

electricity generators to participate in the RGGI. Indeck claimed that the “*RGGI system of auctioning emission allowances puts companies who are locked into long term contracts at a serious disadvantage and challenged New York’s authority to implement RGGI*”. The parties reached a settlement in the matter lodging a consent decree under which Indeck would receive additional allowances to end its long term contracts and an agreement by the Public Services Commission that it would consider approving a tariff amendment which would allow the passing of costs for purchasing allowances to rate payers. The case serves as a warning that the sale or auction of emission allowances is a complicated area and is likely to be the subject of much litigation.

Wind power on the rise

2009 saw the largest ever yearly increase in the installation of wind power, up 31% worldwide.

China installed 13,000 megawatts of new wind capacity, taking its total to 25,000 megawatts overall. China is now the third largest wind power installer behind Germany and the United States. China is unlikely to remain third for long with its wind growth initiative supported by its Renewable Energy Law, which is set to take effect in April this year. Already China has plans which will see six provinces in the country’s north host seven wind “mega complexes” of between 10,000 and 37,000 megawatts each. The economic downturn has done nothing to lessen the installation of wind farms worldwide.

2009 also saw the German states of Sachsen-Anhalt and Mecklenburg-Vorpommern meet 40% of their electricity needs from wind power. This is food for thought for Australia who is lagging well behind in wind power installation. (see <http://www.earthpolicynews.com>)

FEDERAL

Nicola Durrant

The CPRS

The Prime Minister announced on 27 April 2010 that the government would delay implementation of the CPRS until the end of the Kyoto Protocol commitment period in 2012.

Coalition’s Direct Action Plan for Climate Change

For the sake of completeness, a summary of the Coalition’s alternate climate change policy, such as it is, is set out below.

The Coalition’s position has focused on asserting that the CPRS is no more than ‘a great big new tax’ and presenting an alternate strategy based on so-called ‘direct action’ to reduce emissions by 5 per cent by 2020 based on 1990 levels. The Coalition asserts that this will be achieved without new or increased taxes on Australian industries or increased costs to Australian households and families. It predicts that its policy will cost \$3.2 billion over 4 years using primarily ‘soil and sun’.

Emissions Reduction Fund

To facilitate direct action, the Coalition would establish an Emissions Reduction Fund to support

emissions reduction activity by business and industry. Through the Fund it would make incentives available for the oldest and most inefficient power stations to reduce their emissions, ‘in an orderly manner which protects jobs, electricity prices and energy security.’ ‘Clean Energy Employment Hubs’ would also be established.

The Coalition has stated that businesses that reduce emissions below their baseline or ‘business as usual’ activity would be able to ‘sell’ their abatement to the government. Businesses that emit above their ‘business as usual’ levels would incur a ‘financial penalty’. Apparently this is not a ‘tax’ on emissions nor a scheme for ‘trade’ in emission reductions despite its close resemblance to a baseline and credit system.

The Emissions Reduction Fund would consider tenders for projects that will reduce emissions through forestry abatement, utilising waste coal mine gas for electricity generation, energy efficient building projects, innovative landfill management, composting and recycling.

Replenishment of Soil Carbon

The Coalition asserts that ‘the single largest opportunity for CO2 emissions reduction in Australia

NELR recent developments

is through bio-sequestration and the replenishment of soil carbon in particular.' The Coalition believes that it will deliver about 85 million tonnes per annum of abatement through soil carbons by 2020 with an initial purchase of 10 million tonnes of abatement through soil carbons by 2012-13. This approach overlooks the very temporary nature of soil sequestration as a transient offset measure rather than direct action to reduce our actual emissions. Furthermore, there is a need to comply with established carbon offset standards in ensuring that soil sequestration activities are 'additional' to business as usual, verifiable and 'permanent', that is, capable of being maintained for very long timeframes. This is particularly problematic in Australia with our variability in surface temperatures and rainfall – both of which will affect the amount of carbon uptake and storage in soils.

Renewable Energy Initiatives

The Coalition would introduce a range of initiatives to boost renewable energy use in Australia. The Coalition would provide a \$1,000 rebate for either solar panels or solar hot water systems, capped at 100,000 rebates per year, with the goal of achieving one million additional solar energy roofs on homes by 2020. The Coalition would also allocate \$100 million to a Solar Towns and Solar Schools Initiative.

The Coalition states that a proportion of incentives provided through the RET would be reserved for bigger projects and emerging technologies. The Coalition has also indicated that it would continue the *Greenhouse Friendly* program.

Green Corridors

The Coalition has also committed to the planting of an additional 20 million trees by 2020 to re-establish urban forests and green corridors. As with soil sequestration, forest sequestration projects are temporary offset measures and do not represent direct, permanent, emission reductions. Appropriate mechanisms must be put in place to ensure that carbon stocks are maintained in the longer term.

The Coalition has also indicated that it will also allocate up to \$5 million for research into algal synthesis.

Issues with the Green Loans Program

On 19 February 2010, the Minister for the Environment announced changes to the Green Loans Program. Green Loans will be discontinued from 22 March 2010. Immediate changes to the Program include:

- Further funding for an additional 600,000 free assessments.
- A limit of no more than 3 assessments per assessor in one day. The purpose of this change is to improve the quality of home assessments.
- A limit of no more than 5 assessments per assessor per week and a cap of 15,000 bookings per week. This will ensure that there is equity between assessors and that the Program provides longer term certainty to assessors.
- No more than 5,000 assessors will be accredited under the Program.
- Bookings cannot be transferred or on-sold between assessors.

These arrangements will remain in place to the end of 2010

Issues with the Home Insulation Program

The Government will roll out an electrical safety inspection program of all homes that have had foil insulation installed under the Home Insulation Program. This followed findings of 'live' insulation in some roofs and the deaths of several installers from electrocution associated with the use of metal fasteners (banned under the program in 2009). There have also been allegations of fraud in the program with reimbursement claims lodged with the Government where insulation allegedly has not been installed. The Government has announced that it will establish a new Home Insulation Program Review Office and appoint an independent reviewer to conduct a review of the program design, implementation and delivery. In the first instance, a householder will be able to engage any licenced electrician to conduct a safety inspection, and where necessary, rectification work related to the installation of foil insulation. The licenced electrician will be able to seek reimbursement of the costs from the Commonwealth.

Installer's must be re-registered under the strengthened registration requirements for the new

NELR recent developments

Renewable Energy Bonus Scheme (REBS) (*discussed below*). Households must first seek an inspection from their original installer. If households continue to have safety concerns, or if their original installer has not met the strengthened requirements of the REBS, then they will be able to request a risk assessment through a nominated hotline. Where the telephone assessment shows there are significant potential risks, an on-site inspection by an accredited inspector will be arranged. The factors that will be taken into account in the assessment process will include:

- the record of the installer, including any audits or inspections previously conducted;
- the location of the home;
- the age and nature of the home, any renovations and age of electrical wiring;
- electrical and other equipment installed in the roof space such as ceiling fans, heating and stove flues, bathroom heaters and especially down lights; and
- the type and method of insulation installed.

The government has stated that electrical safety issues that are identified as a result of these inspections will be rectified and the Commonwealth will seek to recover the costs of that rectification from the installer, including by withholding payments.

New Household Renewable Energy Bonus scheme

A new household *Renewable Energy Bonus Scheme* will replace the Home Insulation Program and the Solar Hot Water Rebate Program both of which have been discontinued. It is intended that the insulation component of the Renewable Energy Bonus scheme will come into operation by 1 June 2009.

Under the household Renewable Energy Bonus Scheme households will be able to receive a rebate for the installation of ceiling insulation or a solar hot water system or a heat pump. \$1000 rebates will be available for ceiling installation and solar hot water systems and \$600 rebates for heat pumps systems. Changes include:

- Householders, rather than installers, will claim the \$1000 rebate directly through the Medicare system.

- A new registration scheme will require all installers to reregister, pay a cash bond, show evidence of meeting the training and skills requirements and provide certified quality assurance and occupational health and safety plans.
- A strengthened compliance regime will be introduced in concert with State and Territory occupational health and safety and fair trading authorities.

The Government will also commission an external assessment of the proposed implementation arrangements for the household Renewable Energy Bonus scheme and will continue to provide oversight to the scheme during its operation.

Ministerial Portfolio Changes

Penny Wong is now responsible for energy efficiency in addition to climate change. Greg Combet is responsible for winding up the insulation program and putting the new Renewable Energy Bonus in place. Peter Garrett remains in charge of other environmental matters.

Review of the Renewable Energy Target Scheme

Penny Wong announced that the Renewable Energy Target scheme (RET) will be enhanced to provide greater certainty. From 1 January 2011, RET will include two parts - the Small-scale Renewable Energy Scheme (SRES) and the Large-scale Renewable Energy Target (LRET).

The SRES will cover small-scale technologies such as solar panels and solar hot water systems. It will provide a fixed price of \$40 per megawatt hour of electricity produced, providing direct support for households that take action to reduce emissions. Under this fixed price, a Sydney household that installs a 1.5 kilowatt solar panel system in 2011 will benefit from an upfront subsidy of \$6200. If the same household decides to install a typical solar water heater they will receive \$1200 in support under the SRES. This follows concerns regarding the negative impact of flooding the market with cheaper 'solar credits' on investment in the large scale projects such as wind farms. The Government will release an industry consultation paper shortly and intends to legislate the changes in the Winter Sittings of Parliament.

NELR recent developments

Meanwhile, the Council of Australian Governments (CAOG) is undertaking a review of specific issues with the RET scheme. That review has now been expanded to consider whether new waste coal mine gas projects should be eligible under the RET and whether annual targets under the RET should be increased to offset the additional Renewable Energy Certificates issued as solar credits which are not backed by actual generation. In this regard, the Department of Climate Change has released two issues papers for public consultation:

- Discussion Paper 4 – the treatment of new waste coal mine gas power generation in the RET
- Discussion Paper 5 – the treatment of ‘Solar Credits’ Renewable Energy Certificates under the RET.

The RET legislation also includes provisions to provide partial exemptions from RET liability in respect of acquisitions of electricity used in carrying on emissions-intensive trade-exposed (EITE) activities. In late 2009, the Government released for public consultation draft regulations to deliver partial exemptions from liability under the RET in relation to all activities that would qualify for assistance under the CPRS EITE assistance program.

Climate Change and Adaptation

The Australian Coasts and Climate Change Council released its preliminary conclusions in February 2010 ahead of the coastal forum in late February. The key messages to come out of its report are:

1. National action is needed urgently and on a continuing basis to equip Australia to cope with the serious threats to the coast posed by climate change. The response effort should recognise the diversity of circumstances.
2. Governments, businesses, professional bodies and communities all have key roles in forming and delivering an effective national response in which Australian Government leadership will be vital.
3. Early key actions need to focus on building national awareness of the issue, improving understanding of what may be the most effective actions and clarifying the roles of different entities.

4. A short extension of the term of the Council to late 2010 is recommended.

The Government also released its position paper, *Adapting to Climate Change in Australia*, setting out the Government’s vision for adapting to what it identifies as being the *unavoidable* impacts of climate change. It outlines the Government’s role in adaptation, which includes building community resilience and establishing the right conditions for people to adapt; taking climate change into account in the management of Commonwealth assets and programs; providing sound scientific information; and leading national reform. In particular, the position paper identifies six national priority areas for action in:

- coastal management,
- water (availability and security),
- infrastructure,
- natural systems of national significance,
- prevention, preparedness, response and recovery with regard to natural disaster, and
- agriculture.

The report particularly emphasises the national significance of protecting ports, roads, airports, military facilities and infrastructure for water, electricity and telecommunication services. The report notes that as a fundamental guiding principle, adaptation considerations and responses will be embedded within existing policy and institutional frameworks. New institutional or policy structures will be considered only where a demonstrated case has been made and existing frameworks cannot manage those risks effectively (p12-13). The report further notes that, in some cases, the scope of the task demands a nationally coordinated approach, with each sphere of government having a distinctive but critical role. These roles will vary depending on the scale and nature of the risks being managed (p15). Tests for whether a national response is required will include:

- where a complete adaptation response can only be mounted through a collaborative effort (e.g. water, emergency management and some areas of standards);
- where there is current policy overlap and a collaborative effort is required, for example where there might be inconsistent approaches between jurisdictions that produce inefficiencies

NELR recent developments

- or higher costs for business; and
- if the magnitude of the risk to national wellbeing warrants all governments working together – where failure in one jurisdiction is a problem for the entire nation. Failure of critical infrastructure, such as electricity generation might be an example where such collaborative action is warranted.

In some cases, such as water reform, governments are already working together to deliver a national solution. In other cases, such as coastal development, the report acknowledges that new processes of national co-operation will be needed (p16).

Enforceable Undertaking under the EPBC Act

The Department of Environment announced that an enforceable undertaking was accepted on 8 February 2010 from Holcim Australia (formerly Cemex Australia) following an incident in late 2008 where work at the company's quarry damaged an area that is part of a National Heritage place. A minimum of \$280,000 will be spent to improve the company's management practices including development of a cultural heritage management plan for the quarry, appointment of an Indigenous relations officer, revision of its environmental management plan and improved induction and training systems for employees and contractors. The company must also enter into cultural heritage agreements with three Aboriginal groups in the area regarding the operational aspects of the quarry. Consultation about possible remediation at the affected site must also form part of these arrangements. The Department has noted that, 'enforceable undertakings were an important tool under the national environment law and allowed money to be directed where it was needed and avoided lengthy adversarial court processes.'

Migratory Species: Amendment to EPBC Act

The longfin mako, shortfin mako and porbeagle sharks have been listed as migratory species under the EPBC Act. This follows their listing under the international Convention on Migratory Species (CMS) owing to concerns about populations in the Northern Hemisphere. The Environment Minister has stated that there is a lack of evidence to suggest that Australian populations of these shark species face the same threats as other parts of the world and that there would be no demonstrably significant

conservation benefit from banning recreational fishing for these species. Consequently, commercial fishing operations will not be permitted to take these species unless they are acting in accordance with management arrangements accredited under the EPBC Act.

Meanwhile, the Environment Minister introduced a new bill into the House of Representatives to allow the continuation of recreational fishing of mako and porbeagle sharks. Mr Garrett said the amendments to the EPBC Act provided for a balance between protecting the shark species in a way that reflects our national circumstances and not disproportionately affecting recreational fishers. Mr Garrett noted that the decision to make the change was backed by the Independent Review of the EPBC Act which stated that the EPBC Act was too inflexible in requiring species on Appendix II to the CMS to be automatically listed as migratory, and by having only limited exceptions when it came to interactions with listed species.

Hawke Report on the EPBC Act

The findings of the final report of the *Independent Review of the Environment Protection and Biodiversity Conservation Act 1999* were tabled in Parliament. The report aims to enhance the EPBC Act to:

- promote the sustainability of Australia's economic development;
- reduce and simplify the regulatory burden;
- ensure activities under the Act represent the most efficient and effective ways of achieving desired environmental outcomes; and
- based on an effective federal arrangement.

An integrated reform package has been presented in the review which revolves around the following nine core elements:

- redraft the Act to better reflect the Government's role, streamline its arrangements and rename it the *Australian Environment Act*;
- establish an independent Environment Commission to advise the government on project approvals, strategic assessments, bioregional plans and other statutory decisions;
- invest in the building blocks of a better regulatory system such as national environmental accounts, skills development, policy guidance, and acquisition of critical spatial information;

NELR recent developments

- streamline approvals through earlier engagement in planning processes and provide for more effective use and greater reliance on strategic assessments, bioregional planning and approvals bilateral agreements;
- set up an Environment Reparation Fund and national 'biobanking' scheme;
- provide for environmental performance audits and inquiries by the Environment Commission;
- create a new matter of national environmental significance for 'ecosystems of national significance' and introduce an interim greenhouse trigger;
- improve transparency in decision making and provide greater access to the courts for public interest litigation; and
- mandate the development of foresight reports to help government manage emerging environmental threats (p2).

In terms of climate change, the report acknowledged that the CPRS is intended to be the primary measure for reducing emissions but recommended that, in light of the current uncertainty surrounding the CPRS, and the urgency in starting to tackle Australia's carbon trajectory, the Government consider implementing the following:

- an interim greenhouse trigger, to be introduced as soon as possible by way of Regulations to fill the regulatory void, ceasing once the CPRS is operational.

This trigger is intended to ensure that emissions intensive developments properly consider and implement low cost abatement solutions in their construction and operation. The review suggested that the Act should be triggered if the threshold were exceeded in any 12 month period over the life of the project or activity. A threshold of, at most, 500,000 tonnes of carbon dioxide equivalent for domestic emissions was suggested with suggestions that the utility of a 100,000 tonne threshold should be considered by the government. The review noted that it must be ensured that assessment does not require the implementation of mitigation options at a cost higher than the price of carbon as projected over the life of the project. Consequently, the review suggested that only cost effective mitigation conditions should be imposed as part of an approval under the Act; and

- a requirement to consider cost effective climate change mitigation opportunities in strategic assessments and bioregional plans (p112-116).

A copy of the review can be found at www.environment.gov.au/epbc/hawke-report.html.

Native Vegetation Framework

In 2008 the Natural Resource Management Ministerial Council (NRMMC) confirmed the importance of the *Native Vegetation Framework* as the national policy document for achieving:

- a reversal in the long-term decline of Australia's native vegetation, and
- an improvement in the condition of existing native vegetation.

The NRMMC directed that the review of the framework be finalised and in November 2009 the NRMMC endorsed the draft Australia's Native Vegetation Framework for public consultation. Submissions are due by 31 March 2010. (See <http://www.environment.gov.au/land/vegetation/review/index.html>).

Addition to List of Key Threatening Processes

The following recommendations of the Threatened Species Scientific Committee have been accepted by the Minister with effect from 8 February 2010:

- A. The Committee recommends that the list referred to in section 183 of the EPBC Act be amended by including in the list of key threatening processes: "Loss and degradation of native plant and animal habitat by invasion of escaped garden plants, including aquatic plants."
- B. The Committee recommends that a Threat Abatement Plan is not considered a feasible, efficient or effective way to abate the process at this time.
- C. The Committee recommends that abatement actions for this key threatening process continue to be developed and implemented under the Australian Weeds Strategy 2007.

For full text of the Committee's advice see: <http://www.environment.gov.au/biodiversity/threatened/ktp/garden-plants.html>.