



**The Law Society
of New South Wales**

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27 May 2008

Ms Vicki Buchbach
Committee Manager
Standing Committee on Natural
Resource Management (Climate Change)
Parliament House
Macquarie Street
SYDNEY NSW 2000

By Fax: 9230 3309

Dear Ms Buchbach

Re: Inquiry into Emissions Trading Schemes

I refer to the Standing Committee's current inquiry into the implications that national and international emissions trading schemes have for natural resource management in New South Wales.

The Law Society's Environmental Planning and Development (EPD) Committee would like to raise the following issues for your consideration.

Transitional requirements for Greenhouse Gas Reduction Scheme

The Department of Water & Energy is currently undertaking consultation into processes that will guide the transition from GGAS to a national emissions trading scheme. The GGAS scheme does not require that financial additionality be shown. While it is yet to be determined, the EPD Committee suggests that any new trading scheme is likely to require this.

The EPD Committee asks the Standing Committee to consider what arrangements will need to be put in place to ensure that current participants in the GGAS are not disadvantaged.

Consent conditions etc

It is not uncommon for conditions of planning approvals (such as development consents and part 3A approvals) and mining licences to require that actions be taken which may be capable of generating credits under a trading scheme. For example, a mining licence will require compliance with a mine closure plan which requires that tree planting activities be undertaken on disturbed sites.



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The EDP Committee asks the Standing Committee to consider how conditions of this type will be addressed in relation to any proposed additionality requirement.

Carbon Capture and Storage

The Federal, South Australian, Victorian and Queensland jurisdictions have all reached various stages of advancement in relation to a regime for carbon capture and storage. New South Wales appears to be lagging behind somewhat in this regard. The NSW Parliamentary Library Research Service has recently released a briefing paper on carbon capture and storage. However, the EPD Committee observes that the paper appears only tangentially concerned with the legal aspects of that process, focussing more on matters such as economics, feasibility, political issues and relevance to NSW geological conditions.

The EPD Committee highlights the need for the numerous legal issues surrounding carbon capture and storage to be addressed, and urges the Standing Committee to satisfy itself that full consideration is being afforded to the development of definitions, access and property rights, intellectual property rights, monitoring and verification regimes and liability issues.

Renewable Energy (New South Wales) Bill

This bill remains current before the Parliament. It is understood that, in light of the change of Federal government and new policies announced by the new Federal government, that this bill is unlikely to proceed.

The EPD Committee asks the Standing Committee to consider the possible ramifications of not pursuing this legislation.

Clarification of Interrelationships

In making determinations and recommendations, the Independent Pricing and Regulatory Tribunal is required to have regard to the following criteria (section 15 Independent Pricing and Regulatory Tribunal Act 1992):

- (a) the cost of providing the services concerned,
- (b) the protection of consumers from abuses of monopoly power in terms of prices, pricing policies and standard of services,
- (c) the appropriate rate of return on public sector assets, including appropriate payment of dividends to the Government for the benefit of the people of New South Wales,
- (d) the effect on general price inflation over the medium term,
- (e) the need for greater efficiency in the supply of services so as to reduce costs for the benefit of consumers and taxpayers,
- (f) the need to maintain ecologically sustainable development (within the meaning of section 6 of the Protection of the Environment Administration Act 1991) by appropriate pricing policies that take account of all the feasible options available to protect the environment.

In the light of legislation such as the above, the EPD Committee wonders whether it is the Standing Committee's intention to clarify the interrelationship between trading schemes, offsets and carbon neutral tickets pricing policies by agencies.

The Law Society appreciates the opportunity for its committee to have input into your consideration of the emissions trading scheme reference. If you have any questions in relation to this letter, kindly contact Mrs Sherida Currie in the first instance on telephone 9926 0252, email src@lawsocnsw.asn.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Hugh Macken', with a long horizontal flourish extending to the right.

Hugh Macken
President