AUSTRALIAN INDUSTRY
GROUP

H M Ridout
Chief Executive

51 Walker Street
North Sydney NSW 2060
PO Box 289
North Sydney NSW 2059
Australia

ABN 76 369 958 788

Tele: +612 9466 5566
Fax: +612 9466 5599
www.aigroup.com.au

22 August 2011

Mr Tas Sakellaris
Assistant Secretary
Carbon Price Legislation Branch
Climate Strategy and Markets Division
Department of Climate Change and Energy Efficiency
GPO Box 854
CANBERRA ACT 2600

Dear Mr Sakellaris

The Australian Industry Group is pleased to have the opportunity to make the attached submission on the draft legislation to implement the Government's proposed Clean Energy Future plan. Despite the fact that many of the provisions of the draft Bills are identical to provisions from the Carbon Pollution Reduction Scheme Bills and many technical and drafting issues were addressed in 2009, it is unfortunate that the consultation process on this legislation has been subject to such tight timelines as these are very important issues.

This submission will primarily focus on a set of areas where the draft legislation does not fully implement important aspects of the Clean Energy Future policy, or where it can be usefully improved in ways compatible with that policy. We realise that the Department does not have a brief to revisit decisions taken by the Multi-Party Committee on Climate Change. However, Ai Group also stands by the criticisms that we have made of the policy package, including:

1. The fixed carbon prices within the policy are unnecessarily high and disruptive, and are out of step with current international carbon prices. Lower fixed prices would ease the transition and, combined with the early and automatic switch to an internationally linked emissions trading scheme, would not distort investment and abatement decisions;

2. The assistance package for manufacturing, while welcome, does not address the up-front cost impact that businesses will face before energy efficiency and emissions reduction projects can bear fruit. These transitional impacts are severe in some cases, particularly where industries fall somewhat below the thresholds for the Jobs and Competitiveness Program, and companies will be left to bear them until efficiency assistance kicks in. Some companies will not have significant opportunities to further increase their efficiency.

3. There is no clearly articulated drive to prune the tangle of numerous existing mitigation policies, programs and measures at the Commonwealth, State and local levels. Many of these policies are inefficient in themselves, and become doubly redundant if carbon pricing is in place. The continuation of such measures threatens to double up costs and burdens for many businesses.

Ai Group's submission reiterates these points, while also drawing attention to more technical issues with the draft legislation. We continue to consult with our members Australia-wide on the legislation and the broader policy, and will raise further issues with the Department and the Government as they arise.

There are two further areas of concern. The adoption of the 80% emissions reduction target for 2050 was surprising as it did not feature in the consultative forums in the lead up to the announcement of the Government's policy. It is extraordinarily ambitious. Secondly, the default caps that would come into play after 2015-16 if regulated caps were not made or were not acceptable to the Parliament assume there is no additional abatement effort by non-covered sectors. This is a highly conservative assumption and we would not like to see the default caps come into play.

While the Government has expressed its intention to introduce the Bills to Parliament in September following this brief consultation, the Government should be open to introducing further amendments (before or after potential passage) that are necessary to ensure workable arrangements for business.

A range of technical issues associated with the treatment of natural gas supply, the use of obligation transfer numbers and the allocation of liability within joint ventures are, we understand, being raised by other stakeholders. We do not address these directly, but urge the Department and Government to clarify and simplify these issues wherever possible.

A number of important matters are not addressed within the draft legislation, but in forthcoming draft subordinate legislation or in policy and guidelines. These issues include the detailed framework of the Jobs and Competitiveness Program and the operation of the Clean Technology Program, as well as the implementation of changes to the treatment of synthetic greenhouse gases. Industry awaits these details with intense interest and the programs should be designed in such a way that they effectively meet the needs of industry.

Yours sincerely,

Heather Ridout
Chief Executive

ATTACHMENT

CLEAN ENERGY BILL AND RELATED BILLS – AUSTRALIAN INDUSTRY GROUP DETAILED SUBMISSION

Ai Group has examined the Clean Energy Future draft legislation and consulted with our members and other industry stakeholders, and has identified several areas for improvement. These fall into three categories:

1. Policy changes. There are areas where the draft legislation implements the policy announced on 10 July 2011, but the policy itself should be changed. We realise that altering these matters is not within the Department's remit.

2. Policy enhancements. There are areas where the draft legislation can be improved in ways that go beyond the announced policy without contradicting it.

3. Implementation issues. There are areas where the draft legislation does not effectively fulfill the policy intent, or would be otherwise unsatisfactory in practice.

Unless otherwise specified, all section references are to the draft Clean Energy Bill.

Policy changes

Prices: Section 100 of the Clean Energy Bill 2011 specifies fixed carbon prices starting at $23 a tonne and rising to $25.40 by 2014-15. Ai Group considers the starting prices to be unnecessarily high. They are out of step with the lower prices that currently prevail in international carbon markets. Furthermore, the prices represent a sharper and more disruptive shock than a gentler transition would. The key factor for investment decisions, particularly for long-lived assets like electricity generators, is expectations around future prices rather than the starting price. Linkage to global carbon markets in the floating price phase provides a reasonable basis for assessing those future prices.

Thus there should be no barrier to the adoption of a softer start with lower fixed carbon prices. Such prices should more closely reflect current prices in the European Union ETS and the Clean Development mechanism; an example trajectory would start around AUD$10 and move gradually towards international prices currently expected for 2015-16. This might also require consequential changes to some elements of the various assistance packages.

Policy enhancements

Reviews by the CCA: Section 288(1)(a) requires periodic reviews by the Climate Change Authority to consider, among other matters, the effectiveness and efficiency of the Clean Energy Act and associated legislation. The CCA will separately be given responsibility for reviews of the Renewable Energy Target, National Greenhouse and Energy Reporting system, and Carbon Farming Initiative.

However, a key role is lacking that would be appropriate for the CCA and consistent with the policy framework announced: a responsibility to consider and review the whole of Commonwealth mitigation policy, which is reflected not just in the CEF, RET, NGER and CFI but in a host of programs, policies and measures across multiple portfolios. The CCA should have scope, and indeed an obligation, to consider these measures in conducting its reviews, to make findings about their efficacy, and to make recommendations about their future. It would also be useful for the CCA to look to State mitigation policies.

Thus the legislation could be amended to add:

- s288(1)(aa): without limiting the operation of review requirements applying under other Acts, the effectiveness and efficiency of all Acts, regulations, policies and measures of the Commonwealth that have the reduction of greenhouse gas emissions among their stated purposes; and

- 288(1)(ab): where practical and consistent with effective consideration of other matters under this Section, the effectiveness and efficiency of all Acts, regulations, policies and measures of the States that have the reduction of greenhouse gas emissions among their stated purposes.

NGER improvement: Some amendments to the *National Greenhouse and Energy Reporting Act 2007* are included within the package of draft Bills. We understand that a separate set of general enhancements and improvements to NGER has for some time failed to find a place on the legislative calendar. Many businesses who will not hold carbon price liabilities are involved in NGER reporting and would like to see the system improved at the earliest possible date. Concerns have been expressed to us in particular around the need to streamline data collection requirements in the construction sector, where information on minor energy use by subcontractors has been sought or obtained at a level of cost and effort far out of proportion to its actual significance. If there is an opportunity to progress already-developed NGER enhancements alongside other legislation, it should be taken.

Implementation issues

Caps – matters to which the Minister must have regard: Section 14(2)(vii) requires the Minister to have regard, when recommending scheme caps, "to estimates of greenhouse gas emissions that are not covered by this Act". To ensure that relevant matters are taken into account, this should be expanded to "to estimates of greenhouse gas emissions that are not covered by this Act, including the impacts of any laws, regulations, policies or measures to reduce or restrain those emissions".

JCP – referral to PC: Section 155(2)(b) specifies that the matter referred to the Productivity Commission for review shall be the impact of the Jobs and Competitiveness Program on Emissions Intensive Trade Exposed industries. This is too narrow, since the effect of the carbon pricing mechanism and the Clean Energy Bill and related legislation as a whole is relevant. The provision should instead specify "the matter of the impact of the Clean Energy Act, including the Jobs and Competitiveness Program, on emissions intensive trade exposed industries."

JCP – PC review considerations: Sections 156(3)(a) and (b) ask the PC to consider whether 70% or more of international competitors in an activity face a comparable carbon constraint, and whether the decay of JCP assistance for that activity should be halted. However, no clear link between these questions is drawn. Section 156(3)(b) should commence "whether, in light of the matter in paragraph (3)(a), the application of the rate of assistance […]".

Consideration is also needed of whether s156(3)(a), or the explanatory memorandum, should include guidance on how "70% or more of international competitors" should be measured. Imaginable situations include those where the numerical majority of businesses in a sector face a carbon price, but not the majority of the market, due to a structure with numerous small players and a few big ones. A reference may be appropriate to "international competitors, weighted by global market share" or similar.

JCP – PC review and Government's response: Section 157 should more clearly reflect the Government's policy commitment that three years' notice will be provided of modifications to

EITE allocations that have a negative effect on business. Section 157(3) requires the PC to have regard to this principle, and the Minister must have regard to the PC's advice. However, it would be more appropriate for the principle to be further reflected in the specific matters the Commonwealth should have regard to under s157(5).

Reviews by CCA: Section 289(2)(g) requires the CCA to take account, in periodic reviews of the level of carbon caps and any indicative national emissions reduction trajectory, of estimates of greenhouse gas emissions that are not covered by the Clean Energy Act. To ensure all relevant matters are taken into account, this should be expanded to "estimates of greenhouse gas emissions that are not covered by this Act, taking account of the impact of any laws, regulations, policies or measures directed at reducing those emissions."

Reviews by CCA – conduct of inquiries: Sections 288(6), 289(7), 291(6) and 293(3) of the Clean Energy Bill, and section 59(3) of the Climate Change Authority Bill, require that the CCA make provision for public consultation as part of its periodic and special reviews. This is appropriate. However, it would be sensible to include general provisions, perhaps within the Climate Change Authority Bill, on the conduct of such public consultation. An appropriate model would be the provisions relating to Productivity Commission inquiries contained within ss13-16 of the *Productivity Commission Act 1998*.