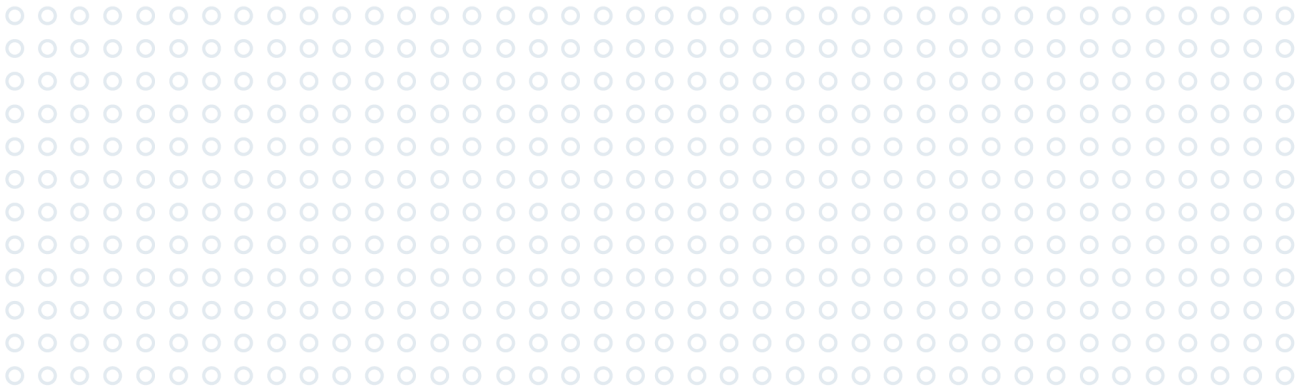


Business
Council of
Australia



Submission regarding the
Draft Clean Energy Legislation
Amendment (International Emissions
Trading and Other Measures) Bill
2012 and Related Bills

SEPTEMBER 2012

About the BCA

The Business Council of Australia (BCA) brings together the chief executives of 100 of Australia's leading companies.

For almost 30 years, the BCA has provided a unique forum for some of Australia's most experienced corporate leaders to contribute to public policy reform that affects business and the community as a whole.

Our vision is for Australia to be the best place in the world in which to live, learn, work and do business.

INTRODUCTION

Australia's policy response to the risks associated with climate change should be workable, at lowest possible cost, fiscally responsible and not make Australian industries uncompetitive if competitor nations do not take equivalent actions.

It is only a strong economy with strong businesses that will have the capacity to invest in the technologies and process improvements to reduce emissions.

This submission provides comments in relation to the proposed amendments to the Clean Energy legislation to give effect to the removal of the price floor, support international linkage and address a number of other matters.

It is very disappointing that such a short time frame has been provided for comment on the proposed legislative amendments. The urgency for this package of amendments remains unclear.

It should also be noted that the absence of the detail to be included in regulation and ministerial determinations, limited consultation and lack of comprehensive explanatory notes means it is not possible to fully consider the ramifications of what is being proposed for either the effectiveness of the legislation or its possible impact on businesses.

SUMMARY OF RECOMMENDATIONS

The government should:

- remove the floor price
- remove the limit on the use of Kyoto-compliant permits created through the clean development mechanism and not pursue section 123A as drafted as this will adversely impact on investment decisions and increase risk premiums
- ensure the process to develop a new price ceiling includes consultation with stakeholders and that the methodology makes transparent how the dual pressures of competitiveness and rising energy costs are addressed in setting the new ceiling price
- ensure that in any negotiations in relation to direct linkage, including those to take place with the European Union, Australian business and households are not disadvantaged and that the full implications of what is proposed are considered. This will require a comprehensive consultation mechanism with business as all aspects of the linkage treaty are considered
- ensure that in any negotiations in relation to direct linkage that the outcome does not restrict the access to other schemes or sources of verifiable and Kyoto-compliant certificates and permits

- ensure that the reviews to be undertaken by the Climate Change Authority of the carbon pricing scheme and the jobs and competitiveness package take into consideration the impacts on competitiveness and/or additional costs to business of linkage to the EU-ETS or other schemes
- either lower the permit price in the fixed-price period to reflect international carbon prices or revisit the duration of the fixed-price period and substantially reduce this so that Australian businesses and households do not face an artificially high carbon price over the next three years
- rather than pushing through the natural gas amendments at this time there should be a more comprehensive stakeholder engagement process put in place so as to determine the core issues and options to address these.

CONTEXT FOR THE BCA RESPONSE

The BCA supports the removal of the floor price and a surrender charge. Both these elements of the legislation distorted the market that is intended by the legislation and bring additional costs to the economy and consumers at a time when all efforts should be directed at maintaining a strong and growing economy.

The BCA remains of the view that there should not be any restrictions placed on businesses' use of international permits to meet their full liabilities under the Clean Energy Act, including numbers of international permits and types of permits (subject to them complying with international standards).

The greenhouse gas emissions scheme should start with a low price in the fixed-price period reflecting international prices while businesses and households adjust to this long-term policy.

More broadly, as the BCA has stated in earlier submissions, it remains essential that Australia's contribution to the reduction in global greenhouse gas emissions be done in a manner that does not adversely impact the competitiveness of Australia's trade exposed industries, reflects the actual carbon price being paid by our competitors and is in line with demonstrable international action.

DISCUSSION OF THE PROPOSED AMENDMENTS

Removal of the floor price and related surrender charge

The BCA supports the removal of the floor price and a surrender charge. Both these elements of the legislation distorted the market that is intended by the legislation and will bring additional costs to the economy and consumers at a time when all efforts should be directed at maintaining a strong and growing economy.

Access to international permits/certificates

The BCA supports access to international permits/certificates as one of the mechanisms that should be available to Australian businesses to manage the costs of complying with the Australian clean energy legislation.

What is important in any negotiations with regard to international linkage to specific schemes in other countries is that these negotiations and linkage arrangements do not bring with them additional costs and red tape on business or place any limits on Australian businesses accessing the full range of verifiable and eligible permits/certificates.

It is deeply concerning to see the Australian government already proposing further limits on the use of Kyoto-compliant certificates even before the details of an agreement/treaty with the European Union (EU) have been negotiated.

It is also very disappointing that there has been no effort to consult with business so that there is a shared understanding of the costs and risks as well as benefits of particular approaches to linkage with the EU emissions trading scheme (EU-ETS).

Proposed linkage with the EU-ETS

The recent government announcements map out a timeline for the development of an agreement/treaty with regard to linking to the EU-ETS by mid-2015 with it taking effect no later than 2018. The first phase is to be one way linking and the intention is that it be two-way over time.

This process opens many questions for business.

First and foremost is how will Australia's competitiveness and economic strengths be ensured when the EU will be making scheme design decisions in line with their own interests and economic structures. There are substantial differences in the objectives and design detail of the Australian clean energy legislation and the rules governing the EU-ETS.

An equally as important threshold question is why pursue linkage to the EU-ETS such that the EU-ETS will set the Australian price. This is in effect what will happen as a result of the introduction of the 12.5% limit on using other Kyoto-compliant certificates.

The Australian government in pursuing linkage with the EU-ETS must ensure Australian business and households are not disadvantaged and that the full implications of what is proposed are considered. This will require a comprehensive consultation mechanism with business as aspects of the linkage treaty are considered.

The government should make clear that the reviews to be undertaken by the Climate Change Authority of the carbon pricing scheme and the Jobs and Competitiveness package must now take into consideration the impacts on competitiveness and/or additional costs to business of linkage to the EU-ETS or other schemes.

Proposed limit on access to and use of different forms of international permits

The proposed limit on use of eligible Kyoto units (i.e. only 12.5% of the 50% allowance for use of international permits) is an unwarranted additional cost to business and a high cost to be paid as a trade off for a possible linkage to the EU-ETS.

This artificial limit should not be proceeded with, especially given the details of any agreement with the EU are yet to be resolved.

Section 123A as drafted should also not be pursued. This section in effect will allow a government to issue regulations imposing or amending designated limits on different types of international emission units such with as little as twelve months notice. Such an approach is likely to adversely impact on investment decisions and increase risk premiums as developers cannot be sure of the length of time particular classes of permits will be valid for acquitting a liability.

Permit price ceiling

The government has indicated it intends to maintain a price ceiling for Australian permits and that it will set it with reference to the likely 2015–2016 EU-ETS permit price.

The setting of a ceiling price takes on additional complexity with international scheme linkage.

The reference to aligning the price to the EU-ETS permit price is of particular concern in that it is the EU that will determine the price in their scheme to suit its policy agenda and economy. This may not be in Australia's best interest.

Australia will require a price ceiling that both addresses international competitiveness risks and does not lead to substantial increases in energy costs.

It is important that the process to develop a new price ceiling includes consultation with stakeholders and that the methodology makes transparent how the dual pressures of competitiveness and rising energy costs are addressed.

Price and duration during the fixed-price period

The price in the fixed-price period should also be addressed as part of these amendments.

Business will face the one of the highest carbon prices globally during that period unless the government acts to redress this issue.

The BCA has previously recommended that the greenhouse gas emissions scheme should start with a low price in the fixed-price period reflecting international carbon prices while businesses and households adjust to this long-term policy. It remains of this view particularly given the trend in international carbon prices.

If the government is not prepared to reduce the price it has legislated for permits in the fixed-price period it should revisit the duration of the fixed-price period and substantially reduce this so that Australian businesses and households do not face an artificially high carbon price over the next three years.

Natural gas provisions

The BCA has had limited time to consider the range of other amendments proposed and in discussions with our members we have found that even those directly affected have not been fully consulted.

There is particular concern as to the complexity of the natural gas provisions and the absence of real clarity as to what the particular concerns are that the proposed amendments are meant to address.

Rather than pushing through the amendments at this time, the BCA recommends that there be a more comprehensive stakeholder engagements process put in place so as to determine the core issues and options to address these.

In conclusion

In the limited time available the Business Council of Australia has used this submission to highlight some critical concerns in relation to the proposed amendments and to propose that the provisions in relation to natural gas be deferred until there has been comprehensive consultation on the issues with affected stakeholders.

It should also be noted that the absence of the detail to be included in regulation and ministerial determinations, limited consultation and lack of comprehensive explanatory notes means it is not possible to fully consider the ramifications of what is being proposed for either the effectiveness of the legislation or its possible impact on businesses.

We do hope that there is more comprehensive consultation put in place with regard to the details of the proposed linkage to the EU-ETS. The design of such linkage must be in a manner that does not bring additional costs and regulatory burden to business. Nor should it restrict business from acquitting its liability at lowest cost. Clearly the proposed restriction on the use of Kyoto-compliant permits created using the clean development mechanism will increase business costs. This proposal should not be pursued.

Please contact Maria Tarrant, Deputy Chief Executive, Business Council of Australia, on 03 8664 2664 should you have any queries with regard to this submission.

BUSINESS COUNCIL OF AUSTRALIA

42/120 Collins Street Melbourne 3000 T 03 8664 2664 F 03 8664 2666 www.bca.com.au

© Copyright September 2012 Business Council of Australia ABN 75 008 483 216

All rights reserved. No part of this publication may be reproduced or used in any way without acknowledgement to the Business Council of Australia.

The Business Council of Australia has taken reasonable care in publishing the information contained in this publication but does not guarantee that the information is complete, accurate or current. In particular, the BCA is not responsible for the accuracy of information that has been provided by other parties. The information in this publication is not intended to be used as the basis for making any investment decision and must not be relied upon as investment advice. To the maximum extent permitted by law, the BCA disclaims all liability (including liability in negligence) to any person arising out of use or reliance on the information contained in this publication including for loss or damage which you or anyone else might suffer as a result of that use or reliance.