



Deacons

Briefing Paper on Carbon Pollution Reduction Scheme Bill 2009 and associated legislation

April 2009

**Commissioned by the Australian Local Government
Association on behalf of:**

- **Local Government Association of South Australia**
- **Local Government Association of Tasmania**
- **Local Government Association of the Northern Territory**
- **Local Government and Shires Association of NSW**
- **Municipal Association of Victoria**
- **Queensland Local Government Association**
- **Western Australian Local Government Association**

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1. Executive summary

- 1.1 A Council with operational control over a landfill that has emissions exceeding 25,000 tonnes of CO₂-e per financial year will be a liable entity under the CPRS, and will be required to purchase and surrender eligible emissions units to the Authority by 15 December after the relevant financial year. These Councils will need to consider how they fund this liability, and whether the costs can be recovered from their customers. This is likely to depend upon the contractual arrangements between the particular Council and its customers.
- 1.2 The CPRS legislation currently proposes that the threshold of 25,000 tonnes of CO₂-e may be reduced to 10,000 tonnes of CO₂-e in certain circumstances.
- 1.3 Council owned landfills that closed prior to 1 July 2008 will not be covered by the CPRS.
- 1.4 Emissions resulting from legacy waste (waste deposited at a landfill prior to 1 July 2008) will not incur a liability (ie will not require surrender of eligible emissions units) until 2018.
- 1.5 If a Council has operational control over any other facility that has direct emissions exceeding 25,000 tonnes of CO₂-e per financial year (for example, a wastewater treatment plant), it will also be a liable entity under the CPRS and have to report under NGERs.
- 1.6 Councils that have a liability under the CPRS will be required to submit reports under the NGERs to the Authority by 31 October following the relevant financial year
- 1.7 Councils that are not covered by the CPRS will not have any obligations under NGERs, unless they are a “constitutional corporation” and trigger the corporate or facility thresholds.
- 1.8 Councils may be able to “opt in” to the CPRS through reforestation activities.
- 1.9 Councils that do not have a direct liability under the CPRS are likely to experience increased waste disposal costs, if landfills used by them are covered by the CPRS. Whether these costs are able to be passed on by the landfill operator will depend upon the contractual arrangements between the Council and the landfill operator.
- 1.10 Councils will also experience increased costs for electricity and fuel, and any emissions-intensive goods and services used by the Council.

2. Introduction

2.1 On 10 March 2009, the Government published a package of draft legislation to establish the Carbon Pollution Reduction Scheme (**CPRS or Scheme**). The exposure draft CPRS Bill seeks to implement the design of the scheme set out in the Government's White Paper issued on 15 December 2008. Minister Wong has described the Bill as containing 'no significant policy changes' from that outlined in the White Paper. The consultation period for the draft legislation closes on **14 April 2009**. Final drafts of the Bills are proposed to be introduced into Parliament in May with the aim of achieving passage of the Bills through Parliament in June 2009.

2.2 The current timetable set out by the Department of Climate Change is as follows:

May 2009	Bills introduced into Parliament Key draft regulations released
June 2009	Passage of Bills through Parliament
Third quarter, 2009	Authority established
Fourth quarter, 2009	Stage 1 regulations made
First quarter, 2010	Scheme caps for first 5 years and Scheme gateways for next 10 years announced Stage 2 regulations made
First-second quarter, 2010	First auction of Australian emissions units
1 July 2010	Scheme commences

2.3 It is assumed that readers of this Briefing Paper will have read our Briefing Paper on National Greenhouse and Energy Reporting Scheme, Carbon Pollution Reduction Scheme and Complementary Measures dated September 2008 (**September Briefing Paper**).

2.4 This Briefing Paper does not address the following matters, except where they are relevant to issues surrounding the CPRS:

- (1) Renewable energy target
- (2) Energy efficiency measures
- (3) Adaptation
- (4) Voluntary carbon offset market.

3. Overview of the Carbon Pollution Reduction Scheme

Legislative Package

3.1 The proposed CPRS legislation is made up of:

- (1) *Carbon Pollution Reduction Scheme Bill 2009* (**CPRS Bill**);
- (2) *Carbon Pollution Reduction Scheme (Consequential Amendments) Bill 2009* (**Consequential Amendments Bill**);
- (3) *Australian Climate Change Regulatory Authority Bill 2009* (**Regulatory Authority Bill**);
- (4) *Carbon Pollution Reduction Scheme (Charges – General) Bill 2009*;
- (5) *Carbon Pollution Reduction Scheme (Charges – Customs) Bill 2009*; and
- (6) *Carbon Pollution Reduction Scheme (Charges – Excise) Bill 2009*.

The Government has also released Commentary for each Bill.

3.2 The CPRS Bill sets out how the CPRS will operate. A number of aspects have been left to be dealt with in regulations (see section 5 below). The Consequential Amendments Bill deals with amendments required to other legislation, in particular, amendments to the NGER Act. The Regulatory Authority Bill establishes the Australian Climate Change Regulatory Authority (**Authority**), which will administer the CPRS. The Authority will also administer the reporting regime established under the NGER Act, and the expanded renewable energy regime. Accordingly, the Authority will replace the Greenhouse and Energy Data Officer and the Office of the Renewable Energy Regulator.

3.3 The three Bills dealing with Charges are technical bills, and will be enacted in case Australian emissions units are considered to be taxation in the future.

3.4 This Paper concentrates on the provisions of the CPRS Bill, and where applicable the relevant aspects of the Consequential Amendments Bill.



Summary of CPRS

- 3.5 The CPRS is a 'cap and trade' scheme.¹ This means a cap is set on the emissions that will be covered by the Scheme, permits are issued up to the amount of this emissions cap and the permits are able to be traded. The intent behind a cap and trade scheme is that emissions reductions can be achieved at the lowest possible price.
- 3.6 Not all of Australia's emissions will be covered by the Scheme. Hence, the cap will be lower than the overall national target. Australian emissions units will be issued by the Authority up to the cap (that is, if the cap is 100,000,000 CO₂-e for one year, 100 million Australian emissions units will be issued).
- 3.7 Liable entities (that is, entities covered by the Scheme) will be required to acquire and surrender sufficient eligible emissions units to cover their total emissions for a particular financial year. Australian emissions units will need to be purchased through auctions. If insufficient eligible emissions units are surrendered, an administrative penalty will apply. The liable entity will also be required to purchase sufficient emissions units to cover the shortfall and surrender these in the following financial year. If the administrative penalty is not paid by the due date, a late payment penalty will apply.

Objectives of the CPRS Bill

- 3.8 The objects of the CPRS Bill are to:
- (1) Give effect to Australia's obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol
 - (2) Support the development of an effective global response to climate change
 - (3) Take action towards meeting Australia's targets in flexible and cost-effective way.
- 3.9 The targets set out in the CPRS Bill are:
- (1) To reduce emissions to 60% below 2000 levels by 2050; and
 - (2) To reduce emissions to between 5% and 15% below 2000 levels by 2020.
- 3.10 The Government has committed to a 5% reduction, and has indicated it will increase this target to 15% if global agreement is achieved whereby all major economies (including

¹ For more detail on emissions trading schemes generally, and an introduction to carbon trading, please refer to our September Briefing Paper.



China) commit to substantially restrain emissions and advanced economies (including the United States of America) take on reductions comparable to Australia.

Caps and Gateways

- 3.11 The regulations will set the caps and gateways that apply to the CPRS. Annual caps will be set for a 5 year period and gateways will be set for a 10 year period. The cap will limit the number of Australian emissions units that can be issued. It is important to note that the cap will not be the same as Australia's total emissions. This is because not all sectors producing greenhouse gas emissions will be covered by the CPRS, and not all entities within the covered sectors will be covered (for example, those below the relevant threshold). Gateways will provide a range of emissions numbers, with an upper and lower level. It is intended that future national caps (after the initial 5 year period) will fall within this range.
- 3.12 In determining what caps and gateways to set, the Minister must have regard to Australia's international obligations under the Climate Change Convention and the Kyoto Protocol, and a report from the expert advisory committee.
- 3.13 The Minister may also have regard to:
- (1) The principle that stabilisation of atmospheric concentrations of greenhouse gases at around 450ppm of CO₂-e or lower is in Australia's national interest
 - (2) Progress towards, and development of, comprehensive global action under which all of the major economies commit to substantially restrain greenhouse gas emission and all of the advanced economies commit to reductions of greenhouse gas emissions comparable to the reductions to which Australia has committed
 - (3) The economic implications associated with various national scheme gateways, including the implications of the carbon price
 - (4) Voluntary action which is expected to be taken to reduce Australia's greenhouse gas emissions
 - (5) Estimates of greenhouse gas emissions that are not covered by the CPRS.
- 3.14 It is intended that the caps and gateways will be set out in regulations which will be released in early 2010.



Gases

3.15 The CPRS will cover all 6 greenhouse gases (carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), HFCS (hydrofluorocarbons), perfluorocarbons (PFC) and sulfur hexafluoride (SF₆).

Covered Sectors

3.16 The sectors which will be covered by the CPRS are stationary energy, transport, fugitive emissions, industrial processes, and waste.

3.17 For all sectors, except the transportation sector, the liability rests on the actual emitter. In relation to the transportation sector, liability is imposed upstream on the fuel suppliers, importers or producers.²

3.18 It is not intended to cover deforestation (i.e. land clearing) under the Scheme, however forestry will be provided with the ability to voluntarily “opt-in” to the Scheme. Reforestation is considered in more detail below.

3.19 In relation to agriculture, the Government considers it is appropriate to include agriculture if issues such as emissions estimation and reporting can be resolved. However, agriculture will not enter the scheme until 2015, with a final decision being made on inclusion or exclusion by 2013.

Liable entities

3.20 Those entities from the above sectors which will be covered by the CPRS will be known as liable entities. Liable entities will include:

- (1) entities that have operational control over a facility with direct emissions (ie. Scope 1) of more than 25,000 tonnes of CO₂-e per annum (except for landfills where the threshold may be 10,000 tonnes of CO₂-e in certain circumstances – see paragraph 6.4 below);
- (2) importers, producers or suppliers of fuel;
- (3) importers, manufacturers or suppliers of synthetic greenhouse gases.

² In order to ensure that the cost is not felt (at least initially) by households, the Government proposes to cut fuel taxes to offset the price increases likely to result from liability incurred by fuel suppliers. This measure would be put in place for an initial 3 year period, with a review undertaken at the end of this period. A similar mechanism will be put in place for heavy vehicle road users for an initial one year period.



- 3.21 Where the entity is a corporation, liability will attach to the controlling corporation (essentially the company at the top of the corporate tree). Where the entity is not a corporation, liability will attach to the person that has operational control over the facility. Person is defined to include local government. Local government will only have liability under paragraph (1) above.
- 3.22 In some circumstances it may be possible for liability to be transferred from the fuel supplier to the user of the fuel. In these instances, an Obligation Transfer Number will be issued. Generally this transfer of liability will occur when the fuel user uses high volumes of a fossil fuel (e.g gas, coal). A mandatory transfer of liability will occur when the fuel used by the user produces greenhouse gas emissions exceeding 25,000 tonnes of CO₂-e. We have assumed that no Council would fall into this category and therefore have not considered Obligation Transfer Numbers further in this paper.
- 3.23 There is also an ability to transfer liability through a Liability Transfer Certificate. A Liability Transfer Certificate can be obtained in two instances: to transfer liability to another member of the corporate group, or to transfer liability to the company that has financial control. This option is currently only available to corporations, so is not of relevance to local government, however we note that the Commentary to the CPRS Bill states that it is intended that the financial control transfer test will be expanded to allow a transfer from any person with operational control to any person with financial control.³

Operational Control

- 3.24 The concept of “operational control” is critical for determining whether a person has a liability under the Scheme. “Operational control” is defined in the NGER Act. An entity is considered to have operational control over a facility if it has the authority to introduce and implement:
- operating policies;
 - health and safety policies; and
 - environmental policies.
- 3.25 If there are two entities that both have the authority to introduce and implement the above policies, then the entity that has the *greatest authority* to introduce and implement the

³ This option may be relevant to Councils where they sub-contract out the operation of their landfill but retain control over expenditure of infrastructure required in connection with the landfill (i.e landfill gas capture equipment).



operating and environmental policies (but not health and safety policies) will be deemed to have operational control. For example, two parties in a joint venture might both be considered to have the relevant authority.

- 3.26 The Consequential Amendments Bill proposes to introduce further amendments into the NGER Act to clarify that where two entities are considered to have the greatest authority to introduce and implement operating and environmental policies for a facility, they must nominate one of the entities to be the responsible party. It is an offence not to make this nomination, and where no nomination is made both entities will be deemed to be responsible parties and the responsibility for reporting and the liability under the CPRS will be apportioned equally.

Eligible emissions units

- 3.27 Liable entities will be required to surrender sufficient eligible emissions units to cover their emissions for a financial year. Eligible emissions units include:

- (1) Australian emissions units;
- (2) certified emissions reductions (**CERs**) except long term CERs (**LCERs**) and temporary CERs (**TCERs**) under the Clean Development Mechanism (**CDM**);
- (3) emissions reductions units (**ERUs**) under Joint Implementation (**JI**); and
- (4) removal units (**RMUs**) relating to land use, land use change and forestry activities;
- (5) international units other than Kyoto units if provided for in the Regulations when reviewed in the post 2012-13 period (for example, eligible emissions units could include units issued through the New Zealand Emissions Trading Scheme).

- 3.28 There is no cap on the amount of international units that may be used as eligible emissions units.

- 3.29 Once an emissions unit is surrendered it is cancelled. It is also possible to buy units for voluntary cancellation.

Australian emissions units

- 3.30 Each year, the Authority will issue Australian emissions units up to the national scheme cap. One Australian emissions unit will represent one tonne of CO₂-e. Australian Emissions Units can only be issued for years where the scheme cap is in place, hence only five years worth of Australian emissions units will be issued at any one time.



- 3.31 The Australian emissions units will be issued for a particular financial year (ie. they will be date stamped for that financial year) and will have a unique identification number. They will be personal property, and will be transferable to a person who has a Registry account or between Registry accounts held by the same person.
- 3.32 The majority of Australian emissions units will be sold through auction. Details of the auctioning procedures will be released in a further discussion paper. However, it is anticipated that auctions will be held monthly, and four years of vintages will be auctioned in each year (ie. the current vintage plus advance auctions of three further vintages).
- 3.33 A proportion of the total yearly issued units will be provided, without fee, to the emissions-intensive trade-exposed industries and coal-fired electricity generators. Australia Emissions Units will also be issued for reforestation and for destruction of synthetic greenhouse gases. They can also be issued for a fixed charge for the first 5 years of the Scheme (starting at \$40 per unit). This provision is intended to place a price cap on the units, at least for the first 5 years.
- 3.34 It will be possible to use Australian emissions units issued in earlier years to satisfy a liability in a later year (known as 'banking'). It will also be possible to use Australian emissions units issued for the following year for up to 5% of an entity's emissions liability for that financial year (known as 'borrowing').
- 3.35 Modelling undertaken by Treasury predicts that if the medium term emissions reduction target is 5%, the Australian emissions unit price will start at around \$23 in 2010, rising to \$35 by 2020. However, if the target is increased to 15%, the Australian emissions unit price will start at \$32, rising to \$50 in 2020. As at the date of this Briefing Paper, Kyoto Units (namely, CERs) are trading at around €11 (around \$23).

Surrendering eligible emissions units

- 3.36 Surrender of eligible emissions units must take place by 15 December following the relevant financial year. The number of emissions units required to be surrendered by a liable entity will be the provisional emissions number less any surplus emissions units surrendered in the previous year, plus any 'make good' number for the previous financial year. The provisional emissions number is not required to include the emissions generated from the combustion of any eligible upstream fuel or liquid petroleum fuel (as liability for these fuels will rest with the upstream supplier).
- 3.37 The provisional emissions number must be included in the report to be submitted to the Authority under NGERS. If the Authority considers that an incorrect report has been



submitted, or no report has been submitted when it should have been, it can calculate the emissions number itself.

Unit shortfall

- 3.38 If insufficient eligible emissions units are surrendered to cover an entity's emissions liability for a particular financial year, it will be required to pay a penalty. The penalty will apply to the shortfall amount. It will either be a fixed amount prescribed by regulations, or if no regulations are in place, it will comprise 110% x the benchmark average auction price for the previous financial year. The penalty must be paid by 31 January following the relevant financial year.
- 3.39 In addition to the penalty, the liable entity will also be required to 'make good' its shortfall (ie by purchasing emissions units to cover the shortfall, which must be surrendered in the following financial year).

Reforestation

- 3.40 As referred to above, there is the ability to 'opt-in' to the Scheme and be issued free Australian emissions units for eligible reforestation projects.
- 3.41 The process is as follows:
- (1) A person applies to the Authority to become a Recognised Reforestation Entity;
 - (2) A person applies to the Authority for a declaration that a project (whether existing or proposed) is an Eligible Reforestation Project, being a project for the establishment, management and maintenance of forest stand/s. There are specific requirements in relation to what constitutes a forest stand, including that the trees:
 - (a) Were established by direct human induced methods;
 - (b) Grow to a potential height of 2m and crown cover of at least 20%;
 - (c) Cover an area of land of at least 0.2 ha; and
 - (d) As at 31 December 1989 the land was clear of trees of a specified height and crown cover;
 - (3) The person establishes that it holds a "carbon sequestration right" as Australian Emissions Units can only be issued to a person who holds the exclusive legal right to obtain the benefit of sequestration in trees;



- (4) The Authority issues a notice specifying the reforestation unit limit (the maximum number of Australian Emissions Units which can be issued in relation to the project);
- (5) The person submits a reforestation report to the Authority (a reforestation report must be submitted within 5 years of the last report and not before 12 months of the last report) establishing the CO₂-e sequestered;
- (6) The Authority issues a Certificate of Reforestation specifying the Australian emissions units allocated.

3.42 The Authority can issue a Notice of Relinquishment which revokes the Eligible Reforestation Project declaration and the Australian emissions units issued (for example in the case of fire). The Authority can also impose forest maintenance obligations which can require a forest stand to be established or maintained such that on maturity the net greenhouse gas removed equals the Australian emissions units issued.

Compliance

3.43 The CPRS Bill specifically seeks to regulate actions that may be taken by entities to escape or avoid liability under the Scheme. For example, if the Authority considers that an arrangement has been entered into with the purpose of seeking to avoid triggering a threshold, it can determine that the relevant entity is not entitled to obtain the benefit of the relevant threshold. These provisions apply to any arrangement put in place after 15 December 2008 (ie the date of release of the White Paper).

3.44 If a person is convicted of an offence relating to fraudulent conduct, and that conduct has involved the issuing of Australian emissions units, the court may order that the person must relinquish a specified number of units. In practice, this provision of the CPRS Bill will only apply where emissions units have been issued without charge, such as those proposed to be issued to the emissions-intensive trade-exposed sectors and coal-fired electricity generators.

3.45 The CPRS Bill expands upon the corporate liability arrangements contained within the NGER Act, by expanding possible liability to all executive officers of a body corporate, rather than just the Chief Executive Officer. The CPRS Bill provides that if a body corporate contravenes a civil penalty provision, and an executive officer was involved in the contravention, that person will also contravene a civil liability provision. Executive Officers include directors, Chief Executive Officer, Chief Financial Officer and the Company Secretary.



- 3.46 Penalties for contravention of civil penalty provisions are up to \$1,100,000 for a body corporate and up to \$220,000 for an individual. Proceedings can be commenced up to 6 years after the contravention.
- 3.47 We note that in Victoria, the *Local Government Act 1989* (section 5) provides that a local council is a "body corporate with perpetual succession", meaning that the corporate rather than the personal civil penalty applies to local councils. We have not comprehensively reviewed the relevant legislation in each State and it would be necessary to confirm that the situation in Victoria is the same in other jurisdictions.
- 3.48 As identified above, in addition to the local council being potentially liable, the Chief Executive Officer and the Chief Financial Officer of the Council (however the position's title is described) and possibly other executive officers of the Council could be held personally liable for a breach of a civil liability provision if the executive officer knew or should have known that the contravention would occur and was in a position to influence the Council in relation to the contravention but failed to take all reasonable steps to prevent it.
- 3.49 There are also significant penalties (up to \$1,100,000 or 10 years imprisonment) if a person enters an arrangement to avoid an existing or future liability to pay a penalty for an emissions unit shortfall.

4. Overview of the National Greenhouse and Energy Reporting System (NGERS)

- 4.1 The following discussion only covers those aspects of the NGERS that will be applicable to local government if amendments are made to this System as proposed by the Consequential Amendments Bill.

Relevant documents

- 4.2 The documents which are relevant to an understanding of the National Greenhouse and Energy Reporting System are:
- (1) National Greenhouse and Energy Reporting Act 2007 (Cth) (**NGER Act**);
 - (2) National Greenhouse and Energy Reporting Regulations 2008 (Cth) (**NGER Regulations**);
 - (3) National Greenhouse and Energy Reporting (Measurement) Determination 2008 (Cth) (**NGER Measurement Determination**);



- (4) National Greenhouse and Energy Reporting Guidelines;
 - (5) National Greenhouse and Energy Reporting (Measurement) Technical Guidelines 2008 v1.0
- 4.3 The Department of Climate Change has also published a National Greenhouse and Energy Reporting System Calculator, which can be accessed through the Department's website at <http://www.climatechange.gov.au/reporting/calculator/index.html>.
- 4.4 The Consequential Amendments Bill proposes various amendments to the NGER Act. Of significance for local government, the Commentary to the Consequential Amendments Bill states that the registration and reporting requirements in the NGER Act will be expanded to cover all liable entities. For the purposes of the following discussion, it is assumed that this Bill will be passed in similar format to its draft status. It is also assumed that the Authority will replace the Greenhouse and Energy Data Officer, as the regulatory body for NGERS. We note that the NGER Regulations will also require amendment to apply to liable entities.
- 4.5 If a Council is a liable entity under the CPRS, it will need to register with the Authority by 31 August⁴, following the first financial year in which liability arises, and report to the Authority by 31 October.
- 4.6 If a Council is not a liable entity under the CPRS, it will not be required to comply with the registration and reporting requirements of NGERS, because the general requirements only apply to "constitutional corporations".⁵ If a Council is a "constitutional corporation", it will need to consider whether it exceeds the corporate threshold, which for the 2008/2009 year is 125,000 CO₂-e emissions or 500 terrajoules of energy use or production or the facility threshold, which is 25,000 CO₂-e (ie the same threshold as the CPRS). We consider it unlikely that any Council would meet the corporate threshold (for example, 500 terrajoules of energy use equals electricity consumption of 139,000,000 kWh).

Registration

- 4.7 To apply for registration, an application form must be completed and lodged with the Authority. At the moment, the NGER Regulations provide that the following information must be submitted in the registration application:

⁴ We note that although the Commentary to the Consequential Amendments Bill states that the NGER Act will be amended to require liable entities to register by 31 August, the Consequential Amendments Bill does not actually include this amendment.

⁵ Any Councils that consider that they may be a "constitutional corporation" should obtain separate advice in relation to their possible liability under the NGERS for registration and reporting. In this context, we refer to the Federal Court decision of *Australian Workers Union of Employees, Qld v Etheridge Shire Council* [2008] FCA 268, which found that Etheridge Shire Council was not a "trading" or "financial" corporation, because its predominant and characteristic activity was one of local government.



- ABN, head office street address and head office postal address of the corporation
- Full name, email address, contact phone number and postal address of the corporation's chief executive officer or equivalent
- Full name, email address, contact phone number and postal address of someone who will be the primary contact person for the corporation
- The name and ABN of each subsidiary, joint venture and partnership that is a member of the corporation's group
- The first financial year in which a reporting threshold is met.

Obviously, these regulations will need to be amended to deal with the application requirements for those entities that are not corporations, such as local government.

- 4.8 The penalty for failing to apply for registration is 2,000 penalty units, which currently equals \$220,000.
- 4.9 Registration is complete when the Authority adds the entities' name to the National Greenhouse and Energy Register. Entities will remain registered unless they apply for de-registration, the application for deregistration has been approved by the Authority and the entities' name has been removed from the Register.

Reporting

- 4.10 A new Part 3A will be inserted into the NGER Act to require liable entities to provide a report to the Authority. The report will need to cover:
- (1) Specified Scope 1 (direct) emissions covered by the Scheme;
 - (2) The calculation of the provisional emissions number; and
 - (3) The calculation of the final emissions number.
- 4.11 A liable entity will not be required to report other matters covered by the NGER Act, such as Scope 2 (indirect) emissions, energy production and energy consumption (unless the liable entity is a corporation which meets the thresholds set out in the NGER Act).
- 4.12 Reporting is undertaken by industry sector, and the entity with operational control over a facility must determine the principal activity of that facility so that it can be attributed to the correct industry sector. The 'industry sectors' used are those set out in the Australian New



Zealand Standard Industry Classification (**ANZSIC**⁶) and are set out in Schedule 2 of the NGER Regulations.⁷

4.13 The NGER Regulations also include specific provisions for reporting on greenhouse gas emissions from particular sources (in terms of what information is required to be provided). For a landfill, the following matters will need to be reported upon:

- (1) The location of the landfill site by State or Territory;
- (2) The number of years in operation;
- (3) The tonnes of average annual amount of disposal of solid waste over the lifetime of the facility prior to the first year of reporting;
- (4) The total tonnes of waste entering the landfill;
- (5) The break down of the source of the waste (e.g municipal, commercial and industrial or construction and demolition).

4.14 In order to prepare a report, it will be necessary to decide which method will be used for measurement. The methods are set out in the NGER Measurement Determination. They are:

- (1) Method 1, the default method, which is derived from the National Greenhouse Accounts methods and is based on national average estimates.
- (2) Method 2 is a facility specific method which uses industry practices for sampling and Australian Standards for analysis.
- (3) Method 3 is the same as method 2 but is based on Australian Standards for both sampling and analysis.
- (4) Method 4 provides for facility specific measurement emissions by continuous or periodic emissions monitoring.

4.15 We note that for the waste sector, there is currently no Method 4.

4.16 It is outside the scope of this paper to go into detail on the different methods. For the methods relating to landfills, Councils should have regard to part 5.2 of the NGER

⁶ Australian Bureau of Statistics, 28 February 2006, 'Australian and New Zealand Standard Industrial Classification Code'

⁷ The industry sector for waste disposal is 292.



Measurement Determination, and should seek advice from appropriate consultants as to which method to use.

- 4.17 We note that the Commentary to the Consequential Amendments Bill states that where an entity has elected to use Method 2 or above (ie a higher order method) in respect of a particular facility, then that method will have to be used for a minimum period of 4 years. It is intended to amend the NGER Measurement Determination to reflect this requirement, however the Commentary states that these amendments will not be made until after the CPRS Bill comes into effect.

Compliance provisions

- 4.18 Please refer to our September Briefing paper for details of the compliance provisions in the NGER Act.

5. CPRS Regulations

- 5.1 The regulations may:
- (1) Specify detailed scheme cap numbers for each relevant financial year and scheme gateways;
 - (2) Prescribe the distance for the proximity rule for landfill facilities;
 - (3) Include several provisions in relation to fuel suppliers;
 - (4) Specify grounds for the transfer of liability transfer certificates;
 - (5) Allow for non-Kyoto international emissions unit to be included in the scheme;
 - (6) Provide for the administration of the Registry as it applies to Kyoto units, arrangement for the carry over of Kyoto units, the administration of outgoing international transfers, and conditions relating to the transfer of units;
 - (7) Provisions in relation to the emissions-intensive trade-exposed (**EITE**) including creation, criteria for eligibility and application process requirements of the EITE assistance program, the rates of assistance, the allocative baselines for each activity, and the administrative allocation of Australian emissions units as well as alternative penalty rates;



- (8) Provide for application requirements and additional criteria to become a recognised reforestation entity, specify other project attributes to be recognised as an eligible reforestation project and provide further detail on the definition of a 'forest stand';
- (9) Specify requirements going to the calculation and reporting of net greenhouse gas removals, the process involved and requirements associated with submitting a reforestation report;
- (10) Specify that an eligible international emission unit must not be surrendered in relation to a particular year;
- (11) Specify the process for surrendering international emissions units;
- (12) Set out detailed record keeping obligations;
- (13) Make further provision in relation to the Registry.

5.2 It is expected that the first set of regulations will be released in May 2009, and the second set of regulations (incorporating the Scheme caps and gateways) will be released in early 2010.

6. Local Government Facilities caught by the CPRS

6.1 The only local government facilities which are anticipated to be above the threshold for liability under the Scheme are landfills. For completeness however the situation in relation to wastewater facilities is considered below.

Landfill Facilities

6.2 A "landfill facility" is defined in the CPRS Bill as a facility for the disposal of solid waste as landfill. Closed landfills are also included in the definition, however landfills that closed prior to 1 July 2008 will not have a liability under the Scheme. To receive the benefit of this exemption, the landfill must have ceased taking waste by this date.

6.3 Generally, a landfill facility will have liability under the Scheme if it has emissions of 25,000 tonnes of CO₂-e or more a year.

6.4 However, the CPRS Bill currently includes provisions which lower this threshold to 10,000 tonnes of CO₂-e in two instances.

- (1) The lower threshold will apply if a landfill facility is within a prescribed distance of another landfill facility that accepts similar classifications of waste (this provision is



being referred to as the “proximity rule”). This lower threshold is intended to prevent the displacement of waste from a landfill facility that meets or exceeds the threshold of 25,000 tonnes of CO₂-e (ie large landfill) to a landfill facility that does not meet this threshold (ie small landfill). The prescribed distance has not yet been determined and will be specified in the Regulations. We note that work undertaken by Hyder Consulting suggested that an appropriate threshold would be 82 km⁸. This figure was also referred to by the Government in the White Paper. We also note that the CPRS Bill currently only refers to “landfill facilities open for the acceptance of waste”. It does not distinguish between landfills accepting different types of waste (as is stated in the Commentary). The Commentary states that provisions relating to this requirement are yet to be drafted, but does not state whether these provisions will be included in the CPRS Bill or the Regulations. Further, as currently drafted the proximity rule does not make it clear that the reduced threshold will only apply to a landfill which is within a prescribed distance of a landfill which is covered by the Scheme (ie a landfill exceeding the 25,000 tonne CO₂-e trigger).

- (2) The second exception is where a landfill facility to which the lower threshold applies closes. In this instance, the landfill will continue to have a 10,000 CO₂-e threshold for the ten financial years following the year of closure, following which it would revert to 25,000 CO₂-e.

6.5 For the purposes of landfill facilities, emissions from a solid waste disposal source are categorised into two components:

- (1) emissions from past waste, or ‘legacy waste’: that is, emissions generated from waste deposited prior to 1 July 2008⁹;
- (2) emissions from new waste; that is, emissions generated from waste deposited from 1 July 2008 onwards.

6.6 To ascertain whether the threshold is triggered both emissions from legacy waste and emissions from new waste must be considered. However, it will not be necessary to surrender emissions units for the legacy waste emissions until the 2018/2019 financial

⁸ The figure of 82 km was based on transportation of Commercial and Industrial Waste; a permit price of \$20; use of a 20 tonne truck @ \$120 per hour, travelling 30 km per hour; emissions of 0.83 CO₂-e per tonne of waste based on 50% gas recovery. See page 26, Hyder Consulting Report on “Options for covering waste facilities under an emissions trading scheme”, 10 June 2008, on the Department of Climate Change’s website.

⁹ We note that Hyder Consulting prepared a report for the Department of Climate Change to assess the impact of including emissions from legacy waste within the CPRS - Hyder Consulting Report, “Assessment of Landfill Legacy Issues”, 4 December 2008. This report can be found on the Department of Climate Change’s website.



year. In other words, there is a liability 'holiday' for legacy waste emissions until 1 July 2018.

- 6.7 The Government in the Commentary on the CPRS Bill acknowledges that legacy waste emissions have been excluded from the Scheme until 2018 because some operators will have difficulties passing on scheme costs for emissions from past waste streams. The Government reasons that by 2018, legacy emissions will fall substantially and excluding liability from this period will reduce the financial impact on landfill operators and give them time to assess other abatement opportunities.
- 6.8 For landfills that close after 30 June 2008, liability for emissions will remain with the entity which had operational control of the facility at closure. In the event that operational control changes after the facility is closed, liability would transfer to the new operator. The provisions relating to this requirement are yet to be drafted.
- 6.9 In terms of the measurement of legacy waste emissions we understand it is intended that the same model should be used for both new waste emissions and legacy waste emissions. For example, if Method 1 is chosen to measure emissions from new waste, this method will have to be used to measure emissions from the old waste. As stated in paragraph 4.17 above, once an operator chooses a particular method, that method must be used for a minimum 4 year period. The drafting in relation to this aspect has not yet been undertaken, and we understand that the Australian Landfill Operators Association will be putting forward some suggested drafting in its submission on the draft CPRS Bill.
- 6.10 The Commentary on the CPRS Bill states that the Scheme will allocate methane that is captured and combusted proportionally between legacy and new emissions. It is intended that this allocation will be given effect by an amendment to the NGER Measurement Determination. The following example is provided as to how this would work:

In 2012-13, Company E has operational control over a landfill facility. Gross emissions from that landfill facility (prior to accounting for methane flaring) are 120,000 tonnes of CO₂-e. This is made up of 30,000 tonnes of CO₂-e of new emissions and 90,000 tonnes of CO₂-e of legacy emissions.

The landfill facility flares an amount of methane that reduces its net emissions to 60,000 tonnes of CO₂-e. Assuming the landfill facility is outside the specified distance (as prescribed in the Regulations) of another competing landfill facility, the following applies:



- The landfill facility is covered under the Scheme, as the total (net) emissions from the landfill facility (60,000 tonnes of CO₂-e per year) exceed the participation threshold of 25,000 tonnes of CO₂-e per year.
- The reductions in emissions achieved through methane flaring are allocated proportionally between legacy emissions and new emissions. Therefore, net new emissions are 15,000 tonnes of CO₂-e and net legacy emissions are 45,000 tonnes of CO₂-e.
- Company C is liable for the net new emissions equal to 15,000 tonnes of CO₂-e.

Wastewater Facilities

- 6.11 The Government's position as expressed in the White Paper is to apply the Scheme threshold to wastewater facilities based on total direct (Scope 1) emissions from all sources, including post-discharge (fugitive) emissions. The CPRS Bill and Commentary does not change this position and provides no further guidance in relation to how wastewater facilities will be treated under the Scheme. The Government indicated in the White Paper that it is not inclined to reduce the threshold to ensure more comprehensive coverage of wastewater emissions as this would bring many small wastewater treatment plants in regional towns and urban areas into the Scheme, substantially increasing the number of entities with Scheme obligations and Scheme administrative costs. In contrast to the solid waste sector, a lower threshold is not proposed because all wastewater treatment facilities are currently government-owned and because wastewater flows through established pipeline infrastructure, there is little scope for waste displacement or market distortions between covered and uncovered sectors.
- 6.12 There are significant inaccuracies and uncertainties with measurement of emissions from the decomposition of organic matter in wastewater (largely nitrous oxide), especially in relation to the area of fugitive (post-discharge) emissions from the disposal of treated wastewater. Based on our conversations with representatives of the Australian Water Association and the Water Services Association of Australia, if the current conversion factor for nitrous oxide is used, only a few waste water facilities are anticipated to be above the Scheme threshold. As could be anticipated, these are the major metropolitan facilities which are operated by water corporations rather than local councils. While the wastewater industry has made submissions to the Government that the current conversion factor is not in accordance with world's best practice, there is no indication that the conversion factor is proposed to be amended.

7. The impacts and implications of the CPRS on Council operations

Will Councils be liable entities under the CPRS?

- 7.1 We have concluded that only Councils that have operational control over a landfill, which emits more than 25,000 tonnes of CO₂-e per financial year, are likely to be liable entities under the CPRS. Depending upon the final drafting of the proximity rule (see paragraph 9.12 below), Councils with operational control over landfills which emit more than 10,000 tonnes of CO₂-e may also become liable entities.
- 7.2 Where a Council sub-contracts the operation of the landfill to an independent contractor, it will need to assess who has operational control in order to determine where liability will fall. See paragraphs 3.24 to 3.26 above.

What must a Council do if it is a liable entity?

- 7.3 If a Council is a liable entity, it will need to purchase sufficient eligible emissions units to cover its direct (Scope 1) emissions. It will not have to purchase emissions units to cover its fuel use on the landfill. Nor will it have to purchase emissions units to cover its fuel used elsewhere in Council operations. This liability will remain with the upstream fuel supplier.
- 7.4 The eligible emissions units will need to be surrendered to the Authority by 15 December following the relevant financial year. If insufficient emissions units are surrendered, the Council will incur an administrative penalty. The penalty will attach to the unit shortfall and must be paid by 31 January. A further penalty will result if the administrative penalty is not paid by this date. In addition to the penalty, the Council will need to purchase eligible emissions units to cover the shortfall and surrender these units in the following financial year.
- 7.5 Councils who are liable entities will wish to consider whether there is a possibility of reducing emissions to below the threshold, for example through the installation of gas capture infrastructure. Councils may also wish to consider whether there are other options for reducing the emissions profile of their landfill, for example waste diversion of biodegradable waste. We note, in this context, however the anti-avoidance provisions contained within the CPRS Bill which enable the Authority to essentially 'look behind' any scheme specifically put in place by a liable entity in order to avoid triggering the threshold.
- 7.6 In the event that a Council is unable to get below the threshold, and therefore has a liability under the Scheme, the Council will need to consider how it is going to satisfy that liability. For example, will it simply purchase Australian emissions units through the auctioning



process; will it purchase eligible international emissions units; will it purchase more eligible emissions units than it needs and bank these units for later years; will it participate in the secondary emissions unit market; etc. These issues and others, such as carbon price forecasting, are likely to require specialist advice.

Do Councils have ability to trade emissions units?

- 7.7 If a local council is a liable entity under the CPRS it will need to purchase sufficient eligible emissions units to acquit (surrender) in a compliance period. These units can be bought either through the auctions which will be held by the Authority, through brokers who are able to source international units or by trading in the market.
- 7.8 We have considered whether trading is within the powers of local councils in Victoria under the *Local Government Act 1989* (Vic) (**LG Act**) as set out below. We have not comprehensively reviewed the relevant legislation in each State and Territory and it would be necessary to confirm that our findings in relation to the powers of local government in Victoria are consistent in other jurisdictions. Generally, our view is that local government would have the ability to undertake trades in the carbon market.
- 7.9 Councils are granted broad general powers to do “all things necessary or convenient to be done in connection with the achievement of [their] objectives and the performance of [their] functions”. Compliance with the obligations placed on liable local councils under the CPRS Bill is necessary to achieve the objectives of a local council, the primary objective being to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions. Obligations under the CPRS Bill also fall within the functions of a Council under the LG Act (section 3E) which are specified to include:
- (b) planning for and providing services and facilities for the local community;*
 - (c) providing and maintaining community infrastructure in the municipal district;*
 - (g) exercising, performing and discharging the duties, functions and powers of Councils under this Act and other Acts;*
 - (h) any other function relating to the peace, order and good government of the municipal district.*
- 7.10 The LG Act also grants, and provides for restrictions on, the powers of local councils in relation to financial management. For example, Part 9 of the LG Act contains restrictions on the power of a local council to enter into contracts for goods or services, or for the carrying out of works, over the value of \$100,000 (or such higher amount as may be fixed



by Order in Council). However we are of the view that trading in an open market for the acquisition of eligible emissions units would not be considered a contract for the provision of goods or services for the purposes of the LG Act and there are no other relevant restrictions which would hinder a local council entering the market to purchase Australian emissions units or international units.

- 7.11 Local councils also have specific 'entrepreneurial' powers under the LG Act including power for a local council, for the purpose of performing any function or exercising any power conferred on a Council by or under legislation, to participate in the formation and operation of a corporation, trust, partnership or other body and associated powers. If a local council needs to utilise these powers in order to enter into the market, the Council must assess the total investment involved and the total risk exposure, there being additional requirements if the sum is greater than \$100,000 or 1% of the Council's revenue from rates and charges.
- 7.12 Local councils may also need to consider whether it is necessary to amend the delegations to officers to carry out functions under the CPRS.

Waste disposal costs

- 7.13 Where a Council has a direct liability under the CPRS because it operates a landfill over the relevant threshold, it will need to consider how it can pass on the costs associated with that liability. The most obvious way will be increasing the gate fees of its landfill to cover the costs of satisfying this liability. These increased costs are then likely to result in increases to that Council's rates (if the landfill takes municipal waste). It is outside the scope of this Paper to consider the mechanics surrounding such rate increases.
- 7.14 For those Councils that do not operate a landfill, increased costs of waste disposal are still likely to arise. This is because the operator of the landfill(s) used by a Council will be seeking to pass on the costs associated with their liability under the Scheme. Whether these costs are able to be passed on where there are existing contracts in place between the Council and landfill operator will depend upon the exact terms of the contract. Councils will need to review their waste disposal contracts to ascertain where the liability will lie. Future contracts entered into with landfill operators are likely to include provisions specifically addressing liability under the CPRS and any cost allocation and sharing arrangements in respect of this liability.



- 7.15 Hyder Consulting in their report, “*Assessment of Landfill Legacy Issues*”¹⁰, have modelled the expected financial impact of the CPRS. Their modelling showed that at a cost of \$20 per permit, the likely cost impact would be between \$8.46-\$39.02 per Australian household per annum. If the permit cost was \$40, the impact would rise to \$16.92-\$78.04. The range in cost depends upon the location of the landfill, the gas capture efficiency and the discount rate. Hyder Consulting also note that these costs apply to MSW, C & I and C & D wastes. Other assumptions are set out at pages 4-5 of the report.

Will Councils have to comply with requirements of NGERs?

- 7.16 Only Councils that are liable entities under the CPRS will have obligations to register and report under the NGER Act. A report will need to be submitted by 31 October following the relevant financial year. If the Scheme commences on 1 July 2010 (as currently anticipated), the first financial year when CPRS obligations will arise will be 2010/2011. Thus the first report to be submitted by Councils that are liable entities will be due on 31 October 2011.
- 7.17 Resourcing issues are likely to arise for Councils who have a reporting obligation, as it is unlikely that Councils will have sufficient resources or expertise inhouse to enable them to prepare the necessary reports. In particular, an assessment will need to be undertaken as to whether Method 1 (the default method) should be utilised or whether a higher order Method (ie Method 2 or 3) should be used. The work involved in using Method 2 is likely to require outsourcing.

What will the impact of the CPRS be for non-liable entities and for Councils generally?

- 7.18 The overall impact of the CPRS in the long term will be increased costs of electricity, gas and fuel (both petrol and diesel). In the initial years of the Scheme, this impact may not be too great, because of the assistance that will be provided to coal-fired electricity generators and the arrangements concerning fuel.
- 7.19 The Treasury modelling report published in late 2008 after the Green Paper concluded that at a price of \$25 per emissions unit, there would be a one-off rise in the consumer price level of around 1-1.5 per cent, with minimal implications for ongoing inflation. The average household is expected to spend an extra \$4-5 per week on electricity and \$2 per week on gas and other household fuels. This corresponds to an increase in electricity prices of 17-24 per cent and in gas prices of 11-15 per cent.

¹⁰ See Hyder Consulting report for Department of Climate Change on “*Assessment of Landfill Legacy Issues*” dated 4 December 2008, which can be found on the Department of Climate Change’s website.



- 7.20 The cost of emission-intensive goods and services is also likely to increase. It should be noted, of course, that these cost impacts will arise for everyone in Australia.
- 7.21 We anticipate that where there are existing contracts between a Council and a supplier for the provision of goods and services, and those goods or services are likely to be impacted by the CPRS, suppliers will seek ways of trying to pass on these costs. Whether this option is available will depend upon the terms of the particular contract. However, for new contracts Councils can expect to see provisions included dealing with the allocation of costs arising from the CPRS.

Are there opportunities for Councils under the CPRS?

- 7.22 The main opportunity for Councils under the CPRS is the ability to generate income through the forestry provisions. It is likely that this opportunity will be of more relevance to rural and regional councils, who have excess landholdings or are able to acquire land in their area to undertake plantation of forests.
- 7.23 Other than free Australian emissions units that can be obtained through forestry activities¹¹, it is not intended that any other sectors will be able to generate offsets or credits for use within the Scheme. The Government will give further consideration to the agriculture sector when it decides in 2013 whether agriculture will be included in the Scheme.

Voluntary action by Councils

- 7.24 Due to the fact that any person can purchase Australian emissions units, it is open to Councils to purchase Australian emissions units (either through the auctioning process or on the secondary market) even if they are not a liable entity. The only pre-requisite is that the purchaser must hold a Registry account. It would then be open to a Council to sell these units to liable entities under the Scheme or to voluntarily surrender them for cancellation.¹² The impact of voluntary surrender of emissions units by non-liable parties will be to drive the carbon price higher.

8. Case study summary of a Council operated landfill

Council A has operational control of a putrescible landfill which accepts 100,000 tonnes of waste per annum. The landfill has no landfill gas capture. Assume the landfill has emissions of 105,000 tonnes CO₂-e. This is made up of 100,000 tonnes CO₂-e arising

¹¹ Another sector which can generate free Australian emissions units is the destruction of synthetic greenhouse gases, however this is not relevant for local government activities.

¹² This ability is subject to any specific local government laws dealing with financial management, as referred to in paragraphs 7.10 and 7.11 above.



from the release of methane gas and 5,000 tonnes CO₂-e arising from the combustion of diesel used by landfill vehicles.

Assuming that the CPRS starts on 1 July 2010, Council A will have the following obligations in relation to the 2010/2011 financial year:

31 August 2011	Register with the Authority
31 October 2011	Submit report under NGERS to the Authority
15 December 2011	Surrender 100,000 eligible emissions units to the Authority (the 5,000 units to cover the fuel use will need to be surrendered by the fuel supplier). Assuming a cost of \$25 per unit, total expenditure \$2.5 million .
31 January 2012	Pay a penalty if less than 100,000 units submitted by 15 December 2011. Late payment penalty applies if payment not made by 31 January 2012.

Assume that Council A installs landfill gas capture infrastructure which captures 70% of the total emissions. The landfill will still be covered by the Scheme because the residual emissions (30,000 tonnes CO₂-e) are greater than the threshold of 25,000 tonnes CO₂-e, however Council A will only need to purchase 30,000 eligible emissions units to satisfy its liability (**\$750,000 @ \$25 per unit**).

Assume that out of the 100,000 tonnes, 20,000 tonnes relates to new waste (that is, waste deposited since 1 July 2008) and 80,000 tonnes relates to legacy waste (that is, waste deposited prior to 1 July 2008). The landfill will still be covered by the Scheme because the total emissions are greater than the threshold of 25,000 tonnes CO₂-e. However, Council A will only need to purchase 20,000 eligible emissions units to cover its liability due to the liability 'holiday' (**\$500,000 @ \$25 per unit**).

Assume that landfill gas capture infrastructure captures 70% of the total emissions and that 20,000 tonnes CO₂-e relate to new waste and 80,000 tonnes CO₂-e relate to legacy waste. Total emissions still equal 30,000 tonnes CO₂-e, therefore landfill over the threshold, but



due to legacy waste 'holiday', Council A will only need to purchase 6,000 eligible emissions units (**\$150,000 @ \$25 per unit**).

9. Issues for submissions on the CPRS Bill

9.1 We consider that the main impact of the CPRS Bill will be on those Councils that are likely to be liable entities because they have operational control over a landfill which triggers the relevant threshold. Hence, we have concentrated our comments on this aspect. We have also addressed the general cost implications of the CPRS at the conclusion of this section.

9.2 There are a number of issues currently being addressed by the landfill industry in relation to the liability of landfills under the CPRS. These are:

- (1) Measurement Issue;
- (2) Legacy Waste;
- (3) Thresholds/Proximity Rule;

Measurement issues

9.3 The key issue relating to measurement is that ultimately measurement or the results of utilising one of the Methods in the NGER Measurement Determination will be to determine an entity's liability under the CPRS (ie it will dictate firstly whether the entity's landfill triggers the applicable threshold, and secondly how many eligible emission units will need to be purchased for surrender). It is therefore of critical importance that the information produced through application of the NGER Measurement Determination is as accurate as possible. As the External Audit Consultation Paper published in October 2008 by the Department of Climate Change states:

"The quality of emissions data that will underpin the CPRS will need to be **investment grade** to provide the market with a sound foundation for decision making" [emphasis added]

9.4 The Waste Management Association of Australia, through its Landfill Division has undertaken extensive dialogue with the Department of Climate Change in relation to the measurement issues and the content of the NGER Measurement Determination. The result of this dialogue is that changes will be made to the Methods in the NGER Measurement Determination. It is expected that the revised NGER Measurement Determination will be released in May.



9.5 Some of the outstanding issues that we have been advised of are:

- (1) The NGER Measurement Determination should reflect individual waste type DOC_s, in place of the average 0.5 currently adopted by DCC;
- (2) The collection efficiency included in Method 1 should be varied to 95% for closed and capped landfills;
- (3) The issue of moisture content in the landfill 'representative zone' in Method 2 should be determined by the operating duration of each cell and not the use of leachate recirculation;
- (4) Revision of the default waste compositions for MSW, C&I and C&D;
- (5) Updating of the degradability of timber and other harvested wood products (this updating is contingent on new papers in the scientific literature due during 2009/10);
- (6) Removal of rubber/leather, nappies and sludge and the reduction in textiles (for the manmade fibre textiles) from the list of degradable waste components;
- (7) Reconsideration of State based variations in k values for food and garden waste;
- (8) Application of an MCF of 0.75 for food and garden waste to allow for aerobic degradation before collection;
- (9) Increase in the default maximum collection efficiency for Method 1 (currently 75%, Landfill Division has asked for 80%);
- (10) Finalisation of the new Method 2/3 using flux box testing instead of USEPA Method 2E;
- (11) Acceptance of visual waste composition methodologies used widely in Australia for waste composition surveys;
- (12) Acceptance of IR field gas composition instruments as used commonly in Australia instead of gas chromatography;
- (13) Recognition that Method 4 is under development and consideration of that method in the medium term;



(14) Recognition that methane oxidation is a flux based phenomena not a directly related % of residual gas emissions as it is in the current methodologies.

9.6 We imagine one of the key issues for Councils who are required to prepare a report under NGRS will be the resourcing issue, hence affected Councils may wish to make submissions on this aspect.

Legacy Waste

9.7 The liability 'holiday' until 2018 for legacy waste will only apply to waste deposited prior to 1 July 2008. This means that waste currently being deposited in landfills (and which has been deposited since 1 July 2008) has a liability attached, even though the CPRS legislation has not yet been passed and the CPRS has not yet commenced. The landfill industry's position is that the liability 'holiday' should apply to all waste deposited before the Scheme commences; that is, liability should only attach to waste deposited from 1 July 2010. We would assume that all of local government would support this position (because of the associated cost impacts for waste disposal).

9.8 We refer again to the work undertaken by Hyder Consulting in their December 2008 report. Their modelling demonstrated that inclusion of emissions from legacy waste could result in a cost of \$15.45-\$39.02 per household per year, compared to a cost of \$6.37-\$14.06 for a landfill that entered the Scheme after 2010 (see Table 7)¹³.

9.9 The legacy waste issue raises a number of aspects which local government may wish to consider commenting on. Firstly, whether emissions from legacy waste should be covered at all by the CPRS. Secondly, if emissions from legacy waste are included in the CPRS, what should be the appropriate cut off date for the 'holiday' – should it be a later date than 2018? Thirdly, what date should trigger liability for new waste going into landfills – should this be 1 July 2008 as currently set out in the legislation, or should it be 1 July 2010 when the Scheme will officially commence?

Thresholds/Proximity Rule

9.10 The proximity rule was introduced into the CPRS Bill as a result of suggestions from the industry that the 25,000 tonne CO₂-e threshold may cause displacement of waste from those sites over the threshold (ie large landfills) to those sites under the threshold (ie small landfills); the rationale being, that there would be differential pricing between the larger landfill (with a CPRS liability) and the smaller landfill.

¹³ Figures based on emissions permit price of \$20 per tonne CO₂-e and discount rate of 10%. Please refer to the report for other assumptions.



- 9.11 As discussed above, the general assumption appears to be that the Government will choose a threshold around 80 km. State local government associations and individual Councils will need to consider the implications of a threshold of this distance. It may also be that further evidence should be provided to the Government in relation to whether there is a real likelihood that waste displacement will occur.
- 9.12 We note that Deacons has been asked by the Australian Landfill Operators Association (**ALOA**) to assist it prepare revised drafting of the current provision in the CPRS Bill dealing with thresholds. The intent is that the lower threshold will not be an automatic threshold, but rather, will be triggered following an application by an affected landfill operator (ie where a landfill operator covered by the Scheme is losing waste tonnage to another landfill which is not covered by the Scheme). In other words, the threshold applied to the whole landfill industry will be 25,000 tonnes CO₂-e, but in the event of demonstrated diversion from covered landfills to uncovered landfills, the Authority will have the ability to lower the threshold to 10,000 tonnes CO₂-e. The Authority will be required to determine what an appropriate distance is, in determining whether to apply the lower threshold. Further, it is intended that once the smaller landfill closes, then the threshold for the large landfill will revert to 25,000 tonnes CO₂-e, but the threshold for the smaller landfill will stay at 10,000 tonnes CO₂-e for 10 years following closure.

Specific cost impacts associated with landfills

- 9.13 There are a couple of specific cost impacts arising in connection with landfills which may be relevant for local government. The first relates to the recovery of costs for those Councils that are a liable entity under the Scheme. It is assumed that very often a Council may only operate one landfill, unlike private operators who may operate a number of landfills. In this event, the Council will only have one source for raising the funds necessary to satisfy its liability under the Scheme (ie the gate fees from that particular landfill). Whereas private operators who may have a number of landfills (or operate other waste facilities/operations), may be able to apportion their liability across all of their landfills (some of which may be outside the operation of the Scheme if they fall below the threshold) and other operations.
- 9.14 Secondly, Councils operating landfills in rural or regional areas may be at a disadvantage due to their smaller waste volumes and rates base. It is possible that they will need to charge higher amounts per tonne than metropolitan landfills to cover their CPRS liability (assuming of course, that their emissions trigger the relevant threshold).



General cost implications of CPRS

- 9.15 As identified above, there will be long term cost impacts arising from the introduction of the CPRS. Costs of electricity and fuel will increase over time to reflect the carbon price. These increased costs will be borne by all sectors of government and community, and ideally will encourage changing behaviour to achieve energy efficiency and other forms of energy savings. It can be expected that new technology will develop to provide lower emissions products and goods.
- 9.16 It is not currently planned to directly compensate local government for the increased costs that will arise from the CPRS. The only form of direct compensation (in the way of free emissions units) will be to the emissions-intensive trade-exposed industries and to coal fired power generators. The monetary amount of assistance to the coal-fired electricity generation sector will be in the order of \$3.5 billion in 2008/09 dollars (based on a 5% medium term reduction target).
- 9.17 The Government does, however, intend to establish a Climate Change Action Fund (**CCAF**). The draft CPRS legislation package does not deal with the CCAF, however this fund will potentially be of relevance in relation to the cost implications arising from the Scheme. The Government intends to allocate \$2.15 billion to this Fund over 5 years. The CCAF will provide funding in the following areas:
- (1) Information (informing community sector organisations, small and medium sized enterprises and larger industrial businesses about operation of Scheme) (\$130 million)
 - (2) Investment in Energy Efficiency and Low Emissions Technologies (\$1.4 billion)
 - (3) Structural adjustment provision for workers, communities and regions dependant on coal-fired electricity generation (\$200 million)
 - (4) Coal sector adjustment (\$750 million)
- 9.18 The cost increases that Councils will incur once the Scheme is established will either need to be absorbed by Councils or recovered through rate increases. Councils will need to give consideration to what the likely cost increases will be, and what mechanism they will use to recover or account for these increases. Possible options include reducing the level of services provided, reducing staffing costs, implementing energy efficiency programs or increasing rates.



- 9.19 In addition to their own cost issues, Councils may be required to assist their communities adapt to or manage their cost issues arising out of the CPRS. This issue is likely to be more significant for Councils with low socio-economic communities. In this context, we note that the Government has stated that every cent of revenue raised from the sale of Australian emissions units will be used to help households and business adjust to the Scheme. In addition to the assistance proposed to be provided through free permits and the CCAF, the Government will provide direct assistance to households through the tax and transfer system, amounting to \$9.9 billion between 2010/11 to 2011/12. The fuel tax adjustments will amount to \$4.3 billion.
- 9.20 A key role of local government in relation to the implementation of the CPRS is likely to be education and information dissemination. Councils may wish to consider applying for funding from the CCAF to enable them to fulfil this role.

10. Abbreviations and Glossary

Abbreviations

AEU means Australian Emissions Unit.

ANZSIC means Australian New Zealand Standard Industry Classification

CER means Certified Emissions Reductions.

CCAF means Climate Change Action Fund

CO₂-e means Carbon Dioxide equivalent.

CPRS means Carbon Pollution Reduction Scheme.

DOC_f means Degradable Organic Content fraction

ERU means Emissions Reductions Unit.

RMU means Removal Units.

CDM means Clean Development Mechanism

JI means Joint Implementation



Glossary

Australian Emissions Unit is a unit issued by the Authority on behalf of the Commonwealth, which represents 1 tonne of CO₂-e.

Authority means the Australian Climate Change Regulatory Authority.

Banking is the ability to retain, for future use in a later financial year, emissions units issued or created in an earlier financial year.

Borrowing is the ability to use emissions units from a future financial year to meet obligations in a current financial year.

Carbon Dioxide equivalent (CO₂-e) - to account for differences in the warming effect of various greenhouse gases, emitters often express their emissions of various gases in CO₂ equivalent. This represents the amount of CO₂ that would have the same relative warming effect as the basket of greenhouse gases actually emitted.

Carbon sequestration right means the exclusive legal right to obtain the benefit of carbon sequestration in trees.

Certificate of reforestation means a certificate issued by the Authority in respect of an eligible reforestation project for a reforestation reporting period to a recognised reforestation entity which holds the carbon sequestration right in relation to the project.

Clean development mechanism - the CDM aims to promote sustainable development in developing countries and to help developed countries meet their Kyoto Protocol emissions reductions targets. Investors in CDM emissions reduction projects earn tradable credits after being approved by the CDM Executive Board. The CDM was established by article 12 of the Kyoto Protocol.

Covered sector - the sectors of the economy which will have a legal liability to acquit emissions units equivalent to greenhouse gas emissions attributable to them once the Scheme commences.

Eligible emissions unit means:

- (a) An Australian emissions unit; or
- (b) An eligible international emissions unit.

Eligible international emissions unit means:



- (a) A certified emissions reduction (other than temporary certified emissions reduction or a long term-certified emissions reduction); or
- (b) An emission reduction unit; or
- (c) A removal unit; or
- (d) A prescribed unit issued in accordance with the Kyoto rules (whether issued in or outside Australia); or
- (e) A non-Kyoto international emissions unit.

Eligible reforestation project means a reforestation project for which a declaration has been made by the Authority, identifying the project area and other attributes of the project.

Emission of greenhouse gas from the operation of a facility is a scope 1 emission of greenhouse gas, where:

- (a) A greenhouse gas is released into the atmosphere as a direct result of the operation of the facility; and
- (b) Regulations made for the purposes of paragraph 10(2A)(a) of the *National Greenhouse and Energy Reporting Act 2007* declare that the emission is a scope 1 emission covered by the Carbon Pollution Reduction Scheme.

Emissions number is a person's emissions number for the current eligible financial year and is the sum of:

- (a) The total of the person's provisional emissions number (if any) for the current eligible financial year;
- (b) The person's make-good number (if any) for the previous eligible financial year;
- (c) Reduced (but not below zero) by the person's excess surrender number (if any) for the previous eligible financial year,

rounded up to the nearest whole number.

A **facility** is an activity, or a series of activities (including ancillary activities), that involve the production of greenhouse gas emissions, the production of energy or the consumption of energy and that:



- (a) Form a single undertaking or enterprise and meet the requirements of the NGER regulations; or
- (b) Are declared by the Authority to be a facility under section 54 of the *NGER Act*.

Forestry right, being a proprietary estate or interest, is an exclusive legal right to establish, manage, maintain and harvest forest.

Forest stand means a stand of forest where:

- (a) Under the regulations, the stand is taken to have been established by means of direct, human-induced methods; and
- (b) The stand occupies an area of land of 0.02 hectares or more; and
- (c) The stand consists of trees that:
 - (i) Have attained, or have the potential to attain, a crown cover of at least 20% of the area occupied by the stand; and
 - (ii) have reached, or have the potential to reach, a height of at least 2 metres; and
- (d) On 31 December 1989, the area occupied by stand was clear of trees that:
 - (i) Had attained, or had the potential to attain, a crown cover of at least 20% of the area occupied by the stand; and
 - (ii) had reached, or had the potential to reach, a height of at least 2 metres; and
- (e) The stand meets such other requirements (if any) as are specified in the regulations.

Greenhouse gas means:

- (a) Carbon dioxide; or
- (b) Methane; or
- (c) Nitrous oxide; or
- (d) Sulphur hexafluoride; or
- (e) A hydrofluorocarbon of a kind specified in the regulations; or



- (f) A perfluorocarbon of a kind specified in the regulations.

Joint implementation - the Kyoto Protocol's joint implementation mechanism allows one developed country to earn credits in the form of emissions reduction units when it finances projects that reduce emissions in another developed country.

Landfill facility means a facility for the disposal of solid waste as landfill, and includes a facility that is closed for the acceptance of waste.

Landfill gas - gas (carbon dioxide and methane) generated by the natural degrading and decomposition of municipal solid waste by anaerobic micro-organisms in sanitary landfills.

Liable entity means a person liable to acquit eligible emissions unit under the CPRS.

Local governing body means a local governing body established by or under a law of State or Territory.

Make good number will be the same number as the unit shortfall.

Make good provision - a requirement that if a liable party has emissions exceeding its emissions unit holdings, that it must obtain and surrender an additional quantity of permits to "make good" the emissions unit shortfall.

Management of a forest stand includes the harvesting and re-establishment of the forest stand.

Net total number of Australian emission units issued in relation to an eligible reforestation project means the number worked out using the following formula:

Total number of Australian emissions issued in relation to the project less total number of Australian emission units required to be relinquished.

Non-group entity means a person who is not a member of a controlling corporation's group.

Person means any of the following:

- (a) An individual;
- (b) A body corporate;
- (c) A trust;
- (d) A corporate soul;



- (e) A body politic;
- (f) A local governing body.

Project Area in relation to a reforestation project means:

- (a) If the project relates to a single forest stand – the area of land occupied, or to be occupied, by the forest stand; or
- (b) If the project relates to two or more forest stands – an area of land occupied, or to be occupied, by any of those forest stands.

Recognised reforestation entity means the person recognised as a reforestation entity.

Reforestation project means:

- (a) A project for the establishment, management and maintenance of one or more forest stands; or
- (b) A project for the management and maintenance of one or more existing forest stands. For this purpose, it is immaterial whether the project has been carried out.

Reforestation report means a written report given to the Authority about the relevant eligible reforestation project for the period.

Reforestation unit limit in relation to an eligible reforestation project means the specified number declared by the Authority that, under the regulations, is taken to be the projected net greenhouse gases removal number for the project, reduced (but not below zero) by the sum of the following numbers:

- (a) The number that, under the regulations, is taken to be the non-CPRS greenhouse gases removal sales number for the project;
- (b) The number that, under the regulations, is taken to be 2008 carbon stock baseline number for the project.

Scope 1 (direct) emissions are emissions from the operation of a facility where:

- (a) A greenhouse gas is released into the atmosphere as a direct result of the operation of facility; and



- (b) Regulations made for the purposes of paragraph 10(2A)(a) of the National Greenhouse and Energy Reporting Act 2007 declare that the emission is a scope 1 emission covered by the carbon pollution reduction scheme.

Scope 2 emissions covers indirect emissions from the consumption of purchased electricity, steam or heat produced by another organisation

Scope 3 emissions includes all other indirect emissions that are a consequence of an organisation's activities but are not from sources owned or controlled by the organization.

Unit shortfall means if a person has not surrendered any eligible emission units or the number of surrendered units is less than the person's emissions number for the current eligible financial year, then the person has a unit shortfall for the current eligible financial year.