



**Submission to the  
Department of Climate Change and Energy  
Efficiency**

**On**

**Clean Energy Bill 2011  
and related Bills**

**22 August 2011**

## **ABOUT AIP**

The Australian Institute of Petroleum (AIP) was established in 1976 as a non-profit making industry association. AIP's mission is to promote and assist in the development of a sustainable, internationally competitive petroleum products industry, operating efficiently, economically and safely, and in harmony with the environment and community standards.

AIP member companies play various roles in the fuel supply chain. They operate all of the petroleum refineries in Australia and handle a large proportion of the wholesale fuel market. However, AIP member companies directly operate and control only a relatively limited part of the retail market.

AIP is pleased to present this submission on behalf of the AIP's four core member companies:

BP Australia Pty Ltd  
Caltex Australia Limited  
Mobil Oil Australia Pty Ltd  
The Shell Company of Australia Limited

## **Contact Details**

Should you have any questions in relation to this submission, or require additional information from AIP, the relevant contact details are outlined below.

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AIP is pleased to have the opportunity to comment on the Clean Energy Bill 2011 and related Bills.

The Australian petroleum refinery industry is struggling to maintain its economic viability in the face of significant competition from larger competitors in the Asian region and a substantial over capacity in the global refining industry. Over capacity is expected to provide a continuing dampening effect on refiner margins for the foreseeable future as many of the additions in capacity are being undertaken by National Oil Companies where economic viability is not a primary consideration.

The competitive disadvantages for the Australian industry include economies of scale disadvantages, the strong Australian dollar, higher capital costs, significantly higher labour costs and increasing environmental regulation. In addition, the main competitors in the Asian region are located in countries which are not likely to introduce a carbon price for the foreseeable future.

The combined impact of global oversupply and structural disadvantages means the Australian refining industry must be extremely efficient to maintain its economic viability. Over the last 20 years the Australian refining industry has struggled to achieve returns exceeding the long term bond rate and has experienced losses in excess of \$500 million in 2002 and 2008. Despite this challenging business environment, the Australian refining industry sees a positive future is possible in which competitive advantage is based on efficient operation, refinery reliability, and concentrating on niche competitive advantages derived from location and product slate.

Policy makers should understand that this is a finely balanced equation and that any negative impacts on refinery costs could lead to further refinery closures. If such closures were to occur then it will reduce the diversity of Australia's liquid fuel supply threatening Australia's liquid fuel supply security. The Australian community would also lose the other external benefits that the Australian refining sector brings with a high technology, high value adding industry that underpins the competitive advantage of the transport, mining and agricultural sectors. The refining industry is a significant economic contributor in its own right and creates substantial second round economic benefits in regional economies such as Geelong.

Most of these Asian refineries will not have to bear a carbon price for many years. To ensure a level playing field, the international competitiveness of emissions-intensive, trade-exposed industries like oil refining must be fully maintained in the design of an emission trading scheme. Unless this occurs, Australian investment and jobs could be lost as fuel production moves offshore, without any reduction in global emissions.

In addition, refineries form an important part of the supply chain for petroleum products. Australia's energy supply is more secure with the diversity of sources provided by both crude oil imports (and subsequent domestic refining) and petroleum product imports.

The Jobs and Competitiveness Package (JCP) provides the Australian petroleum refining sector with an initial allocation of 94.5% of permits under the scheme. While this level of allocation would appear to create a minimal carbon price impact on the refinery industry, the industry allocative baseline creates a disparity of effect across individual refineries. These impacts are largely a result of the imposition of

a common electricity emissions factor in the Emissions Intensive Trade Exposed (EITE) assessment process. In this context, the decay rate of 1.3% per annum places an increasing burden on the industry over the next five years until the results of the Productivity Commission review in 2014-15. We see no evidence that competitor refineries in Asia will be subject to a carbon price over this period. We therefore consider that the decay rate should be removed from the scheme.

We also consider that given the potential large negative impacts on the petroleum refining industry from changes to JCP that the three years lead time for any adverse changes to take effect should be extended to seven years. The proposed lead time is related to the capital investment cycles within the industry and would allow for an orderly departure from the industry if a refinery were to close as a result of a change in JCP assistance. An orderly departure would involve the recalibration of the supply chain including the identification of new supply sources and alterations to storage and handling requirements. . However, AIP is firmly of the view that no JCP review should result in adverse outcomes for competitiveness.

The Bills appear to largely reflect the policy intentions of the Government but it is difficult to judge in some areas as the Regulations have not been released (ie the National Greenhouse and Energy Reporting Regulations 2008 and the Regulations to give effect to the Jobs and Competitiveness Package (JCP)). We can only assume that the Department will undertake further consultation on these Regulations to ensure that any formulations are workable and do not lead to unintended consequences.

There are a number of areas where definitional clarity is required such as the handling of natural gas streams. Clear definitions for “natural gas” and “natural gas retailer” will ensure that liabilities can be effectively transferred between parties, and gas streams sequestered in products can be accounted for adequately. In the same vein, ensuring that the definitions for certain petroleum products are consistent across the various pieces of legislation giving effect to *excise*, *NGERS* and *clean energy future* policies will ensure that liabilities are clear and any opportunities for tax leakage are minimised. For example, liquid petroleum gas is defined in excise legislation but is not defined in NGERS regulations. Further details of our concerns are contained in Attachment 1.

We have also identified a number of clauses that require further clarification of the meaning of the clause and the circumstances to which the particular clause would apply. We look forward to feedback from the Department so that we can finalise our position on these clauses.

AIP supports the comments made in the Submission by the Australian Industry Greenhouse Network (AIGN).

## AIP Comments on specific provisions in the Clean Energy Bill 2011 and the associated Explanatory Notes

Part	Division	Section	Clause	Comment
1		5		<ul style="list-style-type: none"> <li>• <b>Compressed natural gas</b> is not currently defined in the NGERS Regulations and is also not defined in the Taxation of Alternative Fuels Legislation Amendment Act 2011. Guidance was given in the Explanatory Memorandum for the Taxation of Alternative Fuels Legislation Amendment Bill 2011 - definitions across the Acts should be consistent.</li> <li>• <b>Distribution pipeline</b> is not currently defined in the NGERS Regulations</li> <li>• The definition of <b>facility</b> in NGERS Act appears to be consistent with the facility definition undertaken for the EITE assessment</li> <li>• The definition of <b>feedstock</b> is partially consistent with the definition in the NGERS Act – the definition in the Bill should also include physical processes as well as chemical processes</li> <li>• <b>Foreign person</b> does not appear to be defined in the NGERS Act or the Consequential amendments.</li> <li>• <b>Liquefied Natural Gas</b> is not defined in the NGERS Regulations and is also not defined in the Taxation of Alternative Fuels Legislation Amendment Act 2011. Guidance was given in the Explanatory Memorandum for the Taxation of Alternative Fuels Legislation Amendment Bill 2011 - definitions across the Acts should be consistent.</li> <li>• <b>Liquid petroleum fuel</b> is not defined in the NGERS Regulations and is also not defined in the Excise Tariff Act 1921 -</li> <li>• <b>Liquid petroleum gas</b> is not defined in the NGERS Regulations. However LPG is defined in the Taxation of Alternative Fuels Legislation Amendment Act 2011. - definitions across the Acts should be consistent.</li> <li>• <b>Natural gas liquids</b> are defined in the NGERS regulations covering some of the components of LPG.</li> <li>• <b>Natural gas</b> is not defined in the NGERS regulations.</li> <li>• <b>Natural gas retailer</b> definition should be included in the legislation rather than the regulations.</li> <li>• <b>Transmission pipeline</b> is not currently defined in the NGERS Regulations</li> </ul>
1		6		A more precise definition of the <u>supply of natural gas</u> needs to be adopted. However, a precise definition for natural gas and other products may assist in alleviating this

Part	Division	Section	Clause	Comment
				issue
2		15	3	A point of clarification required - if the sitting patterns in the Houses are not the same then the date of effect of the regulation occurs when the later 15 sitting day period expires
2		17	2	A point of clarification required - what is basis for default cap figure?
2		18	2	A point of clarification required - what is basis for default cap figure?
3	2	20	4	Covered emissions definition will be made clear by introducing and/or tightening the definitions for gaseous fuels and the supply of natural gas. Given the nexus between Excise Act and the Clean Energy Bill care should be exercised to ensure that the definitions in all the relevant Acts and Regulations are consistent. See further comment Part 4 Div 2 s.30 (2)
3	2	20	8/9	The meaning of “withdrawn from a distribution pipeline needs to be clarified”
3	2	29	1	We assume these are standard anti avoidance clauses but their meaning in this context is quite unclear. Could further guidance be given on what sort of schemes are envisaged under these clauses
3	2	29	4	There is not a particular right of appeal to any determination the Regulator may make about threshold determinations. Is the only right of appeal an administrative appeal under the general provision of the Bill? And if so is that the reason for Clause (4)?
3	2	30	2	The definitions for each of the listed fuels have multiple definitions across various Acts, notably the NGRS Regulations and various excise Acts. Either these definitions have to be made explicit or the naming of the products could be removed and make the condition for exemption that fuels are subject to excise.
3	3	33		The previous comments on more precise definitions for natural gas, natural gas retailer and the other product streams that could be captured by these clauses would clarify a lot of the uncertainty about the liable entities and applicable products
3	3	34		Point of clarification once the definition of natural gas is determined – would flows from refineries to third parties and then partial flows back to refineries be covered by the own use provisions?
3	4	41	1	Will the regulator’s issuing of the OTN be timely in the first year. In other words should companies just go ahead and apply for an OTN
3	4	50		Point of clarification - What is situation if supply has already taken place and then the

Part	Division	Section	Clause	Comment
				OTN is cancelled.
3	4	57/58		The use of OTN for feedstock and LPG etc production if supplied from a gas stream from a refinery will depend on the definition of natural gas that will be developed by the Department
3	4	61		Prior contracts for feedstock – supplier must accept OTN – does this apply to gas streams/liquid streams from refineries
4	2	100	3/4	What does this provision mean and can the Department provide some clarification on the circumstances in which it will apply.
4	3	104		It is unclear why a person would be holding more than one Registry account – needs explanation
4	4	111	2	Clause seems to imply no deferred payment options are available for auction payments. cf s113 (r)/(s)
4	4	113	1(r)/(s)	Seems to imply deferred payments are possible – needs to be clarified in light of previous comment
4	4	114	2	Benchmark average auction charge appears to cover more than one vintage year – it would seem more logical to have an average charge for each vintage year auctioned in a particular financial year
4	5	115		What is the purpose of this section? Can the Department provide an example of where this section may apply?
5		119	4	Is there a process for review of any amendment by the Regulator?
		120	2	Can the Regulator's assessment be challenged?
6	3	125	7(d)	What does this mean?
6	3	129	2,3,4	What does this mean?
6	3	130	5	Is regulator obliged to give reasons for decision?
6	3	131	2, 3	What does this mean?
6	4	134		5 working days is not sufficient time to make the payment – it should be 14 days
6	4	140		Is there any interest paid on refund or overpayment?
6	6	142	1(a)	What is significance of 2 or more persons?
6	6	146	1	What are specified events, specified circumstances and specified matters?
7	2	145	1	Why is the formulation of the regulations a “may” rather than a “must”.
7	2	149	5	Does ‘volumes of production’ include production inputs as well as outputs? This needs

Part	Division	Section	Clause	Comment
				to be clarified for the oil refinery activity definition.
7	4	152	1	What is the purpose of this clause?
7	5	155	1	NOTE there is no reference here to EITE industries being able to initiate PC review – seems to be only at discretion of Government to trigger a review under general PC Act provisions
7	5	156	3(b)	AIP supports the full allocation of free permits and the removal of the decay rate. Section 156(3)(b) should therefore be redrafted as follows. (b) whether the application of the rate of assistance for a specific industry declines below assistance rates of: (i) 94.5% for highly emissions intensive industries; and (ii) 66% for moderately emissions intensive industries.
7	5	157		Changes to EITE provisions only after 2017 and then only 3 years notice. The period should be seven years notice.

#### Comments on points in the Explanatory Notes

Page	Chapter	Clause	Explanatory notes
64	1	1.122	What does this mean?
65	1	1.131	Assumes all natural gas is combusted???
68	1	1.143-5	Key provision: very hard to follow
77	1	1.208-10	Can retailer supply gas if it includes a carbon price – also highlights need for alerts from Regulator on cancelled OTNs
93	3	3.31	What does this clause mean?
93	3	3.54	What happens if acquire too many permits?. What if Regulator makes a revised assessment resulting in person holding too many units?
99	3	3.72	In view of requirement to pay before issue of units it may be several days before units issued by Regulator (eg cheque clearance time) and hence potential for not having ownership of units to surrender before compliance deadline
115	4	1.49-57	Scheme is very complicated and confusing; is this necessary given limited number of liable entities; could be handled on a case-by-case basis if revision option chosen by liable entity – e.g. if more than say 5-10% variation over prior year.
132	5	5.28	Where is the permission for this in the Bill?



135	5	5.50	Dot points indicate there is no obligation to only consider (or not to consider) major competitor countries – for refineries there may be no consideration of relevant Asian competitors
135	5	5.64	Seems to imply units in excess of normal emissions not regarded as windfall. Need clear understanding of what windfall means.
143	5	5.101	Where is the provision in the Bill (dot points 2 & 4)? What are ToR and definitions of terms in the 5 <sup>th</sup> dot point? When will this be available?