



Fiona Wild

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Committee Secretary
Senate Standing Committee on Economics
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4th June 2009

Dear Mr Hawkins

Submission to the Senate Standing Committee on Economics Inquiry into the Carbon Pollution Reduction Scheme Bill 2009

Please find attached BP Australia Pty Ltd's (BP) submission to the Senate Standing Committee on Economics Inquiry into the Carbon Pollution Reduction Scheme (CPRS) Bill 2009 (Bill). We have previously provided comment to the Committee in response to its Inquiry into the Exposure Draft of the Legislation to Implement the CPRS. As directed by the Committee Secretary, this submission focuses solely on the changes to the Bill announced by the Prime Minister on 4 May 2009. In the main, we welcome these prudent changes and believe that the CPRS legislation will be more robust as a result.

BP continues to support the case for policy action and certainty around climate change: until energy producers and consumers know and pay the cost of carbon, the uncertainty associated with planning and investing in the transition to a low carbon economy will remain high.

BP supports the use of a cap and trade emissions trading scheme as the key policy instrument to introduce a carbon price and therefore we welcome the introduction of the CPRS. It is, however, essential that this key policy instrument is supplemented by complementary measures to facilitate investment in and deployment of large-scale, low-emission technologies and to address market failures.



As we have stated in our various submissions and testimonies since the release of the Green Paper in September, we believe that the Government has largely 'got it right' with respect to many of the emissions trading design issues. A key exception to this, however, is the process for providing transitional assistance to affected industries via the Emissions Intensive Trade Exposed (EITE) process. We therefore welcome the additional assistance provided to these industries through the Global Recession Buffer.

Our comments on this and other changes to the Bill that affect our business are attached. Please feel free to contact me directly if you would like any further information on these comments, or on any aspects of BP's response to climate change policy development in Australia.

Yours faithfully,
BP Australia Pty Ltd

A handwritten signature in black ink that reads "Fiona Wild".

Dr Fiona Wild

Comments on changes to the CPRS Bill

1. Changes in dates

While we have consistently called for the need for action on climate change, it is also critical that the scheme is well designed. The need for the right design is the more important issue than a specific start date.

A key issue that is still to be resolved is the process for providing transitional assistance to affected industries via the EITE process. Addressing this issue is essential if Australia is to be an 'early mover' without disadvantaging Australian businesses which compete with others who face no such carbon constraint.

A start date of 2011 will allow resolution of the complex EITE process, improving Australia's prospects of getting the right policy both designed and legislated. Getting the right policy in place will also provide Australia with a firm footing to influence negotiations that will ultimately lead to a global response to climate change.

2. Suppliers of fossil fuels

BP welcomes the removal of timing requirements for an OTN holder to quote its OTN to the supplier. This provides the parties with flexibility to contract the terms of supply over long-term supply arrangements.

However, we note the introduction of a 7-day grace period for supplies in circumstances where an OTN is cancelled (sections 51F, 51G) and have some concern that this grace period is too short. While it may be possible to amend supply pricing within 7 days, it does pose an administrative burden on the accounts functions to achieve such change within a short time frame. It may not be administratively possible to effect the necessary changes where a customer's account is large and complex. We would request that the grace period be extended to at least 14 days. Further, we note that the grace period will not apply if the OTN holder has given notice. Again, note that BP would need at least 14 days' notice to effect any change to contract pricing due to OTN cancellation. We would also recommend that the validation provisions set out in section 51E be applicable in the event a supply is made outside the grace period.

In relation to the validation provision in section 51E, it appears that a misuse is automatically validated, whereas a misquotation by honest mistake must be expressly validated, yet it is not clear why this difference exists.

In sections 64A and 64B, the supplier is required to acknowledge the OTN holder's quotation. As per sections 51A(2) and 51B(2), we request that the Act permit this acknowledgement to be expressed in a statement contained in a contract, order acknowledgement, invoice or similar document, whether or not in electronic form.

In relation to section 68(3), BP repeats its concerns expressed in comments made on the Exposure Draft. This section requires the supplier to check the OTN holder's OTN before supply and if the OTN is not on the register, the supplier cannot supply the fuel. This provision is also a civil penalty provision. The liability for quoting a valid OTN must sit with the OTN holder and not the supplier. It is an unfair and unreasonable imposition of liability as well as a further administrative burden on the supplier. Note also that the provision must be reworded so that the supply may occur if the OTN quotation is invalid, only that the supply will be a non-OTN supply.

3. Liability transfer certificates

In relation to the amendments to section 81(1), BP welcomes the acknowledgement that more than one person may have financial control over a facility. However, the amendments do not adequately address the issue of liability transfer where there is more than one person that has financial control over a facility.

Changes made to the Bill explicitly acknowledge that each member of an unincorporated joint venture or partnership will have financial control over a facility if they share equally in the economic benefits from the facility. Yet, the Bill does not permit CPRS liability to be apportioned in accordance with the apportionment of financial control. BP supports a regime that would permit joint venturers to each share in the CPRS liability of a facility. This is particularly relevant in relation to oil and gas developments and facilities. Liability could be apportioned either in accordance with financial control or by agreement. In this regard, we note that such changes have been made to the Consequential Amendments Bill which permits liability to be divided equally among parties to a facility where operational control is shared.

We note that the Government is continuing to work on a satisfactory outcome in relation to carbon cost pass-through issues, and BP supports the efforts towards this. BP's controlling corporation is not a party to any commercial contracts and we may therefore have great difficulty in passing through carbon costs arising from our operations to customers. Accordingly, we would support a mechanism that would permit pass-through and note that a similar regime was implemented with the introduction of the GST.

4. Fixed-price emissions units in 2011-12

In the long term, a market-based system is the best way to deliver emissions reductions at the cheapest price. We acknowledge that price volatility of permits in the short term may warrant a price cap in the initial years of any scheme. However, the successful development of a secondary AEU traded market requires the presence of primary permits with which to build liquidity, provide structure to trading and allow for orderly price discovery. BP therefore would strongly support the earliest possible commencement of auctions for vintages 2012-13 and beyond, preferably with the first auction undertaken in 2010.

5. Emissions-intensive trade-exposed industries

For both our refining and LNG businesses, transitional support is required to avoid competitive disadvantage.

Without significant transitional support, the Australian refining industry will become less viable, and will lose attractiveness as a future investment destination. The refining business is a high-revenue, low-margin activity that competes with imported product that sets the price (import price parity). Any additional costs - carbon or otherwise - cannot be passed on, which reduces profit and long-term viability. In addition, a viable domestic refining industry is needed for fuel supply diversity and energy security.

It is also important that the introduction of the CPRS does not disadvantage LNG relative to our international competitors and to coal, given its role in reducing carbon emissions and as a major source of current and future export revenue for Australia.

We welcome the introduction of the Global Recession Buffer which will provide additional assistance to EITE activities for the first five years of the scheme. This indicates the Government is focussed on ensuring that industries that are put at a disadvantage are adequately protected. However, ahead of completion of the EITE assessment process, it is too early for us to determine exactly how this change will impact on our businesses in Australia.

Additional detail has been provided on the matters that must be considered by the Expert Advisory Committee as part of the five-yearly reviews of the EITE assistance program. While we welcome the clarity that this detail provides, the committee will still have a broad remit to make recommendations as it sees fit. It may be preferable to introduce a mandated 'impacts test' that must be carried out before EITE assistance can be withdrawn from any activity.

BP supports the new information-gathering powers of the Minister in relation to the assessment of activities not currently covered by the EITE program. We suggest the following changes:

In relation to sections 173A(2)(a) and 173A(4), the power to request information must refer specifically to information described in section 173A(1)(c); that is, information that relates to the activity and which is likely to assist the Commonwealth to formulate or vary the EITE policy, rather than any information.

Contrary to the explanation in the Explanatory Memorandum, section 173B does not contemplate a corporation's inability to comply with a request or the significance of the failure to comply. BP recommends that the requirement to comply with such request be qualified in the manner described in paragraph 2.24 of the Explanatory Memorandum.

Further, the power to not issue free units under section 173B(2) must be limited to the particular activity that is the subject of section 173A. In other words, the power

must not be used to refuse free units to a corporation that is eligible for EITE assistance in another activity. Section 173B(2) must be reworded to avoid any impact on other activities under the EITE program.

6. Reforestation

We support the proposed amendments to the treatment of reforestation, which recognise the importance of early action by allowing reforestation to earn AEU's from 2010. In addition, the amendments are supportive of forestry's role as a viable domestic offset and remove some of the ambiguity around individual responsibilities of potential counterparties involved in any given reforestation project.