Submission on the Clean Energy Bill 2011 Exposure Draft

by

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Section, page, paragraph and line numbers hereunder refer to
http://www.climatechange.gov.au/government/submissions/clean-energy-legislative-
package/~/media/publications/clean-energy-legislation/exposure-draft-clean-energy-bill-2011-
pdf.pdf
Boxed text shows quotes from the above exposure draft. Our proposed additions marked with
underline.

16 (3): Seems to be something missing, grammatically speaking:

> *p 27*
> 10 If, at the start of the month of May that is 14 months before the
> 11 start of a particular flexible charge year beginning on or after
> 12 1 July 2016, no regulations made for the purposes of section 14
>   in respect of that flexible charge year
> 13 have previously taken effect, the Minister must take all reasonable
> 14 steps to ensure that a set of regulations that:

The relationship between 16(3) and 16(5) is unclear. The first seems to say a 5 year plan must be laid out just over a year ahead of the start of the 5 years; the second that each year's plan must be laid out just over 5 years ahead. Perhaps 16(3) is only there to handle the years 2015 to 2020? If so, this could be made clearer.

> *p 58*
> 3 **30 Covered emissions from the operation of a facility**
> 4 (1) For the purposes of this Act, a ***covered emission*** from the operation
> 5 of a facility is a scope 1 emission of greenhouse gas, where:
> 6 (a) the greenhouse gas is released into the atmosphere as a direct
> 7 result of the operation of the facility; and
> 8 (b) the greenhouse gas is released in Australia.

What if the emissions were sequestered but subsequently released, accidentally or otherwise? In particular, there has been much interest in the potential of capturing CO_2 emissions from fossil-fuel powered plant, and growing algae on it to produce animal feed or biofuel. But that merely defers the release of the CO_2. The overall process still takes carbon from the long-term (geological) cycle and moves it into the short-term (meteorological/biological) cycle. It is quite inappropriate that such a technology should earn any carbon credits.

What if the GHG is created in Australia but transported, perhaps by pipeline, and released into the atmosphere in international waters?

Section 30, add:
Paragraphs (3)(a to f) do not exempt an emission that is attributable to an incompletely successful attempt to

sequester a GHG which would otherwise have been a covered emission.

Paragraph (3)(a to f) do not exempt an emission that is attributable to an activity or process that has previously earnt carbon credits.

An emission previously exempted under any of paragraphs (3)(a to f) becomes retrospectively unexempted if it was attributable to an activity or process for which carbon credits are subsequently claimed.

Section 100.

It is our reading that during the eligible years commencing July 2015, July 2016 and July 2017, a liable entity will be able to purchase both flexible charge units and a potentially unlimited number of fixed charge units. If the auction price for the flexible charge units reaches the cap, and the entity considers that the unit price will be significantly higher in years to come, the entity could opt to purchase enough fixed charge units to cover its entire need for that eligible year and bank any flexible charge units it has also purchased.

If this reading is correct, this option appears to undermine the intent of disallowing the banking of fixed charge units.

The ability to trade flexible charge units complicates regulating against this. Here's a suggestion:

"Prevention of exploitation of fixed charge units issued as a price cap:

An entity may not apply for fixed charge units under items 7, 8 or 9 of the table in subsection (1) while the entity is in possession of unsurrendered flexible charge units of the same or earlier vintage year.

An entity may not apply for fixed charge units under items 7, 8 or 9 of the table in subsection (1) if there exist unsurrendered flexible charge units of the same or earlier vintage year and that had originally been issued to the entity, except as follows:

• The entity is no longer in possession of such units; and
• The entity pays a 10% premium on the fixed charge units."

Section 143 (2)

After

> *p 168*
> 20 until such assistance is no longer warranted, having regard to:

the logical linkage between (e), (f) and (g) should be "*and*", not "*or*". Consideration of whether assistance is no longer required should have regard to all these matters. Alternatively, (e), (f) and (g) could be introduced as:

"until such assistance is no longer warranted <u>in view of</u>:"

Section 156 (3)(a)

> *p 180*
> 1 whether less than 70% of the relevant competitors

70% of competitors by number or of competition measured by total production?

Section 166(2)(a)

The ending of the eligibility period at June 2010 is both too recent and too sudden. Generating companies have known for more than 10 years that the emissions cause environmental damage, and that alternatives were becoming available. I would suggest a sliding scale which adjusts the assistance factor by a multiplier

according to the date at which the plant first supplied electricity to the grid:
>before July 2005: 100%
>July 2005-June 2006: 99%
>July 2006-June 2007: 97%
>July 2007-June 2008: 94%
>July 2008-June 2009: 90%
>July 2009-June 2010: 85%

Sections 161, 166, 167, 168

p 185

18 [free carbon units] = $\dfrac{\text{Annual assistance factor specified in the certificate}}{\text{Total annual assistance factors for that eligible financial year}}$ x 41,705,000

p 193

22 (c) the emissions intensity of the generation complex is greater than 1.0

p 194

7 [Annual assistance factor] = Historical energy x (Emissions intensity - 0.86)

With these formulas, it would appear that a plant with high emissions could gain enough free units to cover its entire needs. There is no obvious reason why dirty plant should be taxed less per unit of *output* than a cleaner plant. Plant may also obtain excessive relief if either its output has diminished from the historical value (though perhaps the idea is to encourage this) or the total of "excess" emissions to be covered is less than the magic 41,705,000.

Perhaps the intent was only to provide free permits to the extent that the emissions intensity exceeds 0.86, but that is not the consequence of the above formulas. To achieve that, the total of assistance factors would need to exclude the subtraction of 0.86.

To solve these quirks, we propose formulas of this form:

Plant putative emissions = Plant actual energy output x Plant historical emissions intensity
Total putative emissions = sum of Plant putative emissions over all plant
Plant putative excess emissions =
>if Plant historical emissions intensity > threshold1 then
>>Plant actual energy output x (Plant historical emissions intensity - threshold2)
>otherwise 0

Total putative excess emissions = sum of Plant putative excess emissions over all plant
Free units pool = min {41,705,000, Total putative excess emissions}
Plant assistance factor = Plant putative excess emissions / Total putative emissions
Plant's free carbon units = Plant assistance factor x Free units pool

To conform with the apparent intent of the exposure draft, threshold1 would be 1 and threshold2 would be 0.86. However, it is not clear why threshold2 should be so much lower.

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