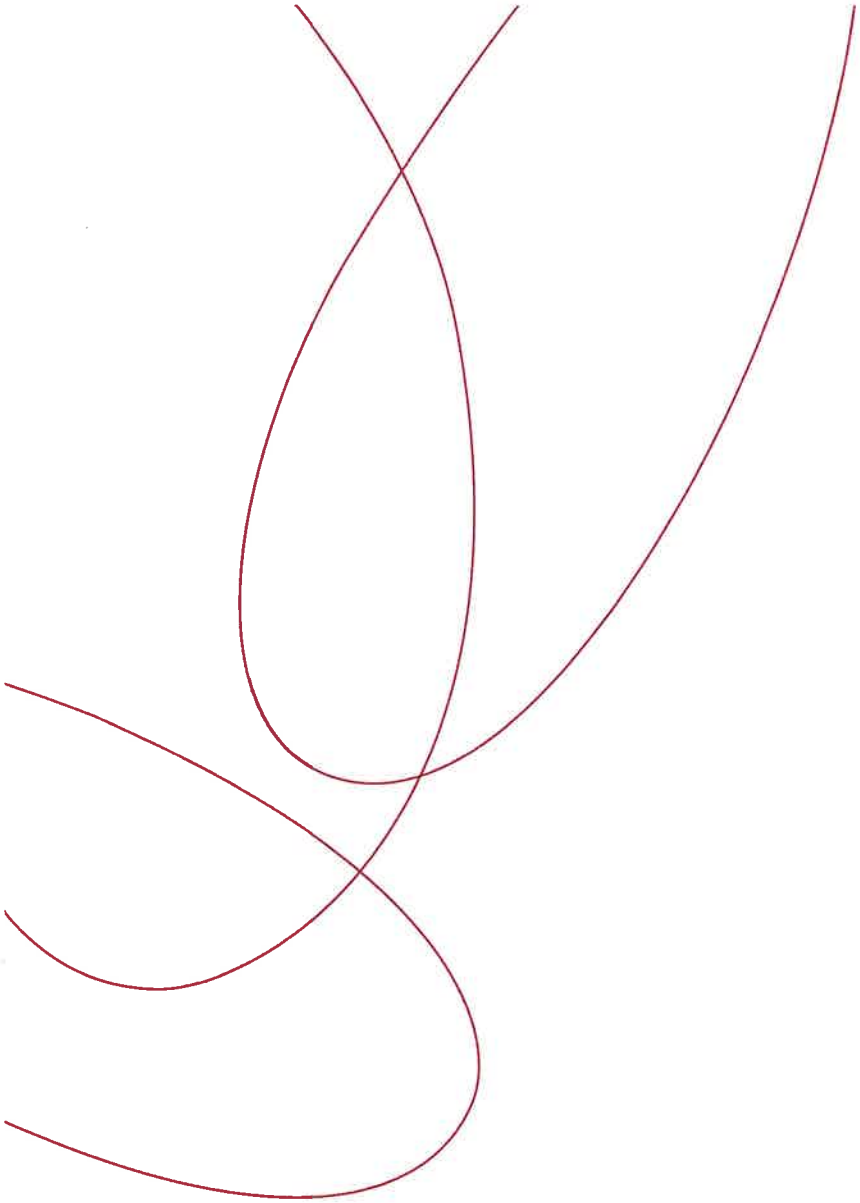

woodside

# Submission to Senate Select Committee Inquiry on Climate Policy

## 8 April 2009

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# 1 Introduction

Woodside welcomes the opportunity to make a submission to the Senate Select Committee Inquiry on Climate Policy.

Australia's liquefied natural gas (LNG) industry is a key part of the global solution to climate change. LNG is a unique source of energy; more emissions efficient than all other fossil fuels and able to contribute directly to the global reduction of greenhouse gas emissions.

For every tonne of carbon dioxide emitted in the production of LNG in Australia, at least four tonnes of carbon dioxide emissions in customer countries are avoided wherever LNG is used to displace coal-fired power generation. This is even greater in China where the impact of displacing coal with LNG for power generation ranges between 5.5 and 9.5 tonnes.[1]

Global energy demand is growing rapidly, driven by emerging economies like China. Forecast growth in Chinese energy demand[2] will require significant importation of natural gas, fuel oil and coal. Australia has the opportunity to help China and other Asian markets ensure the utilisation of natural gas is maximised within the energy mix. This represents an important commercial opportunity for Australian LNG, from which the global emissions footprint and the Australian economy stand to benefit.

Woodside acknowledges the Australian Government is challenged with delivering outcomes for the economy and the global environment. However, LNG provides the opportunity to succeed on both accounts.

Woodside also acknowledges the Government's intention to implement a cap and trade emissions trading scheme. Woodside supports passage of the legislation to implement such a scheme provided it is:

- a genuinely effective global response to climate change;
- economically responsible;
- in Australia's long-term interests; and
- not disadvantageous to Australia's trade exposed LNG industry.

As currently proposed, the Australian Government's Carbon Pollution Reduction Scheme (CPRS) fails to meet these objectives. The CPRS will increase the costs and risks of developing LNG projects in Australia by imposing costs and regulatory risks that overseas competitors are unlikely to face in the near term, placing Australia at a distinct disadvantage.

The most immediate and significant impact of increasing the costs and risks of developing LNG in Australia is that it will threaten the industry's competitiveness, particularly in these difficult economic times. This will invariably lead to a loss of industry investment for no environmental gain, costing Australian jobs and potentially increasing global emissions.

Support for LNG in an emissions trading environment is not a matter of assisting the industry to transition to low emissions technologies. LNG offers an immediate opportunity to reduce emissions through its use as an energy source, in preference to higher emitting alternatives. Imposing permit costs ahead of other LNG producing countries will harm Australian LNG which already faces intense international competition in developing LNG projects. The limited and declining assistance proposed under the CPRS for eligible emissions intensive trade exposed (EITE) industries fails to secure the ongoing competitiveness of Australian LNG. It also fails to recognise that the exposure of Australian LNG does not decline gradually year on year; rather it

[1] CSIRO: *Lifecycle Emissions and Energy Analysis* 1996 and Worley Parsons: *Greenhouse Gas Emissions Study of Australian LNG*

[2] *IEA World Energy Outlook*, 2006: According to International Energy Agency forecasts China is set to surpass the United States as the world's largest energy consumer by 2030, comprising 20% of global energy demand.

is linked to Australia's LNG competitor's adopting similar carbon imposts. Full permit allocation should be provided until relevant governments negotiate the transition to a world in which emissions from LNG are comparably treated and in a manner that is not disadvantaged, relative to coal.

Prior to the 2007 federal election, the Prime Minister as then Opposition Leader said:

> *"In taking the lead before an effective international agreement is in place, it is also vitally important that a domestic scheme does not undermine Australia's competitiveness and provides mechanisms to ensure that Australian operations of energy-intensive trade-exposed firms are not disadvantaged."*[3]

In the interest of developing an effective Australian response to climate change this submission focuses on elements of the CPRS and proposes alternatives so the competitiveness of Australian LNG is not undermined, the Australian economy is not disadvantaged and global greenhouse emissions are reduced.

Further comment on the details of the exposure draft CPRS legislation and suggested amendments are contained in ***Appendix 1***.

# 2 About Woodside

Woodside Petroleum Ltd is an Australian leader in oil and gas exploration, development and production. Woodside seeks to maintain this position through the responsible delivery of outstanding economic performance, environmental excellence and social contribution.

Woodside has a history spanning more than 50 years of developing and operating ambitious, large-scale oil and gas projects.

The company was formed in 1954, with the establishment of Woodside (Lakes Entrance) Oil Co NL, with the aim of exploring for oil in southern Australia.

In 1963 Woodside was awarded exploration rights over more than 367,000 square kilometres off north-western Australia in an area known as the North West Shelf. In the early 1970s Woodside's story changed forever with a string of discoveries of major, world-class gas reservoirs.

Based in Perth, Western Australia, Woodside's business extends over five continents including Australia and North America.

In 55 years Woodside has grown from a pioneer oil and gas explorer to Australia's largest independent producer of oil and gas and a major producer of LNG.

Woodside's LNG development portfolio is entirely Australian. Woodside operates Australia's largest resources project, the North West Shelf Venture in Western Australia, which produces about 40% of Australia's oil and gas and has the capacity to export more than 16 million tonnes a year of LNG.

In 2010, Woodside will complete construction of the A$12 billion Pluto LNG Project near Karratha. The proposed Sunrise (Timor Sea) LNG Development and Browse (offshore Kimberley) LNG Development provide significant opportunities for further investment and growth.

[3] Federal Labor Leader Kevin Rudd MP: *An Action Agenda for Climate Change*, Annual Fraser Lecture, Belconnen Labor Club, 30 May 2007

Woodside's vision is to be a world-class LNG leader. With proven and probable reserves to production ratio of 22 years at 2008 production rates, Woodside is able to help meet growing global demand for clean energy.

# 3 The impact of a carbon cost on Australian LNG

The Australian Petroleum Production & Exploration Association (APPEA) recently described the broad implications of the CPRS on the LNG sector as follows:

> *"While the cost impact of the CPRS on the LNG sector is likely to be less than was originally proposed by the Government, it is significant. We do not suggest that this cost will stop all LNG projects from going forward – decisions to proceed are based on a variety of factors – it is the case that any additional cost burden that is not borne by our competitors only makes it more difficult for these multi-billion dollar projects, that have such a major role to play in reducing global emissions, to proceed."*[4]

Following the release of the CPRS Green Paper, APPEA commissioned independent economic analysis of the impact on Australia's LNG growth potential of a domestic emissions trading scheme, operating in the absence of a broad global scheme.[5] The work found:

> "*where Australia unilaterally commits to a reduction in greenhouse gas emissions of 20 per cent on 2000 levels by 2020 (on the way to a reduction of 60 per cent by 2050), the impact on LNG is severe, with output in the industry falling by more than 37 per cent in 2020 and more than 54 per cent in 2030 compared to what it otherwise would have done. In a scenario where emissions in 2020 are the same as those in 2000 (on the way to a reduction of 60 per cent by 2050), LNG output falls by 16 per cent in 2020 and more than 34 per cent compared to what it otherwise would have done."*[6]

Further independent modelling undertaken for the Senate Select Committee on Fuel and Energy provides peer review of the Commonwealth Treasury's modelling of the economic impacts of reducing emissions. This work indicates that even with a 60% level of permit allocation:

> "*output of the Australian LNG industry would still be between 16 and 37% below the reference case level in 2020 and between 39 and 54% down on what it would otherwise be by 2030*".[7]

Final investment decisions for several new Australian LNG projects are anticipated in the next five years, followed by production three to five years later and pay-back in the range of seven to ten years after that. By the time production from these projects is expected to come on stream (in 2015-2020) Treasury modelling has predicted carbon prices in the range of A$20-$50 (in 2010 terms) per tonne of carbon dioxide equivalent. The uncertainty of the carbon price combined with the level and continuity of EITE assistance post 2020 pose significant risks for the expansion of Australia's LNG industry – risks that do not currently exist in competitor countries such as Russia, Malaysia, Indonesia, Qatar and Egypt.

The LNG industry is part of Australia's low emission energy exports. If growth in Australia's LNG industry is constrained, potential exports of Australian natural gas will be replaced by LNG from other countries and, worse still, higher-emitting fossil fuels such as coal and fuel oil.

[4] Belinda Robinson, CEO APPEA: *Address to National Press Club – Natural Gas A Strategic Natural Asset*, 25 March 2009

[5] *The Concept Economics Report, Estimated Impacts of the Proposed Domestic Emissions Trading Scheme on the Oil And Gas Industry*, 23 September 2008

[6] *Review of the Carbon Pollution Reduction Scheme White Paper, APPEA Comments* February 2009

[7] Dr Brian Fisher, Concept Economics: *A Peer Review of the Treasury Modelling of the Economic Impacts of Reducing Emissions, prepared for Senate Select Committee on Fuel and Energy*, January 30 2009

## 3.1 Capacity to pay for a carbon cost

Despite some suggestions to the contrary, LNG projects cannot absorb the expected cost of emissions permits, nor deal with uncertainty in permit price. LNG projects have long gestation and pay-back periods, require substantial up-front investment and need to be supported by long-term supply contracts with major overseas customers, usually exceeding 15 to 20 years. Australian LNG is a price-taker in the global LNG market – imposing additional costs directly impacts competitiveness.

The restricted capacity of LNG projects to pay additional costs is further exacerbated by the high cost of Australian developments relative to international competitors. Australian greenfield developments represent some of the most expensive LNG projects in the world due to the physical characteristics of the resources and their location. Placing additional costs on new projects will serve only to deter investment in Australia's underdeveloped natural gas resources. Put simply, the CPRS increases the likelihood of the international oil and gas industry diverting investment to competitor projects overseas.

Woodside is aware that the Senate Economics Committee in its inquiry into the CPRS exposure draft legislation has explored capacity to pay based on share price and profit statements. Share price presents a perception of a company's value by the market, based on its assets and a range of other market factors. Of itself, it does not signal that a company can or cannot absorb major new cost imposts. Annual profit results reflect past activity which is not necessarily a predictor of current or future financial position. A reference to Woodside's share price or profit results alone does not reflect that Woodside is reinvesting a significant portion of its recent profits back into developments in Australia – such as in the A$12 billion Pluto LNG Development. Woodside's capacity to make an even larger investment in the Browse Basin, an already challenging project, is further inhibited by the costs and uncertainties of the CPRS.

## 3.2 Protection of trade exposed industries

The Australian Industry Greenhouse Network (AIGN) recently highlighted the inability of trade exposed industries (like LNG) to pass on new costs to customers, together with the relationship between EITE products and householders in the context of the CPRS:

> *"Export and import competing industry has, by definition, limited ability to pass-through increased costs associated with an emissions price, because the prices of their products are determined in international markets. This means that households do not pay increased prices for those products, and have no claim on the emissions permits, or revenue from sale of those permits, associated with those products."*[8]

Woodside understands the Government has articulated concern that increasing the allocation of free permits to EITE industries will increase the burden on households and the non-trade exposed sector.

Woodside refers the Committee to AIGN's analysis which indicates that capacity exists within the CPRS to properly offset trade disadvantage:

> *"...the White Paper provides a budget for just four years that purports to deliver the promise of "returning every cent to the community." However, over the period 2010 to 2020, AIGN estimates that, at a starting price of $25/t escalating at 7% per annum and incorporating the already generous allocation of revenues to households, the whereabouts of permits to the value of at least $25 billion are unaccounted for – or more correctly retained by the Government in Consolidated Revenue for an unspecified purpose.*

[8] AIGN: *Burden Shifting and Trade Exposed Industry*, 1 April 2009

> *On these AIGN estimates, the number of spare permits that could be allocated to TEIs to adequately offset the competitive disadvantage imposed by the CPRS ranges from 70 to 120 million per annum from 2013 through to 2020, without disturbing the existing compensation to households.*
>
> *In summary there are more permits available to do the job of offsetting trade disadvantage properly and shielding low income earners from the increased costs of living induced by the CPRS."*[9]

Furthermore, Australia's permit prices are expected to converge to the international price of carbon emissions. Allocating 100% free permits to Australia's trade exposed industries until competitor countries impose similar costs is unlikely to have any measurable effect on the price householders will incur through the consumption of goods and services.

Woodside urges the Committee to recommend that trade exposed industries be shielded from the impact of the emissions trading scheme by way of full permit allocation, until similar costs are imposed on competitors overseas. This would align the Australian scheme with other schemes implemented in like markets such as the European scheme. The European position is clear; in issuing permits the scheme takes into account the ability to pass on the cost, industry exposure to international competition and consequent risk of carbon leakage. The European scheme affords protection to those industries most at risk and in relation to LNG, additional steps have been taken to assure competitiveness.[10]

Woodside recognises that activities presently accounting for more than half of Woodside's revenue (crude oil, condensate and pipeline gas) will be fully exposed to the scheme.

# 4 Act now or delay?

Woodside agrees with the Australian Government that climate change is a global problem requiring a global solution. It is in this context that Woodside remains focused on advocating that Australian LNG projects should face no net cost increase as a result of a carbon impost, until overseas competitors face similar costs.

Woodside does not advocate delaying the implementation of a carbon reduction scheme for the sake of it, irrespective of the current global financial crisis. To the contrary, Woodside is concerned that the uncertainties created by the scheme design be resolved without detriment to Australia's natural gas exports.

Woodside acknowledges the Government's intention to implement a cap and trade emissions trading scheme. Woodside supports passage of the legislation to implement such a scheme, subject to amendment to fully protect trade exposed industries, and specifically LNG.

## 4.1 Amending the exposure draft CPRS legislation to include EITE provisions in the Act

The EITE regime has been a significant component of CPRS policy to date and industries require certainty around the program rules and requirements. In particular, the defined activities and rates of assistance (including the rate of decline) need to be clear now so that commercial decisions can be made with confidence going forward. The level of certainty is reduced when key details are shifted from an Act to Regulations (and then possibly residing only in a program).

The key attributes of the CPRS as they relate to EITE, including definition of 'trade exposed' have not been included in the Australian Government's exposure draft legislation. Woodside

[9] AIGN: *Burden Shifting and Trade Exposed Industry*, 1 April 2009

[10] There is currently one facility covered under the European scheme; the Snohvit facility in Norway. To accommodate the impact on competitiveness from an increased cost of carbon, the Norwegian Government provided Snohvit with accelerated straight line depreciation and built into the scheme a suite of future protections.

therefore submits that the framework for the EITE assistance program should be included in the Act rather than being deferred to the Regulations. The need for this change is heightened by the fact that draft Regulations will not be released by the Australian Government until June 2009, at the earliest, providing very little time for entities to understand and comment on the program rules and requirements.

Woodside has substantial concerns around the proposed percentage allocation of free EITE permits. The Government's draft legislation and the policy debate have consistently reflected the Government's intention to drive and support a reduction in global emissions. LNG is one of the key fuel sources to achieve this aim and as such, maximum support should be given to the LNG industry. In stark contrast to this, at the 60% level of assistance it is likely that the Browse LNG Development[11] would receive less than 30% of its required permits for free. This result comes from the application of an historic emissions intensity average, combined with the annual permit allocation decay rate of 1.3%, as suggested in the Government's guidance paper for assessing EITE activities[12].

Recognising that differences in reservoir $CO_2$ account for only a small proportion of the overwhelmingly positive lifecycle benefit of greater utilisation of natural gas over other fossil fuels, it would be anomalous for the CPRS to disproportionately penalise future LNG developments as a consequence of variations in reservoir $CO_2$. This anomaly arises in the proposed regime as a result of the application of an historic emissions intensity average that is dominated by production from the North West Shelf Venture fields, which arguably have among the lowest reservoir $CO_2$ content of Australia's known gas reserves.

An approach could be to apply an administrative allocation of permits to each LNG producer in account of reservoir $CO_2$ emissions, in addition to applying an historic allocation emissions intensity average as part of the allocative baseline formula.

Of further concern, the Government's current approach to define the 'activities' of trade exposed industries, combined with the annual permit allocation decay rate of 1.3% has the effect of diluting the level of assistance to EITE industries. The key point to consider is that 'products' are trade exposed, not a selected subset of the activities involved in production. It would seem logical to equate the allocation of permits with the full permit liability of trade exposed products.

Woodside submits that the exposure draft CPRS legislation should be amended to:

- enshrine the treatment of EITE industries and the assistance program in the Act as opposed to expressing in Regulations;
- include in the Act 100% permit allocation to shield Australia's natural gas exports from the additional cost impacts that would otherwise be imposed by the CPRS until competitor countries impose similar imposts;
- insert an administrative allocation of permits to account for variations in reservoir $CO_2$; and
- replace the 1.3% annual reduction in permit allocations to EITE industries with removal of assistance in full when competitor countries impose similar carbon constraints on each trade exposed product.

## 4.2 Amending the exposure draft CPRS legislation to streamline regulation of greenhouse gas emissions

Once the emissions trading market mechanism under the Commonwealth CPRS is operating, it seems logical to conclude that State and locally imposed emissions reduction project approval conditions will have no further justification. Such conditions limit choices properly made by the project proponents to respond to the markets created by the emissions trading scheme; they pose significant risk of arbitrarily burdening projects with unnecessarily high costs, are likely to

[11] Woodside has key terms agreements with customers for supply from the Browse LNG Development , commencing 2015

[12] Australian Government: *Guidance Paper: Assessment of activities for the purposes of the emissions-intensive trade-exposed assistance program*, February 2009

duplicate emissions trading scheme obligations and offer little prospect of net environmental or economic benefits either to the developer or the community.

Woodside is concerned about the potential for the LNG industry to be subjected to duplicate jurisdictional exposure to greenhouse gas emissions regulation. Consequently, Woodside looks to the Commonwealth to signal an intent to actively engage with State and Territory Governments (be it through the Council of Australian Governments or other processes) to ensure industry is not unnecessarily exposed to emission reduction obligations.

The Western Australian Government presently imposes licence conditions on large-scale investments to reduce greenhouse gas emissions. For example as a condition of environmental approval for the A$12 billion Pluto LNG Development, Woodside is required to offset greenhouse gas emissions from the Pluto reservoir for the life of the project. Woodside's intention to satisfy this condition is with the expectation that it would be harmonised with any future national emissions reduction requirements.

The exposure draft CPRS legislation claims not to exclude or limit the operation of a law of the State or Territory and no detail is provided around what laws are viewed as capable of operating concurrently. State and Territory governments imposing conditions that do not maintain access to lowest cost abatement solutions would undermine the efficiency of the CPRS.

Woodside submits that the exposure draft CPRS legislation should be amended to:

- provide a link to Commonwealth, State and Territory laws;
- recognise offset activities undertaken under Commonwealth, State and Territory laws;
- require obligations imposed under Commonwealth, State and Territory laws to be consistent with lowest cost abatement outcomes; and
- recognise CCS activities undertaken under Commonwealth, State and Territory laws.

## 4.3 Amending the exposure draft CPRS legislation to adequately reflect liability under the scheme

Woodside expects that it will shoulder an equitable share of the burden in the task of reducing the emissions of its projects. Woodside is concerned that in the absence of clear legislative guidance, inequity will arise in unincorporated joint venture arrangements with respect to permit liability under the CPRS.

The currently proposed regime establishes different scenarios for incorporated joint ventures that have a separate, single operating entity which would be the liable entity, reflecting shared liability across the participants and unincorporated joint ventures which have an operator that is one of the venture participants, but that, under the current drafting, would not be able to act as agent for a joint venture.

The definitions and concepts around 'liable entity' and 'person' result in the operator of an unincorporated joint venture taking sole responsibility for the permit liability attached to the joint venture. This does not reflect the 'ownership' of the emissions embedded in the products or associated with their production. This produces a distorted outcome when the joint venture participants own the products and profit from their sale but have no statutory liability for the product emissions.

The only option for genuine joint venture sharing of liability among joint venture participants under the proposed regime is created by defaulting on nominating a party to accept liability. This triggers default and a penalty is then imposed equally across all joint venture participants.

APPEA has already made submissions on this issue and the requirements for a financial services licence to the Senate Economics Committee Inquiry into the exposure draft CPRS legislation. Woodside is supportive of APPEA's position on these matters.

In concurrence with submissions already presented to the Parliament by APPEA, Woodside submits that the exposure draft CPRS legislation should be amended to:

- ensure that the definitions of, and concepts underpinning, 'liable entities' and 'person' allow more than one party to be listed as the liable entity; and
- include an indemnity regime whereby operators are the liable entity as agent for the unincorporated joint venture, and that all costs incurred with that liability are apportioned to the joint venture parties on the basis of their percentage stake in the joint venture.

Further comment on the details of the exposure draft CPRS legislation and suggested amendments are contained in ***Appendix 1***.

### 4.4 Extension of the CPRS to Australia's Exclusive Economic Zone (EEZ) – implications for Greater Sunrise

The draft legislation seeks to extend the CPRS to the exclusive economic zone (EEZ) and continental shelf. It is unclear whether the Australian Government intends to apply the CPRS to areas such as the Greater Sunrise gas fields. This raises fundamental jurisdiction issues as the Greater Sunrise gas fields are located in an area that is subject to international treaties between Australia and Timor-Leste. The effect of this is that both the Australian and Timor-Leste Governments must agree on the development of the Greater Sunrise gas fields for development to proceed.

If applied to the Greater Sunrise gas fields, the CPRS would impact project economics and have a significant value eroding impact on the Timor-Leste Government's upstream revenue interests.

The implication of the CPRS for Greater Sunrise production is a matter that should be considered in light of the bilateral dialogue between Australia and Timor-Leste. As there are a number of matters that must be resolved if a Greater Sunrise LNG project is to proceed, Woodside urges the Government to clarify, as a matter of urgency, how it intends to resolve this issue.

## 5 Conclusion

The world's emissions need to be reduced in the most cost-effective way, irrespective of where the reduction takes place. Over the next decade natural gas offers the most immediate opportunity for the transition to a lower emissions global economy. As recently documented by ResourcesLaw International:

> *"LNG is the only energy export, other than nuclear fuel, that is available today and can both reduce the rate of growth of global emissions and alleviate the energy concerns of importing countries, by providing them with diversification of energy supply.*
>
> *LNG does not require new technology – it is available now – and it has clear and well-established pricing mechanisms in place."*[13]

Further, the LNG industry brings with it progressive technological skills, including those needed to support CCS. Many of the challenges facing clean coal technology will be advanced by the knowledge and skills available through the LNG industry where its growth is facilitated rather than impeded

Significant gas reserves are located offshore Australia in deep water, remote from markets. LNG provides the pathway to commercialising these resources, the value of which is otherwise

[13] ResourcesLaw International: *LNG: The Key Fuel in Progressing to a Sustainable Energy Future*, 2009

unable to be realised. It is on the back of LNG projects, particularly in the resource-based economy of Western Australia, that long-term domestic gas supplies and the transition to a lower emissions economy can be secured.

Reducing incentives for companies to invest in industries like LNG, that deliver high government and community returns, is unlikely to be conducive to an efficient economy, especially as these companies are usually global and the investment can be easily lost to Australia.

Failing to shield LNG from the cost of the CPRS – through full permit allocation or other means – until competitor countries impose similar imposts, suggests perversely that the design of the domestic scheme takes precedent over the reduction of global emissions. The Australian LNG industry and the Australian community should question the logic of such action.

As recently documented by APPEA:

> *"We are one of the very few countries that is finding substantially more than it is producing...Despite these massive resources, Australia still only has 2 LNG projects – the North West Shelf operated by Woodside, and Darwin LNG operated by ConocoPhillips. Ben Hollins, Head of Wood Mackenzie's European Gas and Power Consulting practice, has stated that Australia is "...underweight in the global LNG business relative to where it ought to be ..."*
>
> *Likewise, only 9 per cent of Australia's power is generated by natural gas, with NSW and Victoria under 2 per cent. The OECD as a whole and major economies such as the UK and the US have far higher penetration, at 23 percent, 36 percent and 20 per cent respectively.*
>
> *We clearly have a way to go.*
>
> *We do, however, have $200 billion worth of gas projects on the drawing boards. The challenge is to shift these projects off the drawing boards and into construction.*
>
> *Add to those projects the potential for domestic natural gas projects and we have a game-changing shift in Australia's resource sector.*
>
> *Tripling Australia's LNG capacity to 60 – 80 million tonnes per year, having 70 per cent of all new electricity being generated by natural gas and doubling the amount of natural gas used as a feedstock for industrial processes are not overly ambitious possibilities. If achieved they will lead to:*
>
> - *180 million tonnes of global greenhouse gas emissions avoided each year where natural gas is substituted for coal in electricity generation. This is the equivalent of taking more than 40 million cars off the road – more than three times Australia's passenger vehicle fleet – or, using a much less attractive analogy, closing down Victoria and Tasmania;*
> - *The creation of more than 50,000 jobs – around 40,000 in construction and 10,000 permanent positions;*
> - *More than $10 billion each year in taxation revenue. It is worth noting here that the average 2 train LNG project delivers to Australia in net present value, $40 billion in tax revenue over 25 years.*
>
> *While our resource base is more than capable of realising this ambition, it won't happen without commitment – by the industry to invest and governments to do all they can to encourage, and remove impediments to, that investment."*[14]

[14] ibid

On the basis of matters outlined in this submission Woodside urges deeper consideration of climate change solutions that satisfy the imperative of reducing greenhouse gas emissions by enabling growth in the Australian LNG industry, rather than imposing more costs and potentially losing Australian jobs for no environmental gain.

# 6 Summary of recommendations

In addition to comments contained in ***Appendix 1***, it is Woodside's view that the CPRS should be amended to:

- enshrine the treatment of EITE industries and the assistance program in the Act as opposed to expressing in Regulations;
- include in the Act 100% permit allocation to shield Australia's natural gas exports from the additional cost impacts that would otherwise be imposed by the CPRS until competitor countries impose similar imposts;
- insert an administrative allocation of permits to account for variations in reservoir $CO_2$;
- replace the 1.3% annual reduction in permit allocations to EITE industries with removal of assistance in full when competitor countries impose similar carbon constraints on each trade exposed product;
- provide a link to Commonwealth, State and Territory laws;
- recognise offset activities undertaken under Commonwealth, State and Territory laws;
- require obligations imposed under Commonwealth, State and Territory laws to be consistent with lowest cost abatement outcome;
- recognise CCS activities undertaken under Commonwealth, State and Territory laws;
- ensure that the definitions of, and concepts underpinning, 'liable entities' and 'person' allow more than one party to be listed as the liable entity; and
- include an indemnity regime whereby operators are the liable entity as agent for the unincorporated joint venture, and that all costs incurred with that liability are apportioned to the joint venture parties on the basis of their percentage stake in the joint venture.

# 7 Contacts

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**Appendix 1 – Woodside's Detailed Comments on the Australian Government's Exposure Draft Carbon Pollution Reduction Scheme (CPRS) Legislation**

**Submission to Senate Select Committee**
**Inquiry on Climate Policy**

**8 April 2009**

| Carbon Pollution Reduction Scheme Bill 2009 | | | |
|---|---|---|---|
| **Part/s** | **Division/s** | **Clause/s** | **Comment** |
| 1 | | 5 | The definitions of and concepts underpinning 'liable entities' and 'person' should be amended to allow more than one party to be listed as the liable entity. The current regime creates an inequality between incorporated joint ventures (that have a separate, single operating entity which would be the liable entity, reflecting shared liability across the participants) and unincorporated joint ventures (which have an operator that is one of the venture participants, but that, under the current drafting, would not be able to act as agent for the joint venture).<br><br>The definitions and concepts result in the operator of an unincorporated joint venture taking sole responsibility for the permit liability attached to the joint venture. This does not reflect the 'ownership' of the emissions embedded in the products or associated with their production. This produces a distorted outcome when the joint venture participants own the products and profit from their sale.<br><br>If amendments to the definitions and supporting concepts are not workable, we suggest that the Bill should be amended to include an indemnity regime whereby operators are the liable entity as agent for the unincorporated joint venture and that all costs incurred with that liability are apportioned to the joint venture parties on the basis of their percentage stake in the joint venture. |
| 1 | | 10-12 | We understand that the combination of these provisions is intended to exclude export emissions (i.e. the emissions and fuel consumption associated with vessels exporting cargo to international destinations) from the operation of the CPRS regime. If this is the policy intent, we submit that clearer wording is required in the Bill to achieve the exclusion.<br><br>If our understanding is incorrect and export emissions are intended to be covered by the regime, we submit that such coverage is contradictory to the policy intent expressed to date and the object of taking actions towards meeting Australia's greenhouse gas emissions reduction targets. |
| 2 | | 13-15 | Criteria for consideration in setting caps and gateways are not defined. These matters are left to Ministerial discretion. The criteria should be defined. In particular, the Bill should define what the grounds or tests will be for:<br>1. 'comprehensive global action'<br>2. 'major economies'<br>3. 'voluntary action'<br><br>Our concern around the lack of certainty in these criteria and this process is compounded by the fact that these decisions are not reviewable decisions (i.e. no Administrative Appeals Tribunal appeal). The combination of these issues makes it difficult to have confidence in the process as it is not a transparent decision making process. |
| 3 | 4 and 5 | | The Obligation Transfer Number (OTN) regime poses problems for industries that utilise long term contracts. Obtaining an OTN is mandatory for a limited number of entities. Entities outside the mandatory regime may apply for an OTN but will not be compelled to do so. This will lead to an inability to pass through emission permit costs in some situations; even through the goods containing the imbedded greenhouse gas will be passed on. This will not facilitate one of the stated objects of the regime, being to allocate permit responsibility to the person who is emitting the greenhouse gas. |

| | | | |
|---|---|---|---|
| | | | We suggest that:<br>1. The OTN regime be widened to include more entities in the mandatory requirements; or<br>2. An additional regime is included in the Bill to allow existing contracts to be reopened where there is a greenhouse gas issue to be dealt with. The need for this change is supported further by the fact that, for existing contracts, the OTN must be quoted before the CPRS commencement date. Where entities are locked in to long term contracts, they are potentially unable to utilise the OTN regime to pass through costs to the appropriate entity. We submit that this requirement needs to be coupled with a statutory process for re-opening contracts that do not include a re-open regime.<br>These issues are coupled with concerns around the liable entity concept and the lack of a statutory cost pass through regime. These matters are dealt with separately in this submission. |
| 3 | 5 | 68(2) | The requirement of an eligible upstream fuel supplier or supplier of synthetic greenhouse gases to confirm that a recipient has a valid OTN by reference to the OTN Register places an unnecessary regulatory burden on the supplier. Clause 68(2) should be deleted. |
| 3 | 6 | 69-81 | Liability transfer certificates can not be transferred. If entities, corporate structures or contracting regimes are changed, any issued certificates will need to be surrendered and the relevant entities will need to submit fresh applications. This creates an additional and unnecessary administrative burden, both for liable entities and the Authority.<br><br>We propose that a new clause should be added to the Bill to allow transfers of a certificate, based on the same criteria that the Authority would consider when issuing a certificate. |
| 6 | 3 | 131 | The unit shortfall provisions allow the Authority to determine that an entity's self assessment is incorrect and to substitute its own assessment (for which the entity is then liable in terms of permits). The draft Bill does not set out criteria that the Authority must consider in forming its belief; however clause 346 does include clause 131 decisions in the list of reviewable decisions.<br><br>There are several significant implications of receiving an assessment for a unit shortfall (e.g. implication of fraudulent behaviour, requirement to pay a penalty, make good obligations, shortfall publicly disclosed in the Information Database). To provide a transparent system with clear grounds for decision making and appeals, the criteria to be considered by the Authority should be included in the Bill. |
| 6 | 4 | 138 | Part of the liability transfer certificate process includes an obligation for the parent company to guarantee administrative and late penalties of the subsidiary taking on the liability. This appears to be an additional, unnecessary burden on liable entities as the Authority must approve a liability transfer in any event. Any concerns around the financial integrity of the liable entity can be addressed by the Authority when approving or disapproving an application for a liability transfer certificate. |
| 8 | 1 – 3 | 165–173 | The key attributes of the CPRS as they relate to emissions-intensive trade-exposed (EITE) assistance have not been included in the draft Bill. The EITE regime has been a significant component of the CPRS policy to date and industries require certainty around the program rules and requirements. In particular, the defined inclusions and rates of assistance (including the rate of decline) need to be clear now so that commercial decisions can be made with confidence going forward.<br><br>The level of certainty provided is reduced when key details are shifted from the Act to the Regulations (and then possibly residing only in a |

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| | | | program). The framework for the assistance program should be included in the Bill rather than being deferred to the Regulations. The need for this change to the Bill is heightened by the fact that draft Regulations will not be available until June 2009 at earliest, providing very little time for entities to understand and comment on the program rules and requirements. |
| 8 | 1-3 | 165–173 | Woodside has additional concerns around the proposed percentage allocation of free permits. The draft Bill and the policy debates have consistently reflected the Government's intention to drive and support a reduction in global emissions. LNG is one of the key fuel sources required to achieve those aims. As such, maximum support should be given to the LNG industry in terms of:<br>1. Full allocation of free permits under the EITE regime; and<br>2. Inclusion of all aspects of LNG production (i.e. upstream and downstream components in a 'whole of process' approach). Carving out aspects of the LNG process creates an artificial division in entitlements for no apparent environmental gain. A whole of process view needs to be applied to trade exposed products such as LNG, rather than individual activities that take place in the production of LNG. The draft Bill does not reflect the policy expressions around this issue. We submit that the allocation of permits should be aligned to trade exposed products rather than an industry's activities. |
| 8 | 1-3 | 165–173 | Finally, the Bill should include a specific reference that EITE transition arrangements will be maintained for an industry where international competitors do not have equivalent measures. In relation to the LNG industry, this would mean 100% freely allocated permits until international competitors have similar cost impositions. If the Bill is to achieve its' object of supporting an effective global response to climate change, the industries that are part of that response should be fully supported in the transition through to an international carbon pollution reduction regime. |
| 8 | 1 | 165(b) | One of the objects of this Part is to 'reduce the incentives for such an [emissions-intensive trade-exposed] activity to be located in, or relocated to, foreign countries.' In light of the policy discussions around reduction in global emissions and controlling carbon leakage from Australia, this object should be restated as 'remove' rather than 'reduce'. |
| 20 | | 323-325 | Liability has been extended to a wide list of executive officers of bodies corporate. This is a departure from conventional Australian taxation and corporation laws as directors, CEOs, CFOs or secretaries of a corporation will be subject to a civil penalty if they are aware that the corporation will contravene the law, are in a position to influence the corporation's conduct, and fail to take all reasonable steps to prevent it. Extending liability in this way does not appear to further the objects of the Bill and should be reviewed. |
| 24 | | 346 | Decisions that may be subject to merits review by the Administrative Appeals Tribunal are listed in clause 346. The list includes prescribed decisions under the EITE assistance program (item 27). Neither the Bill nor the Commentary explains what type of decisions (if any) this could include. Guidance is required around the potential scope of decisions that could be included in relation to the EITE program. Without such guidance, affected parties do not know what their appeal rights and processes will be. |
| 26 | | 374 | The Authority has a range of miscellaneous functions, including to 'collect, analyse, interpret and disseminate statistical information relating to the operation of the Act…'. There should be at least two criteria applied to the type of information that is widely disseminated:<br>1. Would disclosure of the information (or disclosure of particularised rather than aggregated data) reveal trade secrets or confidential information of the relevant entities?<br>2. Would disclosure of the information (or disclosure of particularised rather than aggregated data) assist in fulfilling any of the objects of |

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| | | | the Act?<br>These criteria should be included in the Bill. |
| 26 | | 376 | The Bill purports not to exclude or limit the operation of a law of the State or Territory that is capable of operating concurrently with the CPRS. No further detail is provided around what laws are viewed as capable of operating concurrently. This creates two issues:<br>1. Given the pre-existence of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth) and several pieces of State legislation that deal with carbon capture and storage (CCS), the lack of detail around concurrent operation creates uncertainty for entities wishing to utilise CCS opportunities as part of their wider greenhouse gas emissions reduction strategy.<br>2. Given the various Commonwealth, State and Territory approval processes that can result in offset conditions, are the CPRS obligations and objects intended to override such regimes? If offsets outside the CPRS are not recognised by the CPRS, the emissions could essentially be counted twice. This would provide a disincentive to for entities to pursue offset opportunities.<br><br>The Bill should be amended to include a regime that:<br>1. Provides a link to Commonwealth, State and Territory laws;<br>2. Recognises offset activities undertaken under Commonwealth, State and Territory laws;<br>3. Require obligations imposed under Commonwealth, State and Territory laws to be consistent with lowest cost abatement outcome; and<br>4. Recognise CCS activities undertaken under Commonwealth, State and Territory laws.<br>Given the potential for the industry to be subjected to duplicate jurisdictional exposure to greenhouse gas emissions regulation, Woodside looks to the Commonwealth to signal an intent to actively engage with State and Territory Governments (be it through the Council of Australian Governments or other processes) to ensure industry is not unnecessarily exposed to multiple emission reduction obligations. |

| Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 | | | |
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| **Schedule** | **Part/s** | **Item/s** | **Comment** |
| 2 | Subdivision 420-D | Sections 420-55, 420-57, 420-60 | The Bill purports to treat EITE free permits and those generated by reforestation differently from a tax perspective.<br><br>For the purpose of Subsection 420-55 (1), permits issued under Part 10 (reforestation) of the Bill are valued at cost. Cost is defined pursuant to Subsection 420-60(1) as the market value immediately after a taxpayer begins to hold the unit. The effect of this is that an amount will be included in a taxpayer's assessable income under 420-45(2) equal to the market value of such permits at the acquisition time, if the permits are still held at the end of the year. This has the potential to cause cash flow issues for an entity as they will effectively be taxed on income they have not earned.<br><br>This issue has been recognised in relation to units issued under the emissions intensive trade exposed program with the insertion of a "no disadvantage rule" under section 420-57, which operates to ensure that the value of such permits on hand at the end of the year is nil. In our view, there should not be any policy reason to differentiate permits issued as a result of carbon sequestration by reforestation from permits issued under the EITE program. To do so could affect an entity's commercial choice as to how they satisfy their obligations under the CPRS with |

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| | | | generation of permits by carbon sequestration by reforestation coming with a cash flow cost.<br><br>To ensure equitable tax treatment of free permits, the Bill should be amended to move wording at 420-57(1)(a) to 420-57(1)(a)(i) and replace "*and*" with "*or*" at the end of the sentence; and insert subsection 420-57(1)(a)(ii) as follows "*it was issued to you in accordance with Part 10 (reforestation) of the Carbon Pollution Reduction Scheme Act 2009*; *and*"<br><br>We also note the Bill does not contain any commentary or provisions relating to the tax treatment of CPRS permits under the following Acts: *Petroleum Resource Rent Tax Assessment Act 1987*, *Excise Act 1901*, *Excise Tariff Act 1921*, *Petroleum Excise (Prices) Act 1987*, and *Offshore Petroleum (Royalty) Act 2006*.<br><br>Consultation with taxpayers and relevant industry bodies should be undertaken with a view to issuing further exposure draft legislation that addresses the application of the CPRS to the abovementioned legislation. |
| 1 | 1 and 2 | | Successful integration and operation of the CPRS requires multiple amendments to be made to numerous other Acts, including the *National Greenhouse and Energy Reporting Act* (NGER Act). This creates a degree of uncertainty for entities as to their obligations, given that the NGER Act forms the basis of obligations in the CPRS regime. |
| | | | The Consequential Amendments Bill does not include repeal of reporting regimes that already exist at the Commonwealth level. We submit that this creates a regulatory and administrative burden for no additional environmental gain and suggest that similar reporting regimes are repealed (e.g. Energy Efficiency Opportunities, Greenhouse Challenge). |

**Australian Climate Change Regulatory Authority Bill 2009**

| Part/s | Division/s | Clause/s | Comment |
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| 3 | | 44 and 48 | These two clauses allow data held by the Authority to be widely shared across the functions of the Authority and also to agencies, bodies or persons outside the Authority. We submit that this is an inappropriate exercise of powers under the CPRS regime and the Australian Climate Change Regulatory Authority Bill. In keeping with the objects of the CPRS Bill, information should only be disclosed if it would assist in fulfilling any of the objects of the CPRS Bill. |

**General Comments**

1. Submissions are due to the Department of Climate Change by 14th April, however many of the key details are left to the Regulations which will not be available until June. It is difficult to make full submissions in the absence of draft Regulations.

2. The regime requires an entity trading in Australian Emission Units to obtain an Australia Financial Services Licence. This appears to be an unnecessary administrative burden, both on the relevant entities and the financial services regulators. Woodside submits that the regime should include an exemption from the licence requirements for entities that are only trading to satisfy permit liabilities for themselves, their subsidiaries or any joint venture operations for which they have accepted reporting and permit liability.

3. The design and function of the Australian Emission Unit auction process was a key matter canvassed in the White Paper yet these details appear to have been omitted from the draft Bills. We submit that the framework should be included in the Bill to provide certainty around the process that all liable entities will obliged to follow.