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Joint Select Committee on Australia's Clean Energy Future Legislation
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CSR Limited submission on Australia's Clean Energy Future Legislation

Introduction

CSR Limited is pleased to provide this submission on Australia's Clean Energy Future (CEF) Legislation.

CSR is an ASX-listed company focused primarily on the manufacture of building products in Australia and New Zealand. Within its wider portfolio of building products, CSR manufactures products and systems, including insulation and glass, which contribute to improved energy efficiency and lower energy consumption in the built environment. CSR employs around 4,000 people across its operations in Australia and New Zealand.

CSR also has an interest in aluminium production through its 70 per cent shareholding in Gove Aluminium Finance, which owns 36 per cent of the Tomago Aluminium smelter in New South Wales. The Tomago smelter employs around 1,100 people directly at the smelter.

CSR has previously (22/8/2011) made a submission on the exposure drafts of the Clean Energy Bills to the Department of Climate Change and Energy Efficiency.

CSR reaffirms the policy positions put forward in that submission together with some additional recommendations in this submission.

CSR Limited policy and principles on carbon pricing

CSR understands the requirement to address climate change by managing and reducing its greenhouse gas emissions. We support carbon pricing as an important measure in encouraging and transitioning the economy to a lower carbon environment. However, this should not be at the expense of manufacturing industry and manufacturing jobs in Australia.

Any proposed policy must maintain trade and investment competitiveness, regardless of the energy intensiveness of the business. That is, trade exposed industries and entities should not be disadvantaged in any way against international competition as a result of the implementation of a carbon price.

Against these principles CSR makes the following summary points:

1. **The CEF is not lowest cost**

The initial fixed price of A$23 per tonne, means Australian industry will pay almost double the price compared to that currently being paid by competing industry in Europe in the first three years of the scheme.

Furthermore, the restriction on Australian industry to source and import international permits will result in higher cost abatement for Australian industry.

2. **Transitional assistance is denied for certain trade exposed industries**

Under the CEF, eligibility for transitional assistance is <u>not</u> available for all trade exposed industry. The arbitrary cut-offs mean that those industries which are below these thresholds but are trade exposed are denied transitional assistance. Hence, they are penalised compared to foreign competitors which do not face a similar impost.

Other sectors may become increasingly trade exposed, in part as a result of carbon pricing and should be eligible for assistance when this occurs. Therefore the CEF needs to address sector specific needs rather than arbitrary cut-offs.

The insulation industry is a case in point. CSR's insulation business, Bradford™ Insulation is trade exposed but because the CEF does not address sector specific needs and includes arbitrary cut-offs, this business will receive no transitional assistance.

The net result is that an Australian made product which actually reduces emissions and energy use in the built environment is arbitrarily denied transitional assistance - it will face higher costs and compete with foreign competitors which are not subject to a carbon price impost.

At a minimum the CEF must be amended to include a mechanism to address anomalies such as these to enable Australian industry which has been denied arbitrary assistance to apply directly for assistance.

3. **The CEF provides no certainty for business**

Despite being a fundamental reshaping of economic policy, the CEF provides no certainty to business.

There is little in the bills that deal with the trade exposed sector and the Jobs Competitiveness Program and yet this is a centre-piece of the policy.

The extensive, almost continuous review processes create a large degree of uncertainty and risk. This does not provide industry with certainty regarding policy direction to allow for investment in lower emissions technologies.

The current proposal creates further uncertainty and transfers the risk to industry because it can be reasonably foreseen that there may be delays or complexity in the Productivity Commission assessing any comparable price on carbon being placed on foreign competitors.

Therefore, the onus of proof should be reversed such that the legislation should stipulate that the floor in transitional assistance to trade exposed industry must be the default position until the Productivity Commission has clearly demonstrated that more than 70% of competitors face a comparable price on carbon.

Conclusion

The above recommendations represent a summary of CSR's position on the Clean Energy Future Legislation. We have attached our initial and more detailed submission to the Department of Climate Change and Energy Efficiency as an appendix as these issues remain valid in the context of the Joint Select Committee's inquiry.

CSR would welcome the opportunity to provide further information on this submission.

Yours faithfully

Rob Sindel
CEO and Managing Director

CSR

CSR Limited Submission on Clean Energy Future Scheme – Bills

CSR Limited is an ASX publicly listed company primarily involved in building products manufacture and a small interest in property development. The company operates in Australia and New Zealand. It has a 25.2% interest in the Tomago Aluminium Smelter. This submission covers all the company's interests.

Policy Matters

CSR Limited was seeking a bill which embraced the following policy elements.

1. CSR Limited Policy and Principles on Carbon Pricing

CSR Limited understands the requirement to address climate change by **managing and reducing its greenhouse gas** emissions.

We support carbon pricing as an important measure in encouraging and transitioning the economy to a lower carbon environment.

We accept the economic consensus that the lowest cost pathway is via an emissions trading scheme.

2. The following are matters of specific concern to the business.

- The less well off and disadvantaged (energy poor) in the community should not have to bear an increased burden as a result of measures.
- Maintaining trade and investment competitiveness, regardless of energy intensiveness of the business. That is, ensure trade exposed industries and entities are in no way disadvantaged against international competition as a result of a carbon price.
- Assistance levels and decay rates.

- Bradford™ insulation has no assistance and is now highly trade exposed. (EU provides assistance for this sector). Other sectors may become increasingly trade exposed, in part as a result of carbon pricing and should be eligible for assistance when this occurs.
- Need to address sector specific needs rather than energy intensive carve up.
- Implicit carbon pricing is not yet sufficiently well developed to be taken into consideration. Effective carbon cost is more important for competitiveness.
- We seek a long term sustainable investment framework.
- Fixed price must be defined for the forward period, bearing in mind transitional arrangements.
- Transition date from fixed price to trading must be firm and ideally sooner rather than later. It can take three to four years from concept to commissioning for significant abatement projects and project returns will be evaluated over 15 to 20 years. Our business needs a framework by which we can develop our own projections about future carbon pricing. The fixed price period doesn't factor into these decisions as it occurs mainly before project startup.
- Transition must be seamless (lowers cost of transition and maintains market confidence) and this probably means shadowing the international market price.
- Firm commitment by Australia to 2020 target
- Clarity around price trajectories and factors which drive this.
- We favour a cap and trade scheme or a rapid move to a cap and trade scheme with banking, borrowing and international trade in permits leading to a lowest cost solution. The scheme should have no price collaring. This means comprehensive coverage of the Kyoto protocol gases and all sectors. It will involve repealing all schemes where the cost of mitigation is greater than that available under the tax/trading scheme. (SRES/RET)
- We are not well disposed to an independent arbiter of assistance, although such a body might have a longer term role in sunset issues and new entrants. For instance we publicly proposed that assistance remain in place until 80% of global trade in a sector was covered by a comparable emissions price for exporters and 80% of importers to Australia have a comparable price on an activity (sectoral basis). If assistance rates and the 80% requirement are prescribed in legislation and was readily transparent, then an independent arbiter could determine whether these levels had been reached.

3. Specific Policy Measures not Addressed in the Bills

Most of the issues raised have not been addressed.

- The CEFS is not a lowest cost pathway to emissions reduction.
- Eligibility for transitional assistance is not available for all trade exposed industry should they wish to apply for it. Government has again fallen for the policy shortfall in CPRS by overcompensating households at the expense of manufacturing industry.
- 100% allocation for scope 1, 2, 3 (all non trade exposed manufacturing inputs, e.g. industrial gases, natural gas, coal) for a facility.
- No decay factor (reduction in permit levels) until at least 80% of relevant competitors have comparable (effective) carbon constraints. This can be determined by independent inquiry/arbiter.

4. Additional Policy Shortcomings

Business Uncertainty

- There is little in the bills that deal with the trade exposed sector and the Jobs Competitiveness Program and yet this is a centre piece of the policy. The extensive, almost continuous review processes create a large degree of uncertainty and risk. The processes place too much discretion with minister**s** and the level or review is too frequent.
- The scheme should be designed to enable businesses to develop a forward view about markets to make future emissions reductions investment program. Business is less adept in making forward views about the outcomes of bureaucratic review processes and government lead market adjustments.
- Business has little confidence in restricted Government conceived markets such as SRES and to a lesser extent RET. The model adopted plays to this lack of confidence. A solution is to start the process at a price

close to market and then proceed to an uncollared traded pricing model or trading with a price cap that reflects an economic cost to the Australian economy that the public is prepared to bear.

- The default provisions on the cap are unrealistic. The scheme only provides coverage for 65% of emissions and it is not clear how much lifting the covered, uncovered and imported permits will respectively be required to bear.

Specific Comments regarding the Bills

As a major economic reform, three weeks has been inadequate to thoroughly review the bills and obtain complete alignment through corporate functions and the businesses on the Bill and its content. This may reflect in some of the comments where more research may have produced a more complete and reasoned response.

Document	Article	Issue	Remedy
Clean Energy Bill	s3 Objects	Part of the object of the bill, especially the JCP is to ensure that carbon leakage does not occur for trade exposed industry	Add a fourth object : To ensure the competitiveness of trade exposed Australian Industry is maintained
	P 25 s 14 (2) (c)(i)	In conjunction with the Commentary P 84 2, 27 Factor 1 – price will not be impacted by Australia's caps so this is a moot consideration. Judgements may be made about the appropriateness of a particular global price and what carbon outcome might be expected for Australia, but given the 5 year notice there is likely to be a huge disconnect. These considerations may give rise to the implementation of s 100 – table – issue of fixed price permits, item 7, 8, 9 whereby the fixed price period can be extended until end FY 2018.	Remove commentary about price considerations for factor 1
	P 25 s 14 (2) (c)(iv)	Building on the Commentary, P85, Factor 4– should specify how the fair share is measured – impact on GNP.	
	P56 s29	Anti-avoidance provisions are back dated to Dec 2008. This is unjust and retrospective legislation is to be avoided.	Anti-avoidance should only be back dated to the release of the Policy Documents July 10, 2011.
	P 25 s 14 (2) (c)(vi)	How does the Green power consideration work specifically? If covered sectors are doing the heavy lifting here then it should be recognised for this.	Ensure that green power adjustments are recognised in setting the caps by those sectors, covered or uncovered in proportion to effort.
	P 25 s 14 (2)	Factor 9. Should be recognised in conjunction with factor 11.	Covered sector burden to be proportionate and

Document	Article	Issue	Remedy
	(c)(ix)	Defaulters pay the penalty and this money should be used by Government to address the shortfall. The covered sector should not be forced to bear this risk.	relate to that sector's emissions in 2000. Government needs to be specific about how this will be managed and paid for in the event CFI, and other provisions don't deliver a proportional saving or that renewable beyond RET don't deliver.
	P 29 s17 (2) and s18	Failure to regulate emissions caps sees fixed decay – 38mt for first three yrs ie going into yr 4 and 12mta pa after that. Covered sectors end up at zero emissions by 2040. This is unrealistic. Actual base for decay won't be known until after Jul 2013 in default case. Concern is that the covered sector is doing all the lifting for the uncovered sector which has no obligation. Who is picking up the bill for uncovered sectors?	Fixed decay factors are unrealistic for the covered sectors. Need to recognise the balance of how the cap will be achieved between imported permits, covered and non covered sectors.
	P 35 s20(4)	What happens when a facility trips in and out of liability by virtue of being close to the 25kta limit? This also creates problems with liability and billing for natural gas.	Need a mechanism whereby that facility can be deemed covered or not covered, but not subject to annual decision making, particularly where the result might not be known until post financial year end.
	P38 sec 21 (6)	For designated JV's who would hold the OTN? Would both, all parties?	
	P58 s30ff	A covered facility may not be an EITE. An EITE may not be a covered facility. This is not given recognition at the Bill level. To remove any doubt or future challenge EITE's should be given recognition in the Bill. Also the Commentary notes allocative baselines won't be updated, but PC will be reviewing measures in 2014, 15, or earlier if requested by Govt, so for how long will baselines be retained?	Provide recognition and definition of EITEs and coverage definitions in the Bill.
	P62 s33ff	Definition of natural gas retailer is to be provided in regulations. This definition needs careful consideration to ensure that it does not lead to restraints or barriers to trade in gas in business to business trades for large volume users. Retail definition should either have a volume cut off or description that revolves around	Prefer a volume threshold to define a retailer. The definition of gas retailer should be defined in the Bill as it impacts the OTN and how liabilities will be managed.

Document	Article	Issue	Remedy
		metering obligations/locations. It may also be that a withdrawal could be made from a distribution pipeline by a non retailer. Clarification of withdrawal and distribution and transmission pipeline would be helpful.	
	P 68 s38(2)(d)	What is the basis for the fee?	Clarification around the principle of the fee might be valuable or inclusion of the words "nominal fee" if one is to be charged at all
	P70 s43	Must give reason for cancellation	
	P71 s44	OTN's not transferable. This may not be workable in a corporate or asset sale situation, given the lag to get OTN's cancelled and re-issued. Also raises the question of an asset transferring from an owner with an OTN to a new owner who may now qualify for one, but needs to make application. Without such provisions may well be billing and retroactive adjustments to billing processes.	Provision for transferability for transitional purposes – change of ownership of company or assets.
	P72, sect 45	Natural gas Retailer not obliged to accept an OTN. Retailers should be obliged to accept an OTN and not be given monopoly rights. Liability rests with whoever has the obligation, namely the holder of the OTN.	OTN acceptance should be mandatory
	P78.79 S 56	Large user of natural gas – seems to imply you can only use if for covered facilities, in a financial year. So if one year a facility trips for an OTN and it is issued, what happens in the next financial year if it falls below the trip? Is the OTN rescinded? It would seem under S 56(8) and (9) a situation could arise where a facility trips in and out by virtue of varying production, (e.g. plant rebuilds etc) despite implications to the contrary in the commentary.(1.156 implies that an OTN is predetermined by years 2010/11 and 2011/12, but it is not clear that it is enduring). This seems to be inconsistent with the ability to quote for a class of supplies.	Thresholds for OTNs need to recognise variations to production due market or plant shutdowns for re-build. OTN's should be for the term of each contract.
	P 80 s57,58	Does this mean you can quote the OTN once for every financial year going forward or quote it every single financial year i.e. can you quote it for the life of a contract or annually? P 70, s1.157 of	Clarify Bill with "must be quoted once for every class or single supply"? OTN's should be for the contract term.

Document	Article	Issue	Remedy
		the commentary is ambiguous	
	P81,82 s59,s60	What is a single supply? What is a class of supplies? CSR contracts are generally organized on state boundaries. They could be with the same or different retailers, with different expiry dates. Is a class of supplies a contract with each retailer or all the contracts with each retailer? Is it based on the term of the contract?	
	P 81 S59(5), s60(5)	Retailer does not have to accept an OTN. The advantages for taking direct liability and quoting an OTN are mitigated as the retailer has no obligation to accept the OTN. In a market with few retail choices and no regulation about transparency, range of prices in the market or knowing the actual prices per quantity paid by retailers for domestic or international permits then users are at the behest of the retailer. Large users are encouraged to take responsibility, failure of Government to require this option is inconsistent with Government's claims about the number of persons with direct liability. Government is not providing the means whereby this can occur. It is not sufficient in such a limited and concentrated market place to leave it to market forces.	Retailers are obliged to offer an OTN quotation facility to large energy users.
	P 108, s91	What happens if a company buys the assets of a covered facility? The LTC is attached to the entity with operational control. The definition of liabilities should be clear between pre and post transition. .The new party should not be subject to the previous entities liabilities. May need some kind of handover period. LTC's should be cancelled immediately and new owner has to obtain an LTC or face up to the operator holding responsibility, but this can take 90 days (s 83(4))for issue of LTC from application.	Provisions need to cover transfer of ownership, particularly if the regulator has 90 days to issue an LTC.
	P110 S 93, s100(7),(8)	In flexible charge years some permits may be issued at a fixed price – this would occur if the scheme was at a price cap presumably, ie international prices were very much higher than	Remove price caps and provisions for a fixed price period during the flexible price period – go straight to trading.

Document	Article	Issue	Remedy
		the cap. Floor pricing only provides for a one sided position on international prices - a position that international prices will rise. On the other hand if international permits are procured above the floor and the price falls at the time of acquittal then the liable part bears an additional penalty. Setting a floor raises many complicating issues and unnecessary risks. A floor price of $15/t isn't sufficient for low emission generation projects and is therefore an invalid reason for setting a minimum. CSR supports a lowest cost pathway and therefore does not support collaring.	If the cap is to be used as safety valve it should be set at a level which reflects the economic price the public is prepared to pay for abatement.
	P113 s100	Table 7-9. Does this extend the rules for the fixed price period if clause 7ff is implemented? Clause 7ff appears to extend the fixed price period into the flexible price period. What does this mean for banking, borrowing etc.	Clarify rules that apply to acquittal, banking, borrowing, international permits, trading etc if a fixed price is set in the flexible price period.
	P117 s 101	No forward market allowed to develop. At least through flexible charge period – after that it will be international market, but still need to have 50% of permits locally issued. If regulations are not in place for the cap then the default applies so auctioning can take place.	Need to issue more permits for current vintage year and for forward years to allow the market to develop. This helps inform investment decisions. Four years of advanced auctions is preferred as it provides more information to industry to develop price forecasts to help with abatement projects or manage carbon price risk.
	P122 S108	Significance of 1 Jul 2018? This restriction presumably comes about from the price collaring arrangements. An unnecessary complication from collaring.	Remove price collaring.
	P130 s114	Significance of benchmark prices other than to calculate shortfall penalties? Does not fully inform the market ie high/lows etc The intent of this section must be broader than simply determining an average for punitive purposes and should be changed to provide for a more informed market.	Regulator should publish more information about the auctions, including highs and lows for each auction and each vintage as well as the market clearing price. Post flexible price period if market is internationally driven then it probably makes little difference.
	P132 s116	Buy back discount. A buy back discount suggests that the carbon price is somehow discounted early in the year. However the	Remove the factor specified in the regulations.

Document	Article	Issue	Remedy
		liability is acquired at the carbon price and probably billed monthly during the year. Therefore there is only one price for carbon. Thus there is no justification for a discounted buy back	
	P133 s116(2)	The buyback discount rate as suggested in the Commentary s3.78 is to be the BBB corporate bond rate. This needs further consideration if in fact this proposal is retained. It is not clear that this benchmark, which also appears to be used in the Australia Energy regulator arrangements, is an appropriate discount rate. This is not a liquid or deep market and may be an imputed rate as there is no depth of issuance in Australia.	There should be no discount rate. If this is retained the BBB bond market is not representative. A more appropriate rate is the 3 month BBSW.
	P142 s 123	Unreasonable to cancel international permits on one year's notice. CDM schemes may have been entered into for a statutory period and this raises a sovereign risk issue. Even 12 months notice for new scheme implies additional risk in developing projects and is likely to lead to Australian or foreign owned companies in Australia having higher risks in project development than other countries. This restricts the options available for Australian entities.	Provide 12 months notice that entering into new schemes delivering certain international permits will be invalid. Existing schemes or those that have CDM approval will be recognised to the natural completion of the project.
	P161 s138 P162 s139	A subsidiary becomes guarantor for the group. Normal tax law rules should apply whereby the liable party is the liable party and the debt should stay with that party. It Is not reasonable to chase other parties for someone else's debt. The operator should not be liable for shortfall charges of other participants	Remove guarantor provisions.
	P 162 s140	It is unclear on what basis the refund of overpayments will be made. For example if units are purchased at the fixed charge in September 2013 and surplus is surrendered by 1st February 2015, which charge will be used to determine the refund?	All refunds by the Federal Government should be based on fixed charge paid for the permits by the liable entity.
JCP	P168, s143(2)(e)(f)	The conditions for JCP are dependent on whether other economies implement schemes which look like CEFS. This is only partly relevant to the international competitiveness of Australian trade exposed industry. The real issue is the actual carbon cost born by competing industry versus the total cost of carbon measures in Australia.	These requirements are inconsistent with s 156(3)(a)

Document	Article	Issue	Remedy
		More broadly CSR supports the replacement clauses of section 143 proposed by the Australian Industry Greenhouse Network in its submission. Rather than repeating that here we refer the reader to that section of the AIGN submission amendment.	
	P170 s145(1), s 146,s153	Appeals, covers the EN, but the mechanisms for issuing free permits do not seem appealable – not covered in legislation.	The issuing of free permits and the 2 year penalty for failure to comply should be appealable under s 281.
	P172 S149(3)	Are statutory declarations necessary for entities which have over 125kta of emissions where they have been subject to ongoing reasonable assurance levels of audit?	Must have flexibility on who signs them – can't be limited to CEO's, CFO's. For large emitters subject to audit, drop the requirement for stat decs where reasonable assurance audits are in place.
	P177 s155(2)	Desirable to look at the impact of the Clean Energy Bill and all other measures on the industry. This section if changed should refer to the AIGN submission comments regarding s155. This defines what the Minister and the PC can take into account and is aligned with the aims and objectives of the Bill.	Replace the review of the JCP program with the impact of the Act and other measures in its entirety on industry. Delete s158. This provides un fettered powers and adds uncertainty and risk to the scheme and industry.
	P 178 S156(2)(b)	It is difficult enough for industry to understand best practice, let alone for outside agencies and consultants. It would be most unusual for one facility to be best practice – it may be best practice in one or more measures if that can ever be determined with certainty. Retrofitting established plant is more costly than setting up a new factory and the economic justification for energy efficiency returns are different. The provision should embrace economic efficiency. Who is the arbiter of best practice? BP is always qualified, by geography, process and best practice emissions might not be best practice environmental behaviour – need to recognize the shortcomings of this clause and broaden it, if not delete it.	E.g. taking into account all the principles of sustainability and economic efficiency, but recommend the clause is deleted.
	P178 s156(2)(d)	Examining what foreign countries have done is of little interest to industry. What is important is the relative carbon impost of all genuine abatement measures for like or competing products.	Clause should apply to trade competitors, not economies.
	P179 s 156(2)(f)	The JCP will result in action to abate emissions; these cannot be	Remove reference to windfall gains.

Document	Article	Issue	Remedy
		considered windfall gains. Also JCP is designed to help maintain competitiveness. The reduction in emissions arising from the JCP is the intent of the policy. In all likelihood the reductions have come at a capital cost. The gains achieved are those intended by the policy to be achieved and deliver the cash flow to deliver the return on investment. A threat that these savings might be considered windfall gains will provide a disincentive for investment in a similar way to the 100% caps under CPRS. The PC review must have primary regard to the aims and objects of the JCP and not be re-interpreted through the various provisions in S156. The overarching purpose of the JCP is to help maintain the competitiveness of Australian trade exposed industry.	
	P178 s156(3)(b)	The productivity contribution should cease at 90% and 60% unless the Productivity commission can determine otherwise	Burden of proof on the Productivity Commission to show cause as to why the decay factor should be extended.
	P178 s156(2)(g)(h)(l)	CSR supports AIGN contention that these clauses are inconsistent with the aims and objects of the program in s143. S143 is an activity based review and this has been lost in s156.	Delete these references and include references to activity based analysis.
	P180 S156 (5)(a)	While the PC might try to undertake such a study it would appear to be extremely difficult to determine the cause of any price increases and circumstances surrounding it. Customs and Border Protection seem to struggle with similar analyses in anti-dumping cases.	Results of such analysis to be transparent and challengeable.
	P181 s157 (3)(b)	Should be 5 years notice – the provisions in this Bill work against the intent of industry investing to reduce emissions by raising the levels of uncertainty for industry and the timeframes to develop meaningful cash flow projections.	Make the changes at the end of a 5 year period
	P 182 S158	Productivity minister has unlimited powers. This adds uncertainty and risk to industry. See comments above s155 (2). Minister is not bound by the PC report.	The Minister should be constrained to not implement any more severe measures before 2018 and within the objects and aims of the JCP.
	P 212 s183,184,185	. The database should not be disclosing facility level information which is considered commercially sensitive. It is possible and	Data base to not publicly disclose confidential information directly or leading to the

Document	Article	Issue	Remedy
		likely that the emissions number can be directly related to a production number where a sole facility has an EN. Furthermore it can also be back calculated from the JCP program entitlements.	determination of production.
	P222 s197	No provision to release details of fixed price permits issued during the flexible collared price period.	
	P223 s199	Quarterly public disclosure of permits issued is the same as publishing production numbers. Will this be done by entity or facility? What about confidentiality and privacy provisions? This does not seem consistent with the commentary s5.89, secrecy provisions?	Need consistent treatment and understanding. The disclosure should be based on where the liabilities are held i.e. at controlling corporation; subsidiary or facility level.
	P241 S216	–What are the obligations on the Commonwealth to make payment on refunds? What are the penalties for late payment by the Commonwealth?	Terms of repayment to be made clear, including penalties for late refund.
	P 263 S237	Inspectors rights of entry are not specified, sec 237ff – must comply with safety processes, procedures. Companies have site safety expectations and inductions and these are expected to be complied with, should be built into the legislation.	Provide a clause s237 (6) requiring compliance with site safety, health and environment entry standards.
	P 271, s 247	Directors, CFO's, CEO's Company Secretary have responsibilities in the event of a contravention. Negligence is defined in following paragraphs.	This goes beyond normal protocol.
	P 296 S 281	Reviewable decisions – these need to include the issues associated with the issue of permits under the JCP program and fixed price permits.	This does not seem to be appealable, but should be.
	S292(8)(b), 294(8)(b)	Minister should consult stakeholders in developing a response.	Not to be at Minister's discretion to consult – must consult directly impacted stakeholders.
	P 302 s288	CCA reviews the need for price ceiling and floors in 2017, so still no certainty for the future. CSR supports international trading and lowest cost pathways. Further reviews build in further uncertainty to the scheme. It is not clear that collar pricing is required at all. If the Government persists with collars in the 3 year flexible period, industry would want to know that collars will be removed.	Remove the need for collaring from the scope of the Authority's review.

Document	Page, Article	Issue	Remedy
Consequential Amendments Bill			
	P 6	Clean Energy Regulator – “applying legislative rules to determine if a particular entity is eligible for assistance….” See comments for s 30ff in main bill regarding EITE status and coverage.	
Exposure Draft Consequential Amendments Bill			
	P98,99,100 S375 s380	Confidentiality not provided for in Regulators report. Disclosure of liable entities emissions at entity level. The split out of the EN also makes scope 2 emissions data public. Provisions should apply automatically and entities should not have to use the provisions under s 385 ff to justify why these data should be confidential.	Require confidentiality as discussed in main bill S 183,4,5
	P 128 Schedule 2 ff	See separate tax comments	

Tax Issues

The matters raised are aligned with those expected in the Taxation Institute’s submission, which CSR supports. However we have added substantial comments in relation to income tax. The following matters need addressing, again in the context of the objective of the Bill which is amongst other things to reduce emissions, not to raise taxes or place cash flow burdens on industry.

1) Income Tax

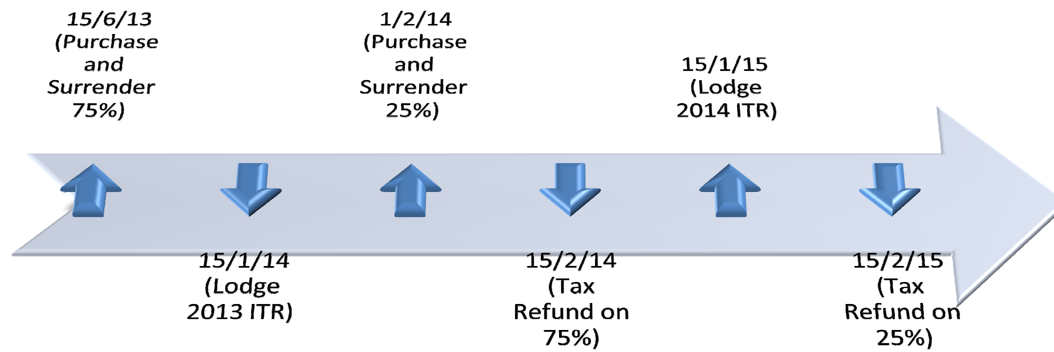
a) Tax deduction for registered emissions units

The proposal is to amend the Income Tax Assessment Acts and the Tax Administration Act to establish a rolling balance treatment for the deductibility of the cost of registered emissions units. This proposed mechanism will effectively defer the tax deduction to the year in which the emissions units are surrendered or otherwise disposed of. This places a cash flow burden on business.

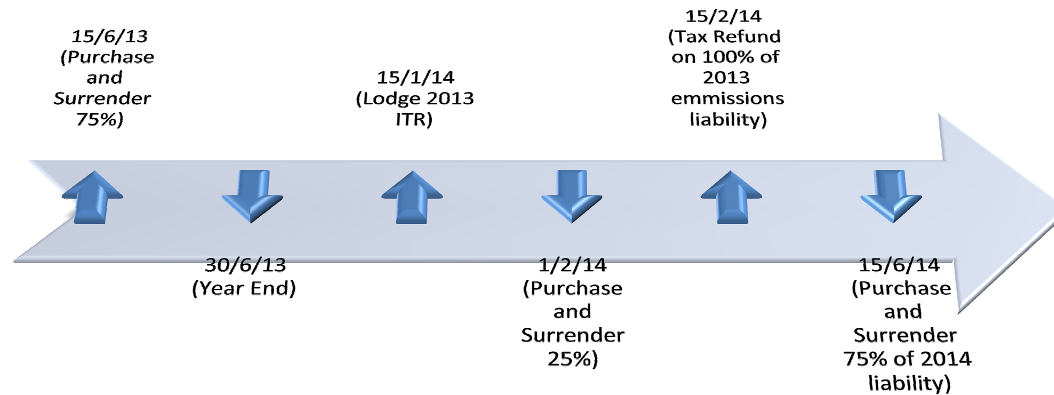
A much fairer outcome would be achieved by allowing businesses to claim a deduction based on the amount of the liability incurred each year. New Zealand, for example, has adopted a similar approach. This approach is consistent with the current tax treatment of business related expenses and liabilities. This point is best illustrated with a simple example.

Take the first year of operation for a taxpayer with a 30 June 2013 year end. By 30 June 2013 they will have incurred a liability for 100% of their emissions for the year. By 15 June 2013, they will have acquired and surrendered emissions units for 75% of that liability. The remaining 25% will be acquired and surrendered by 1 February 2014 (during their 2014 tax year). Under the rolling balance mechanism, the tax payer can effectively claim 75% of their liability in the 2013 year and 25% of the liability in the 2014 year. In practice, a large corporation will lodge its 2013 income tax return on or before 15 January 2014. Taking into account ATO processing time to process the refund, the taxpayer is unlikely to receive the cash benefit of the tax deduction until after 1 February 2014 some 8 months after the emissions units were purchased and surrendered. Applying the same timing to the remaining 25% of the 2013 liability (which will be acquired and surrendered by 1 February 2014), the taxpayer is unlikely to receive the cash benefit of the tax deduction until after 1 February 2015, a full year after the emissions units have been purchased and surrendered. This will clearly have a negative cash flow impact on taxpayers. This

can be represented in the timeline below:



Allowing the taxpayer to claim a tax deduction in the year in which the liability is incurred would essentially eliminate this cash flow disadvantage. This can be illustrated in the following timeline:



Allowing tax deductions on an "incurred" basis rather than using a rolling balance method would have other advantages. For one, it would be better aligned to the way emissions units are expected to be accounted for. Secondly, it would be easier to administer, largely under existing tax laws. To illustrate, the table below contains examples of transactions and the expected tax treatment:

Circumstance	Tax Treatment	Comment
Buy an emissions unit	Tax deduction for amount paid and for any incidental costs	Incurred under s. 8-1.
Sell a unit	Amounts received included in assessable income	Assessable under s 6-1 as ordinary business income.
Liability at the end of a year but no emissions units yet purchased	Tax deduction for the amount of the liability at year end.	Incurred under s. 8-1. Some valuation rules may be required to standardise how the value of the liability is determined by taxpayers at year end.
Surrender a unit in the following tax year for a value different to the value of the liability included as a tax deduction in the previous year.	The difference is included as assessable income or an additional deduction in the following year.	This treatment is the same as the current treatment for accrued expenses.

a) Rolling Balance Mechanism and choice of Valuation Method

If the rolling balance treatment is adopted (despite the cash flow disadvantage to taxpayers illustrated above), the current proposal to restrict changes to the method of valuing emissions units is too restrictive. The current proposal will essentially allow taxpayers to value emission units at either FIFO, actual cost or market value but, once a choice is made, it cannot be changed for 4 years.

Allowing taxpayers the freedom to choose the valuation methodology in the same way that is currently available under Division 70 of the ITAA 1997 for ordinary trading stock, will allow taxpayers to better manage the cash flow disadvantage mentioned in 1(a) above. The trading stock valuation rules in Division 70 have been in use for decades,

are well known and do not result in tax arbitrage. Using those rules will also make it easier for taxpayers to comply with the law rather than have to administer new tax rules specific to emissions units.

b) Absorption Costing

Again, if the rolling balance method is adopted, then the current proposal in section 420-60 (4) to use absorption costing in relation to the tax accounting for registered emissions units should be changed to allow an immediate deduction when these costs are incurred. Full absorption costing will be an added and onerous compliance burden for taxpayers which will require setting up new systems and processes. It is suggested that the compliance cost for taxpayers would outweigh the minor timing differences that might arise under absorption costing.

2) GST

The proposed GST free treatment for supplies of emissions units is very welcome and should save significant compliance costs for business and Government administration. For the same reasons, the GST treatment for supplies of derivatives of emissions units should also be GST free. If transactions in derivatives of emission units will be subject to ordinary GST rules, it is likely that they will be input taxed. If taxpayers choose to manage their carbon liability through the use of derivatives, this will result in increased compliance costs and the denial of GST input tax credits as it is likely that such taxpayers will exceed the current Financial Acquisitions Threshold ("FAT") threshold.

An alternative solution to this issue is for the FAT threshold to be increased for taxpayers that are not in the Finance sector.

3) Unit Charge Shortfall

A non tax deductible unit charge shortfall of 130% is proposed for the fixed price period. This will increase to 200% for the floating price period (again non tax deductible).

These "penalties" are excessive, especially in circumstances where a shortfall arises due to honest mistakes and/or where the shortfall is relatively minor. It must be remembered that the Clean Energy package is a large change for business which will involve new systems, processes, training and education of staff, uncertainties and complexities, particularly in the early stages of the scheme.

Suggestions that could be considered to address this concern include:

- Allowing the administrator the discretion to reduce or remit penalties depending on the severity of the shortfall, the circumstances of the error and whether the error was voluntarily disclosed. This would be a similar approach to the administration of income tax penalties under the Taxation Administration Act.
- Legislating different "penalty bands" starting with smaller penalties for smaller infringements and honest mistakes with increasing penalties for serious non compliance.

In addition, making the whole unit charge shortfall non deductible significantly amplifies the real cost of the penalty. For example, the 200% unit charge shortfall equates to 285% in pre tax terms (200% divided by 0.7). A fairer proposal would be to make only the penalty element non deductible (ie. 30% rather than 130% and 100% rather than 200%).

4) Stamp Duty

There is potential for substantial additional costs on taxpayers if the transfer of emission units will be subject to stamp duty by the States. Our view is that no stamp duty should be payable on the transfer of emission units.

Document	Page, Article	Issue	Remedy
Clean Energy Regulator Bill			
	P 20 s 39	Corporate plan should be made public	
	P 26 S49	Primary disclosure is unnecessarily broad and evidential burden of wrongful disclosure rests with the defendant.	Require owner's consent for disclosure to some of them e.g. ABS, ACMA, NCC, PC, FOI Agency, Statistician, RBA, AEMO, LCA, LSCBB, prescribed international climate body, professional disciplinary bodies, and only State Authorities whose powers mirror those permitted.

Document	Page, Article	Issue	Remedy
Climate Change Authority Bill			
	P 7 s12	Principles specify economic efficiency of the Bills. This should be broadened to measure the economic impact on the whole economy. The Authority should also take into account all other Federal and State schemes and whether they have been disbanded.	As there are public submission provisions they should take advice on this aspect of the economy.
	P 29 s 29	Corporate Plan to be made public	

Document	Page, Article	Issue	Remedy
Unit Shortfall Charges Bill			
	P 3,4 s8	Issue charges floor – quite flexible arrangements , see commentary 1.13, 1.16, but unlikely to be less than $15, $16, $17.05	All clauses allowing for a higher floor charge to be deleted. CSR does not support a floor charge
Excise Bill	P8 s9(4)(a)	It is not clear the relationship between the vintage and the financial year. One assumes they are the same.	Clarify that charges all apply to the relevant vintage, not financial year.

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