Urgent: a fair and effective carbon pollution reduction scheme
Good law must be based on good principles that are widely and clearly understood.

Australia must act now because the world must act now. Global agreement on meaningful targets is absolutely crucial and that also means participation in global cap and trade schemes. To participate in the negotiations and the global mechanisms, Australia must have its own cap and trade scheme.

The 25% reduction proposed by the Federal Government in the event of a global agreement is closer to a meaningful target for 2020 but the world really needs a figure like 40% if it is to keep global warming to 2C° which would mean maintaining the concentration of greenhouse gases (GHGs) in the atmosphere below 450 ppm. The Alliance of Small Island States argues that it should be no more than 350 ppm[1]. We are currently at 387 ppm[2].

Australia has been paralysed too long on this issue as a result of bad politics and is still experiencing the consequences of those political strategies. The current deeply flawed shape of the CPRS proposal is such a consequence.

The CPRS proposal is bad law. The legislation has effectively been cut adrift from the Garnaut Report which produced consistent, well reasoned and principled recommendations as well as the consultation processes that followed it. The current bill is a patchwork of measures that have resulted from turbid negotiations with big business. The result spends too much in compensation to polluters and not enough in direct investment in sustainable industry. It is unnecessarily complex because it includes too many exceptions and loopholes which will be converted into a carbon-leaky sieve to be fought out expensively in the courts in the years to come.

The legislation would allow the Government to give away free carbon pollution permits as a method of reducing the costs to industries trying to adapt to this new reality. For example, Energy Intensive Trade Exposed (EITE) industries will receive between 70% to 95% of their permissions to pollute free depending on whether they emit under (70%) or over 2,000 tonnes of GHG per million dollars of revenue. The free permits allowed to these industries and to stationary coal-fired power stations is estimated to amount to about $12bn.[3] However, those permits, for which those companies have not paid or worked, then acquire the status of property rights[4]. If, in the future, the number of permits needs to be reduced, the tax payer will have to compensate current holders in a buy-back of "their" property.

The bill is going to create a problem with carbon rights similar to that which has already occurred with water rights. Access to a natural and shared resource has been transformed into private property and now that we realise that much of that water must return to being a shared resource, the buy-back is placing very large burdens on the tax payer and windfalls to those who did not create the resource, they made profits and food but those benefits came at the cost of harming the environment that many must share.

Internationally, global cooperation can only come through a recognition of the fact that developed nations have accrued the benefits of industrialisation which has produced GHGs and that now it is developing nations, such as Kiribati, that are paying the price through rising water levels and land degradation. The current proposal acknowledges no such responsibility or reliable mechanism to help such countries.

The proposal would allow polluters to buy carbon credits internationally to the full extent of their liabilities which places too much reliance on the integrity and efficiency of the Kyoto and UN sponsored Clean Development Mechanism (CDM). There are still too many loopholes in that scheme to trust it implicitly to ensure net reductions in emissions[5]. Australians should remember how an Australian company, AWB, successfully flouted another UN sponsored agreement, the "Oil for food program" in Iraq.

The CPRS will undermine, rather than support, those people who want to act to reduce their own emissions. The emissions savings made by householders' actions will just be traded away by the companies who actually emit the GHGs.[6]

If polluters do not reduce their emissions sufficiently below the cap set for them by the Government in line with the national target, they must purchase permits to that amount on the market. If they fail to do so, for whatever reason, the penalty for exceeding the cap is set to be no more than 110% of the current auction price of the necessary permits[7]. This means a small 10% penalty which seems to provide little deterrence.

Human rights thinking provides a good framework for principled law

The Edmund Rice Centre has long argued for good, widely-shared, human values based approaches to social, legal and justice issues. Human Rights principles provide that framework. Individuals have rights to access to the natural resources that they need to sustain life. That includes the right to a sustainable and sustaining environment. The right to emit carbon dioxide into our shared atmosphere is ultimately only held by each individual human being. Each one of them can only have that right in so far as everyone else has it in the same measure, inside the necessary limit-concentration in the atmosphere: after that it is carbon pollution. This is one clear Human Rights principle that should underpin any CPRS.

The other side of rights is responsibility. Those who harm others' rights have a responsibility to repair the harm. Industrialised nations which owe much of their prosperity to the GHGs that already pollute the atmosphere have a primary responsibility to repair the harm. The same argument applies to smaller entities within those countries: polluting companies, as well as individuals whose life-styles would, if lived by everyone on the planet, result in catastrophe.

Polluters who have made profit from doing so should not be compensated for losing that profit. They need a signal to reinvest where they can continue to profit without harming us all.

Human Rights principles cannot be sustained independently of the economy. But nor are they secondary to the economy. The economy exists to serve people, not vice versa. Market-based mechanisms are necessary elements for ensuring that the economy becomes sustainable as well as sustaining. Those mechanisms should engage all who are affected in ways that reflect their rights AND their responsibilities, rather than just focus on companies or the developed or indeed the developing world. Good law should support good ethics, not make ethics irrelevant.

Example suggestions for a better scheme
Domestically and internationally assistance with the necessary transition is important. That should include measures such as: investment in sustainable technologies; funds to retrain workers in sustainable industries; investment in locating these industries in rural and regional areas and assistance to those on lower incomes as the price of energy rises. Our Pacific nation neighbours, particularly low-lying islands, need direct assistance to adapt and prepare for migration.

Given the need to act, the bill needs amending to ensure that action is not postponed further but that the negative aspects of the current legislation do not become mill stones which make future evolution of the legislative framework too difficult. Some examples might include:

Carbon emission permits, especially those given freely to polluters, should not become property rights, should not be transferable and should have a use-by date. Permits gained by other means, by purchase or earned in some other way should be tradeable.

Ordinary people, and businesses, should be included in the scheme if they so wish, so that their initiatives which reduce emissions are directly rewarded. For example, householders and businesses which use less per head (inhabitant or employee depending on the case) than that necessary to achieve the national cap should be

allowed not only to save money but to earn carbon permits which they can trade or retire from the system as they wish.

Maximum limits for penalties for exceeding company caps should be higher leaving more room for adjustment should they prove necessary.

The cap and trade legislation should be part of a raft of measures for reducing emissions. The Government should also introduce a complementary taxation system which it can adjust easily, quickly and cheaply, to respond to emerging pressure to reduce emissions further.

All compensation to polluters should be directly tied to transition investment.

The ability to purchase permits internationally via the CDM scheme should be strictly limited in the beginning and only allowed to proceed based on evaluations of the integrity of the scheme, particularly its transparency and accounting practices.

Companies which are recipients of free permits and compensation from the Government under the scheme should have any political donations taxed at a high rate, eg. 85%.

End-notes follow:-

[1] http://www.alertnet.org/thenews/newsdesk/IRIN/5c3e2a5a508c7770e5ebfe9e37d54840.htm

[2] http://www.guardian.co.uk/environment/2008/may/12/climatechange.carbonemissions

[3] http://www.acfonline.org.au/uploads/res/RiskMetrics_CPRS_Industry_Assistance_May09.pdf

[4] Draft Bill s 94 (http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4127_first/toc_pdf/09091b01.pdf;fileType=application%2Fpdf)

[5] http://internationalrivers.org/files/CDM_factsheet_low-rez.pdf

[6] http://www.edo.org.au/policy/090415cprs.pdf p. 18

[7] http://www.mallesons.com/publications/2009/Mar/9829426w.htm