries – Brazil, Russia, India and China – together accounting for over 50% of global production.[1] China and the other BRIC countries are major sources and influencers of domestic and international competition for the Australian iron and steel industry.

In line with the approach of "common but differentiated responsibilities" under the United Nations Framework Convention on Climate Change (UNFCCC), it is highly unlikely that developing countries such as China and India will take on comparable carbon constraints to Australia in the short or medium-term. Russia has a zero percentage reduction target under the second (2008-2012) commitment period of the Kyoto Protocol.

Even in the EU, which accounts for about 15% of global steel production, under the current (second) phase of the EU emissions trading scheme, iron and steel manufacturers will receive free permits equivalent to 100% of their direct emissions until at least 2012.

The introduction of a price on carbon in Australia in 2010 - ahead of many international competitors - will have a significant and detrimental impact on the relative competitiveness of the Australian iron and steel industry.

The assistance measures for trade exposed, emissions intensive industries proposed in the CPRS White Paper will not be adequate to address this competitive disadvantage. In addition, as the shortfall in EITE assistance will significantly exceed the industry's technical ability to abate its emissions, rather than acting as an incentive, the CPRS simply becomes a deadweight burden.

There is a real danger that the CPRS will fail to meet the Government's environmental and economic objectives. The scheme may well lead to carbon leakage to non-carbon constrained jurisdictions with no reduction in global GHG emissions (in fact, global emissions may increase), disadvantaging Australian producers with no environmental benefit[2].

We could only support the introduction of an emissions trading scheme (ETS) if the system does not alter the competitiveness of the Australian iron and steel industry. The scheme should be redesigned to:

- Be affordable and sustainable;
- Only imposes costs on Australian EITEs in tandem with, and not ahead of, our larger competitors;
- Recognise the technological constraints on emissions abatement in steel making;
- Provide incentives for investment in abatement;
- Take account of the current global and economic crisis;
- Minimise the risks to competitive, trade-exposed Australian manufacturing industry including the steel industry, investment and jobs; and

[1] Based on production data from World Steel Association media release, 22 January 2009

[2] In a speech to the Australian Industry Group on 6 February 2008, Minister for Climate Change and Water, Senator the Hon Penny Wong said: "… the design (of the CPRS) will address the competitive challenges facing emissions-intensive, trade-exposed industries in Australia… There is no point in imposing a carbon price domestically which results in emissions and production transferring internationally for no environmental gain."

- o Include appropriate transitional mechanisms.

2. The Australian iron and steel industry's commitment to emission abatement and energy efficiency

The Australian steel industry is committed to reducing its emissions and is engaged in process improvement, R&D and abatement projects to reduce the industry's carbon footprint and increase energy efficiency.

- Any climate change policy has to recognise the very real technological constraints on emissions abatement in the steel industry.

- Blast furnace technology is the leading established technology and Australia is efficient by world standards.

- We are investing in research to reduce direct (Scope 1) emissions from the integrated iron and steel-making process but a major technological breakthrough is likely to be decades away.

- EAF is a recycling technology which is currently used in 3 Australian steel plants, however, there are limits imposed on its wider extension due to its reliance on scrap steel, which is moving to a supply- demand balance globally.

- Many opportunities to reduce emissions in steel making relate to lifting energy efficiency, which would reduce Scope 2 emissions. However, many of these are costly, difficult to retrofit, and deliver only relatively small incremental cuts to emissions.

- BlueScope's possible $1 billion plus cogeneration project at Port Kembla is one major abatement opportunity. This project has been put on hold as a result of the current economic downturn and until BlueScope has greater clarity about the design of the CPRS.

- Since BlueScope put this large-scale abatement project on hold, the domestic steel market has significantly deteriorated and both BlueScope and OneSteel have cut back production in line with the much weaker market. Any decision to invest in the cogeneration plant will take into account the impact of the CPRS on the ongoing competitiveness of BlueScope's Australian operations, the commercial viability of the project, and economic and business conditions.

3. Current business conditions and outlook

The financial crisis is having a severe impact on the global steel industry, with steel demand, production, and prices falling sharply. Most of the world's steel demand is linked to capital investment and consumption, which in turn is highly dependent on capital availability.

World steel output for December 2008 was 25% lower compared to the same month in 2007.[3]

Globally, capacity utilisation dropped to 70% in quarter 3 of calendar 2008 and was expected to drop further to 63% in quarter 4. Levels of utilization below 60% have occurred only two times - during the Great Depression and during the recession of the early 1980s.[4]

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[3] World Steel Association media release, 22 January 2009

The global steel industry has responded rapidly to the economic downturn by cutting production and reducing costs. Major layoffs have been announced around the world, plants closed, capital expenditure postponed and demand for raw materials has significantly weakened. (Coincidentally, cuts in production will deliver significant short to medium-term cuts in greenhouse gas emissions from the steel industry).

In Australia, both companies have adjusted production levels downward to meet current and forecast market demand. For BlueScope Steel, this has included bringing forward to January 2009 the reline of the No.5 Blast Furnace at Port Kembla Steelworks, which will be relined and out of service at least until June 2009. The extended closure and reline of the No.5 Blast Furnace is expected to cut raw steel production by at least 1.36 million tonnes (total annual raw steel production at Port Kembla is typically in the range of 5.0 - 5.3 million tonnes).

OneSteel has announced the reduction of operating levels at all major facilities, including reducing blast furnace operations at Whyalla to the bottom of the normal operating range, and a reduction in electric arc furnace production at Laverton and Sydney that has seen EAF steel-make cut by approximately 575,000 tonnes in this financial year. In total, steel-make in this financial year is expected to be down between 25% - 30% compared to the previous financial year.

BlueScope Steel has also taken measures to raise equity and strengthen its balance sheet by undertaking a $300 million institutional placement and through a share purchase plan.

Since late-2008, both companies have been implementing a range of operational, financial and human resources initiatives that have helped reduce costs and conserve cash, while avoiding job losses amongst their permanent workforces. It should be noted however that there has been a significant reduction in the number of contract and temporary positions.

These initiatives have included:

- Extended plant idles and the postponement of non-essential work, with associated bringing forward or rescheduling of leave, as well as some temporary lay-offs;
- Outsourcing and contract labour reduced and work transferred to employees;
- Reduced working hours and overtime;
- Redeployment of personnel as business circumstances change;
- Vacancies from retirements and resignations not filled (i.e. job redundancies through natural attrition);
- Non-essential training and recruitment postponed; and
- More options introduced for taking leave without pay (annual and long service).

Employees from both companies have made significant efforts in implementing cost reduction measures. Unfortunately, continued softness in demand has meant both companies have had to start reducing their global workforces beyond natural attrition. At OneSteel, its workforce has been reduced by 1,000 full time equivalents during the period November 2008 to March 2009. This comprises reductions to permanent, temporary and labour hire employees as well as reductions in overtime and changes to shift rosters.

Reducing employee numbers is a last resort, and both companies are being cautious in maintaining key personnel in anticipation of an eventual upturn in demand. However, any further deepening, or a prolonging of the existing downturn, will inevitably mean both companies will need to take further steps to reduce costs.

Continuation of current market conditions into 2010 would see the CPRS compound these cost pressures.

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[4] OECD report, *'The Financial Crisis and Outlook for Steel'*, 15-16 December 2008.

4. Why the EITE assistance proposed in the White Paper is inadequate

The CPRS as currently designed would impose a highly significant cost burden on the domestic iron and steel industry that will not be borne by our larger global competitors. These costs would be very difficult to bear in good economic times. In the context of the deep economic downturn – globally and in Australia - the cumulative costs of the CPRS are intolerable and are very likely to cause a fall in profitability, investment and jobs.

The White Paper made some improvements to the design of the CPRS, including lifting the expected proportion of free permits to industry (from 20% to 25%). It also provided clarification regarding the administration of the scheme, including an explicit statement that free permits would be available to cover growth in EITE production levels, and that no changes would be made to allocations for existing EITE activities as a result of new entrants.

However, the White Paper proposals do not adequately mitigate the cumulative cost impact of the CPRS on the iron and steel industry.

Key flaws in the design of the White Paper CPRS for the iron and steel industry are:

- Commencement of the headline rate of assistance at a maximum of only 90% from day one.

- An effective rate of assistance that is considerably lower than the headline rate. It is not yet certain whether Electric Arc Furnace steelmaking will receive assistance at the 90% or 60% rate, and significant parts of both companies' businesses are likely to be excluded from any assistance.

- Reduction in assistance each year thereafter by 1.3% per annum, which will rapidly exceed the industry's technical capability to abate emissions.

- Assistance provided for costs passed on by suppliers of raw material, services and consumables (Scope 3 emissions) excludes emissions associated with the extraction of metallurgical coal, the steel industry's most significant source of Scope 3 emissions. For the steel industry, Scope 3 emissions could be as much as 5.1 million tonnes of CO2-equivalent per annum.

- The imposition of the Renewable Energy Target scheme, which will add further costs.

The *effective* rate of assistance (i.e. the proportion of total industry emissions covered by free permits) for both companies is therefore more likely to be somewhere between 65% and 75% of total emissions, assuming a headline assistance rate of 90% for the integrated steelmaking process and 60% for the EAF process. This means the CPRS will impose a much larger burden than the headline rate of 90% would suggest and will place a very large financial burden on both companies from the commencement of the scheme.

Our current understanding is that Scope 3 compensation will be restricted to emissions associated with the use of natural gas as a chemical feedstock, and the production of cryogenic gases.

The largest source of Scope 3 costs is likely to be metallurgical coal, most of which is sourced from the Illawarra collieries, which are gassy mines. BlueScope Steel is a captive customer of the collieries, with dedicated rail infrastructure established to bring coal from the collieries to the nearby Port Kembla Steelworks. There is currently no infrastructure for shipping and storing alternative supplies of coal. OneSteel also purchases the bulk of its metallurgical coal from these mines.

Unfortunately, although the White Paper recognised Scope 3 costs may be an issue for some industries, it did not satisfactorily tackle this important source of new costs to the Australian iron and steel industry.

Our analysis indicates that the CPRS will impose unsustainable costs on the steel industry and severely damage its competitiveness, with investment and jobs put at risk.

Our key competitors are not likely to face these carbon costs in the short to medium-term, which will compound the negative impact on the Australian iron and steel industry.

We believe that the CPRS should be re-designed to reduce its unbearable cost burden on the domestic iron and steel industry.

We believe the scheme must be re-designed to protect international competitiveness and provide genuine incentives to reduce emissions.

As well as taking issue with the CPRS as designed, the companies have concerns with the Government's approach of placing details of the EITE program in regulations rather than in the Bill itself and the speed with which the Government is seeking to implement these significant changes. These concerns relate to:

a) The Bill inappropriately delegating legislative power for in effect the whole of the EITE assistance program;

b) The Government not adhering to the policy of providing transparency and business certainty by not including details of the EITE assistance program in the draft legislation;

c) The Government acting inconsistently and inequitably in its treatment of EITE industries compared with other industry sectors receiving assistance under the scheme; and

d) Insufficient government consultation on draft legislation for the EITE assistance program as a result of this detail being left for the regulations.

We have attached more detailed comments on these issues for the Committee's consideration.

5. <u>Conclusion</u>

We believe that an affordable and sustainable emissions trading scheme that does not alter the Australian iron and steel industry's competitive position would:

- Move in tandem with, and not ahead of, our competitors;
- Recognise the technological constraints on abatement in steel making;
- Provide incentives for investment in abatement;
- Reflect the current economic crisis;
- Minimise the risks to jobs, competitive manufacturing industry and the economy; and
- Include appropriate transitional mechanisms.

If the CPRS is to proceed, the Government must ensure that the design of the CPRS offsets the competitive disadvantage of emissions-intensive, trade-exposed industries. If it does not, the danger is that jobs losses and a decline in investment will be inevitable – for possibly a worse environmental outcome.

The CPRS should act in concert with the rest of the world, not ahead of it, and ensure no material competitive impact on the Australian iron and steel industry ahead of major international competitors.

The EITE assistance measures proposed in the White Paper should be redesigned to include:

- EITE assistance to cover all steel industry heavy manufacturing activity.
- 100% free permits for EITE activities from commencement of the scheme.
- No decay in EITE assistance until there is an acceptable global carbon agreement and major competitors face comparable carbon costs.
- Coverage of Scope 3 emissions in CPRS compensation or an arrangement to be included in the scheme that effectively deals with cost pass through on emissions from metallurgical coal.
- Exemption from RET for EITE activities including for the iron and steel industry.
- Inclusion of an effective transition plan for the early years of the scheme.
- Delay commencement of the scheme to allow time for the nature and pace of action amongst international competitors to become more apparent, including the nature of post-2012 international arrangements to succeed the Kyoto Protocol, and for recovery from the current global financial crisis and economic downturn.

We believe that the significance of the introduction of an emissions trading scheme and the CPRS in particular warrants the close attention of the Committee and we thank the Committee for its consideration of our submission on this major environmental and economic reform.

Attachment: Additional Comments on the draft Carbon Pollution Reduction Scheme (*CPRS*) Bill

Introduction

1. This submission relates to the emissions-intensive trade-exposed (*EITE*) assistance program under the draft Carbon Pollution Reduction Scheme (*CPRS*) Bill (the ***Bill***) released by the Government on 10 March 2009.
2. Our concerns particularly relate to the Government's decision to place details of the EITE program in regulations rather than in the Bill itself. In summary, we believe that:

   a) the Bill inappropriately delegates legislative power;
   b) the Government is not adhering to its fundamental policy of providing transparency and business certainty;
   c) the Government is acting inconsistently and inequitably in its treatment of industry sectors; and
   d) the Government is not undertaking sufficient consultation on the regulations.

Inappropriate delegation of legislative power

3. In our view, the regulation-making power contained in clause 67 of the Bill inappropriately delegates legislative power. It provides that matters which should be regulated by Parliament are to be dealt with by subordinate legislation. Details of the EITE assistance program should be created and maintained in the Bill.
4. This raises similar issues as were considered by the Senate Scrutiny of Bills Committee in relation to the Student Assistance Amendment Bill 1994, which established schemes for ABSTUDY and Assistance for Isolated Children but left most of the relevant details about how to qualify for the schemes to regulations, including:

   a) the kinds of benefits that may be paid and their value;
   b) conditions for getting benefits;
   c) when benefits will be payable; and
   d) means tests relating to students, parents and spouses.[i]

5. As is the case for the EITE regulations, the rules to be contained in the student assistance regulations were expected to be subject to frequent amendment. The Committee noted that the ability to make frequent amendments was a weakness in the scheme as it created a legislative maze. Similarly, the EITE program is likely to become overly complex and uncertain (discussed below) if it is subject to regular modification.
6. Moreover, in light of the importance of the EITE program for Australian industry and the CPRS, it is crucial that the transparency and scrutiny afforded to a bill are applied to the details of the program. In its review of the Student Assistance Amendment Bill, the Committee pointed out that the entitlements of social security clients are fully spelled out in the relevant Act and adequately changed by amendments to that Act. The EITE assistance program should likewise be created and maintained in an Act.

Lack of transparency and certainty

7. One of the Government's key reasons for implementing the EITE assistance program is to give affected industries certainty over the cost implications of the CPRS. The White Paper clearly states (Page 12-1) that:

   > *The EITE assistance program has been designed to target assistance in as practical and effective a fashion as possible, to explicitly support continued growth in EITE industries and to provide a transparent assistance framework to ensure industry has the clarity and certainty it needs.*

8. We submit that the inclusion of the EITE program in regulations rather than the Bill does not provide affected industries with sufficient clarity or certainty. The fact that regulations are subject to frequent variation means that businesses such as OneSteel are less able to rely on, and respond to, the legislative criteria contained in those regulations.
9. In addition to generating uncertainty about the content (both current and future) of the EITE program, a failure to include the program in the Bill creates uncertainty about whether the program will exist at all. There is no certainty that regulations will be made, as reflected in clause 167 of the Bill, which says that regulations "may" formulate an EITE program and the Minister must simply take "all reasonable steps" to ensure that regulations are made before 1 July 2010.
10. Even if EITE regulations are made, further uncertainty exists because those regulations are subject to disallowance by either House of Parliament. It is possible that the Coalition, Greens, Family First and Senator Xenophon could form a majority to disallow the EITE regulations in the Senate. This leaves affected industries with even less assurance that the EITE program will be established.
11. We strongly believe that the benefits of flexibility are outweighed by the need to give EITE industries a sufficient level of certainty over the extent and existence of the assistance being provided. Making long-term investment decisions will be rendered more difficult, with the Government imposing another layer of ambiguity in an already highly uncertain global investment environment. As noted by the Government in the White Paper (Page xxv):

> *…in the face of international economic turmoil, Australian businesses need more certainty about their future operating environment, not less.*

Inequitable treatment

12. We believe that the Government is acting inconsistently and inequitably in its treatment of industry sectors which will be most affected by the CPRS. EITE industries are being unfairly disadvantaged in comparison with the coal-fired generation industry. The Government has recognised the importance of certainty for coal-fired generators and there is no justification for denying EITE industries the same level of detail.
13. The Bill sets out the details of the circumstances in which the Authority should issue a certificate of eligibility for coal-fired generation assistance, and determines how the Authority should determine an annual assistance factor in each of those certificates. In comparison with the beneficiaries of the EITE assistance program, coal-fired generators have been given a high degree of certainty over the number of free Australian emissions units they will receive.

Insufficient consultation

14. The *Legislative Instruments Act 2003* (Cth) requires rule-makers to undertake "appropriate" consultation before making regulations, especially where the regulations are likely to have a direct, or substantial indirect, effect on business (s 17(1)).
15. It is indisputable that the EITE regulations will have a direct effect on business. However, we do not believe that we have been given sufficient opportunity to express our views on the proposed content of the regulations – in fact, such content has not yet been disclosed. We understand that the Government currently intends to publish the draft EITE regulations only one week before it introduces the Bill into Parliament.
16. We strongly urge the Government to expend additional time and effort in consulting industry on the content of the EITE program before introducing the Bill into Parliament. This will require publication of the proposed content of the EITE regulations with sufficient time for affected businesses to assess and comment on that content.
17. The process being undertaken by the Government to determine the rates of assistance and allocative baselines under the EITE program does not provide adequate time or opportunity for submissions. Companies are required to collate and submit emissions, trade and financial data based on provisional EITE activity definitions which as at the date of this submission have not yet been finalised – and engage assurance providers to audit that data – before 1 May 2009. Even

once the definitions are finalised, they will be in draft form only and subject to change in the final regulations. There does not appear at present to be any opportunity for data to be provided or submissions made in response to the final definitions and allocative baselines which will be specified in the regulations.

18. In the absence of draft legislation for the EITE program, businesses which may be eligible for assistance are denied a genuine opportunity to make meaningful submissions on the CPRS as a whole. We do not believe that the Government can make an informed decision as persons who may have made a submission either cannot do so or must do so in the absence of clear information about the proposal.

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[i] Senate Scrutiny of Bills Committee, *The Work of the Committee during the 37th Parliament*, http://www.aph.gov.au/senate/Committee/scrutiny/work37/report/c05.htm.