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The Secretary
Senate Standing Committee on Economics
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4 June 2009

Dear Secretary

SUPPLEMENTARY SUBMISSION

Woodside's previous submission to the Committee detailed the detrimental impact of the Carbon Pollution Reduction Scheme (CPRS) on the future growth of Australia's natural gas export industry. Woodside remains concerned that, even with recent amendments, the proposed CPRS will constrain Australian natural gas exports, an industry that could otherwise thrive under a global emissions trading scheme.

On 4 May 2009 the Australian Government announced the following amendments to the CPRS, expressed as a response to the impact of the global recession and public consultations:

- *A one year delay to the introduction of the scheme so that it will commence on 1 July 2011.*
- *A commitment to reduce Australia's carbon pollution by 25% below 2000 levels by 2020 if the world agrees to an ambitious global deal to stabilise levels of CO_2 equivalent at 450 parts per million or lower by mid century.*
- *A one year fixed price phase will apply between 1 July 2011 and 30 June 2012. During the fixed price phase, each carbon pollution permit will cost $10 and banking is not permitted. From 1 July 2012, businesses covered by the scheme will need to purchase permits at the prevailing market price.*
- *A new Global Recession Buffer will be provided as part of the assistance package for emissions-intensive trade-exposed industries (EITE). This will equate to an effective rate of assistance of 66% to moderately emissions-intensive trade-exposed activities in the first year of the scheme. The continuation of the Global Recession Buffer beyond five years will be reviewed in light of domestic and international economic conditions and other relevant factors.*
- *Eligible businesses will receive funding to undertake energy efficiency measures in 2009-10 as part of a $200 million tranche of the Climate Change Action Fund.*[1]

These measures will make no material difference to the impact of the scheme on the Australian liquefied natural gas (LNG) industry. 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. This is an outcome contrary to commitments to introduce an emissions trading scheme without disadvantaging Australia's trade-exposed industries, as promised by the major parties prior to the last election.

[1] Australian Government Media Releases, 4 May 2009

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 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 is linked to Australia's LNG competitors adopting similar carbon imposts.

With the right policy settings and as outlined by the Australian Petroleum Production and Exploration Association (APPEA),[2] the realisation of planned LNG projects offer:

- *the potential to displace 180 million tonnes of global greenhouse gas;*
- *the creation of more than 50,000 jobs; and*
- *the generation of more than $10 billion a year in tax revenue.*

While some Australian LNG projects will likely proceed regardless of the CPRS, nothing in the proposed CPRS amendments changes the independent economic analysis – that under the CPRS Australia's natural gas exports will likely be halved relative to their potential by 2030.[3] This will put at risk tens of thousands of jobs, billions of dollars of investment and the positive contribution Australian natural gas exports could otherwise make to the reduction of global greenhouse gas emissions.

Woodside urges the Committee to consider the realities of long-gestation, capital intensive LNG projects and their role in reducing global greenhouse emissions when deliberating on the Government's amendments to the CPRS.

The Committee is reminded that final investment decisions for several new Australian LNG projects are anticipated in the next 5 years. All are multi-billion dollar investments with long pay-back periods resulting in economics that are sensitive to the imposition of additional costs. Projects of this nature do not create revenue for investors until some 3-5 years after the final investment decision and pay-back could be in the range of 7-10 years after that. By this time the assistance offered to qualifying trade exposed industries under the scheme will have significantly diminished, if it remains at all.

Woodside encourages the Committee to consider work undertaken by the Australian Government in assessing the competitiveness of Australia as an LNG investment destination.[4] Compared to international competitors the tax take from Australian LNG projects is high and return on investment is low, despite other barriers to investment in Australia being comparatively less onerous. The CPRS, even as amended, will exacerbate this situation.

Qualifying for the 60% level of trade-exposed assistance does not adequately address the above concerns. Moreover, Australia's LNG industry is yet to be given certainty that it will be eligible for trade-exposed assistance. Further, the level of assistance beyond 2020 is a source of significant investment uncertainty. Some future Australian LNG projects are likely to be exposed to around 70% - 80% of the cost of their permit liability, regardless of competitor countries imposing similar regimes.

Even with the proposed trade-exposed assistance, a carbon price approaching $25 - $50 a tonne by 2020 could still have the effect of stripping after tax cash flows over the operating life of a new Australian LNG development. Such an outcome erodes the competitiveness of Australian LNG and fails to take account of the role of natural gas in reducing global emissions.

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[2] *Natural Gas – A Strategic National Asset*, Address to the National Press Club, Canberra, by Belinda Robinson, Chief Executive, APPEA, 25 March 2009

[3] 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, 30 January 2009

[4] In Woodside's response to questions taken on notice from the Committee, 11 May 2009: Australian Government's *Energy White Paper Discussion Paper: Realising Australia's Energy Resource Potential April 2009 – refer to* page 30, *Section 8.2.2 International competitiveness and development challenges*

Woodside therefore submits that Australia should do all it can to encourage the growth of natural gas exports rather than put them at a disadvantage to exports from competitor countries, or worse still, at a disadvantage to less clean fossil fuels such as coal. Adding a carbon cost burden to Australian LNG export projects should be contemplated as and when competitor countries impose similar costs on their natural gas export projects. This will better align the potential for the CPRS to deliver outcomes that would be broadly consistent with those expected under a global emissions trading scheme.

More detailed comments on the provisions of the CPRS bills are contained in Appendix 1.

Woodside trusts this supplementary submission is of assistance to the Committee.

Yours sincerely

Rob Cole
Executive Vice President Corporate Centre
& General Council

Carbon Pollution Reduction Scheme Bill 2009			
Part/s	**Division/s**	**Clause/s**	**Comment**
1 3	2 - 4	5	The definitions of and concepts underpinning 'liable entities' and 'person' should be amended to allow more than one party to be recognised as the liable entity. The current definitions and concepts result in the operator of an unincorporated joint venture having sole responsibility for the permit liability attached to the joint venture facilities. 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. The Bill could be amended in a number of ways to address this problem, including by: ○ introducing an indemnity regime whereby operators are the liable entity as agent for the unincorporated joint venture, such that all costs incurred due to that liability are apportioned to the joint venture parties on the basis of their percentage stake in the joint venture; ○ imposing CPRS liability on each joint venture party in proportion to their joint venture interests.
1 3	4 and 5	5, 5A, 6 33, 34 & 35	The Bill does not reflect the Green and White Paper positions in relation to coverage of eligible upstream fuel exports. Both Papers excluded exported fuels from liability under the CPRS. The Explanatory Memorandum also suggests that a producer or manufacturer will not be liable for fuel uses that result in emissions outside of Australia, such as the export of fuel. This exclusion has not been fully included in the Bill. A producer or manufacturer which itself exports a fossil fuel does not receive the benefit of the exemption for the greenhouse gas emissions embodied in the exported fuel. This produces an inequitable outcome as producers or manufactures that supply fossil fuels to another person who then exports the fuel do qualify for the exemption in relation to embodied greenhouse gas emissions. This issue is exacerbated by the fact that the amendments to the Obligation Transfer Number (OTN) regime do not extend the supply concepts far enough. The regime still requires an intermediary in the production/manufacture and export process – it does not recognise the situation where the producer or manufacturer directly exports the fuels.
1 3	4 and 5	5, 5A, 6 33, 34, 35, 51, 55, 64A & 64B	In addition to the issues raised above in relation to exported fuels, the 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: 1. The OTN regime be widened to include more entities in the mandatory requirements; or 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. 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. 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 21	5	68(3), (4) & (5) 327	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, particularly when coupled with civil penalty provisions. These clauses should be deleted.
3	6	69-81	The liability transfer certificate mechanism is unlikely to achieve the stated purpose of addressing the situation where placing obligations on the controlling corporation would impair the ability of the subsidiary or member of the corporate group to pass through carbon costs in existing contracts and convey efficient price signals to end users. There is still an additional step required. Using a typical change in law provision in contracts, subsidiaries would only be able to pass through the costs incurred by the subsidiary as a result of a change in law. The costs incurred by the subsidiary pursuant to the liability transfer certificate are not incurred as the result of a change in law – the liability is voluntarily accepted by the subsidiary when it applies to the Authority for the certificate. The problem could be addressed by rewording the Bill such that a subsidiary with operational control over a facility is <u>required</u> to apply for a liability transfer certificate unless the controlling corporation agrees otherwise. This would create the necessary 'change of law nexus' required to properly impose the costs associated with the CPRS liability on the subsidiary and provide the subsidiary with a greater ability to make use of change of law clauses in existing contracts. The Explanatory Memorandum accompanying the Bill suggests that the amended Bill allows for liability to be transferred within joint ventures and to entities that have the economic benefit of a facility. This concept is partly achieved by clause 81 but does still not allow for liability and cost to be transferred to all the parties in the joint venture. Any transfer pursuant to clauses 73 to 81 must still be to a single entity. This does not address the situation where there are more than two parties in a joint venture and the parties need to share the joint venture facility liability between all of them.
6	3	130 to 143	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 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. The Bill and Explanatory Memorandum state that the assessment of unit shortfall is advisory only, however the provisions do not make it clear that the consequences of a shortfall do not flow from receiving an assessment. 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	165–172	The key attributes of the CPRS as they relate to emissions-intensive trade-exposed (EITE) assistance have not been included in the 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. 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 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	165–172	Woodside has additional concerns around the proposed percentage allocation of free permits. The 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: 1. Full allocation of free permits under the EITE regime; and 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 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	165–172	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.
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: 1. Would disclosure of the information (or disclosure of particularised rather than aggregated data) reveal trade secrets or confidential information of the relevant entities?

			2. Would disclosure of the information (or disclosure of particularised rather than aggregated data) assist in fulfilling any of the objects of the Act? 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: 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. 2. Given the various Commonwealth, State and Territory approval processes that can potentially consider greenhouse gas issues and/or 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. The Bill should be amended to include a regime that: 1. Provides a link to Commonwealth, State and Territory laws; 2. Recognises offset activities undertaken under Commonwealth, State and Territory laws; 3. Require obligations imposed under Commonwealth, State and Territory laws to be consistent with lowest cost abatement outcome; and 4. Recognise CCS activities undertaken under Commonwealth, State and Territory laws. 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.

Consequential Amendments Bill 2009			
Schedule	**Part/s**	**Item/s**	**Comment**
2	Part 3-50 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. Section 191 of the Carbon Pollution Reduction Scheme Bill 2009 provides for the issue of "free" Australian emissions units in respect of eligible reforestation activities. Subdivision 420-D of the Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009 deals with the taxation of registered emissions units a taxpayer holds at the start of end of an income year. Pursuant to Subsection 420-55 (2), permits issued under Part 10 (reforestation) of the Carbon Pollution Reduction Scheme Bill 2009 are to be valued using one of the methods set out in that subsection (FIFO cost, actual cost or market value method). For the purposes of the FIFO cost and actual cost methods, 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. 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 420-58, 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 generation of permits by carbon sequestration by reforestation coming with a cash flow cost. To ensure equitable tax treatment of free permits, the Bill should be amended to move wording at 420-58(1)(a) to a new clause 420-58(1)(a)(i) and replace "*and*" with "*or*" at the end of the sentence; and insert subsection 420-58(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*" 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*. 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**
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.