

14th April 2009

Committee Secretary  
Senate Select Committee on Climate Policy  
Post Office Box 6100  
Parliament House  
CANBERRA ACT 2600  
E mail: climate.sen@aph.gov.au

our ref: CPRS Corr.

**RE: Submission on the Exposure Drafts of legislation to implement the Carbon Pollution Reduction Scheme**

Dear Secretary,

**Introduction**

Wesfarmers, as one of Australia's largest publicly-listed companies, welcomes the opportunity to submit its views on the draft Carbon Pollution Reduction Scheme (CPRS) legislation as part of the parliamentary and public review process. As a whole, the Group and its divisions employ approximately 200,000 people and generate revenues in excess of \$45 billion a year, primarily in Australia.

Wesfarmers' business operations include supermarkets, department stores, home improvement and office supplies; coal mining; energy; insurance; chemicals and fertilisers; and industrial and safety products. The scope and diversity of Wesfarmers' operations means the Group has a strong interest in ensuring the correct balance is achieved between sustained emissions reduction and economic growth through the implementation of what is one of the most significant and far-reaching new regulatory frameworks for business to be introduced in recent years.

Wesfarmers re-iterates its broad support for the CPRS and the development of a market framework that embeds within the economy, clear and transparent incentives for business and the community to reduce reliance on high emission activities and reduce overall carbon emissions over time.

The following submission highlights issues with the draft legislation as it relates to specific operational issues and impacts on Wesfarmers' divisions, which need to be taken into account in the legislation presented to Federal Parliament. It is presented after the formal closing date for submissions to your Committee, as was discussed with your Secretariat, due to the time required to consult within Wesfarmers on these exposure draft Bills.

The significant issues for Wesfarmers Limited in these Bills include:

## **1. Treatment of trade exposed industry**

Wesfarmers maintains its view that until there is a broadly consistent global approach, at least among developed and other large economies, to carbon pricing and constraints, Australian trade exposed and energy intensive industries will require strategic and meaningful support to minimise the impacts from international competitors that are not subject to costs associated with similar carbon reduction schemes. The Government's EITE proposals, in general terms, are workable and our relevant businesses are engaging with the Department on these proposals as necessary. However, the current lack of detail contained within the CPRS legislation on how these support schemes will be designed and implemented remains a concern. As a result, Wesfarmers asks the Committee to withhold consideration of the legislation until the draft regulations which outline the detail of the EITE framework are available for consideration (which we understand will be in May/June).

The impacts of the current EITE proposals on coal mining operations, which Wesfarmers has involvement with through its Wesfarmers Resources Division, is also of concern. Several industry associations, including the Minerals Council of Australia and the Australian Coal Association have raised concerns with the Committee about the exclusion of coal mining from the proposed EITE framework. Wesfarmers will not repeat the details of those submissions at this point, but we believe that coal mining, as a significant contributor to the Australian economy, risks significant impacts through additional costs which, under the current EITE framework, will not be able to be recouped. This carries potential impacts on the capacity of this industry to competitively supply resources and energy domestically and to other countries during what will be a lengthy transition to the development and implementation of new technologies (including "clean coal" technologies).

In addition, those 'captured' coal mines, which provide coal to domestic power generation businesses almost exclusively, warrant, in Wesfarmers view, support for additional costs that under the current arrangements as outlined in the proposed EITE framework cannot generally be passed through under existing long term contractual arrangements. The Australian Coal Association submission reflects Wesfarmers' concerns with the potential impacts of the proposed EITE arrangements on these coal operations.

Also of concern with the EITE proposals is the suggested decay of 1.3% per year in the allocation of permits for EITE industries. While, as stated, Wesfarmers acknowledges and understands the need for clear carbon price signal to support energy efficiency and low carbon technologies, introducing this decay factor in the absence of a coordinated international response to carbon pricing and constraints has the potential to disadvantage the Australian economy for little or no net gain in reducing global carbon emissions.

## **2. Taxation components of the Exposure Draft Bills**

Wesfarmers Limited has reviewed the exposure draft and accompanying explanatory material for the CPRS legislation and, in particular, the Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 as it relates to both the income tax and related tax consequences of the Scheme.

Wesfarmers does not wish to raise any specific issues in regards the legislation as currently drafted. Wesfarmers believes the income tax and GST treatment of the registered emissions units as outlined in the draft legislation are reasonable.

In lieu of any published guidance, Wesfarmers will be directing specific queries to the Department of Climate Change and the Australian Taxation Office seeking clarification regarding the practical implementation of some of the principles outlined in the draft legislation.

## **3. Participation in the CPRS permit auctions**

Wesfarmers, as a liable legal entity under these proposed laws, supports the operation of a free and transparent market in the allocation of CPRS permits. However, it believes that during the initial two years of operation of the CPRS, the capacity to purchase permits at auction should be restricted to liable entities that need to acquit permits against emissions. This would allow the CPRS to be introduced to liable parties gradually and support the development of a viable secondary market for permits.

## **4. Obligation Transfer Notes (OTNs)**

Wesfarmers assessment of the proposed OTN regime as outlined the draft legislation is that, while cumbersome, it should operate reasonably well. Again though some important points will be detailed in the regulations supporting the CPRS legislation - a particular concern is that large users of energy products as a feedstock will be excluded from the OTN provisions. This may result in the inadvertent inclusion of a carbon price in the feedstock although no emissions take place.

## **5. Duties on emission permits and other instruments**

Wesfarmers notes and supports the Federal Government's intent to seek State and Territory Government support for not imposing State duties on the emission permits and other instruments arising from the CPRS legislation. In Wesfarmers view a truly national approach to the issue of reducing Australia's carbon emissions is essential. It urges the Federal Government and Federal Parliament to encourage the other jurisdictions to avoid levying duties on these instruments.

## **6. Pass through of carbon costs in contracts**

Wesfarmers notes the Government's intent to remain silent on the issue of carbon cost pass through in existing commercial contracts. As a diverse company, operating in many facets of Australian economy and community, and a party to numerous contracts as both a consumer and supplier of energy, Wesfarmers is of the view that the legislation should provide for contracts to be "opened up", for the purpose of passing through carbon costs in the domestic economy. Such an outcome would mitigate what would otherwise be a significant amount of effort required at all levels of business to negotiate cost pass throughs. It would also assist in achieving the policy objective of ensuring a carbon price signal was embedded in the purchase of all goods and services.

## **7. Classification of Units as a Financial Product**

In Wesfarmers' view there is a lack of clarity around the effects that the classification of Australian emissions units as "financial products" for the purposes of the Corporations Act will have on companies which are required to surrender those units and who may need to trade in them. The discussion paper that was to have been released by now in relation to this issue is still apparently delayed so it is difficult to comment specifically about our concerns on the issue however in Wesfarmers' view it is preferable that Government issued emission units not be regarded as "financial products" due to the potential regulatory obligations that could apply (in addition to complying with the CPRS and NGER legislation) if such a classification is made. Wesfarmers urges the Committee to reconsider this issue carefully when the Government's intentions are released through the planned discussion paper.

The financial services legislation applies broadly but it is properly aimed at protecting consumers (and ensuring that they are not misled) in their procurement of financial products. In our view, regard should be had in the current context to the fact that entities required to acquire and surrender emissions units will generally be large corporations participating regularly in the CPRS 'industry' and that such entities will be in a sound position to evaluate the nature and value of the units being traded without the need for the financial products and services regimes applying to protect them. In our view misleading and deceptive conduct in any trading of emissions units could be adequately dealt with through the existing provisions of the Trade Practices Act.

## **8. Global Financial Crisis and Timing of the CPRS**

As mentioned above, Wesfarmers takes note of the Government's intended 2010 start date for the CPRS. As other business and industry groups have noted, the broad framework and commitments for its commencement were developed during a period of relatively benign economic conditions which are far different from those Australia is experiencing today. Over the past 12 months, global and Australian economic conditions have significantly deteriorated. The economy and broader market has become increasingly

sensitised to risk and uncertainty as they seek to manage their way through this turbulent period on behalf of their employees, shareholders and other stakeholders.

Certainly a number of businesses, like Wesfarmers, have the flexibility and balance sheet strength to manage the commercial and operational requirements of the new scheme. However, there will be a number of businesses that will find these adjustments difficult to make in a relatively short period of time. Consideration should be given to delaying the commencement of the CPRS for a clearly defined period of time to allow the more severe impacts of the global financial crisis to dissipate and for business confidence and certainty to be restored. Alternatively, the Government may wish to consider exempting specific sectors of the Australian economy which have been impacted more severely by the global downturn. In short, Wesfarmers believes it is imperative to frame the CPRS – and potentially review key elements of its introduction - within the practical context of current conditions.

Wesfarmers trusts these comments are of value to the Committee in their deliberations on the CPRS draft legislation and should you need any further clarification of any point we raise please contact Mark Triffitt, Executive General Manager Corporate Affairs (ph: 0413 876 810; e mail: [mtriffitt@wesfarmers.com.au](mailto:mtriffitt@wesfarmers.com.au)) or Cameron Schuster , Sustainability Manager (ph; 0417 951 540 or 08 9327 4423; e mail [cschuster@wesfarmers.com.au](mailto:cschuster@wesfarmers.com.au)).

Yours sincerely,

Richard Goyder

Managing Director