



# McKEAN & PARK

## LAWYERS

### A CARBON MARKET IN AUSTRALIA

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#### **What is a Carbon Market?**

In simple terms, a carbon market is merely a bourse where those who have a legal need to, may purchase either emission permits or emission credits. An emission permit gives the holder permission to emit a tonne of CO<sub>2</sub>-e. An emission credit is to the same effect and is available because someone else has captured and will retain for a fixed period a tonne of CO<sub>2</sub>-e as a counterbalance or set-off to the purchaser's equivalent emissions occurring in the same year as the capture. The total of emission permits that are issued is restricted by the Kyoto target which Australia is set (for the period 2008 – 2012 about 494,000,000 permits each to emit 1 tonne of CO<sub>2</sub>-e). The total of emission credits is limited only by the capacity of the carbon sinks in which the captured carbon is retained.

In more complex terms, however, a carbon market affects far more businesses than just the energy producers, large energy users, large businesses, miners and some farmers who will, in the near of slightly more distant future, be legally required to make those purchases. In a sense, they are merely the distributors in the system because it is they who pass on the cost of their purchases to everyone who buys their goods. The extent to which they increase or reduce their need to purchase in the market is their decision. One way or another, however, the cost they incur in paying for the carbon they emit is passed on and on and on. It is absorbed particularly by those who use energy or by those who manufacture or provide or deal in goods, services or property which have absorbed energy in their manufacture or provision.

#### **Australia's current dilemma**

Australia has been late in coming to 'global warming' reality largely because the government has mistakenly believed, on the basis of the diplomatic manoeuvres it undertook in the 1990's, that it would not be required to make any significant commitment until after 2012, and quite possibly well after, 2012. In the event, this has proved to be incorrect. Currently both the government and the opposition are confronted with a need to take action much earlier, and for that action to be of a far more substantial nature, than was anticipated in Canberra at any time down to about 2004. As a result almost all Australian businesses find themselves totally unprepared for a carbon market that is inevitable and now appears imminent. No work has been done in training the future market dealers or those who will handle the annual reporting of carbon emissions which commences on 1 July next year. How to reduce and off-set emissions remains a total mystery. All in all it is beginning to look very much like a repeat of the shambles that preceded the introduction of the GST.

#### **Carbon Market v 'Sustainability'**

Because our carbon emissions continue to increase at an alarming rate, either a carbon market must be implemented without delay or in some, as yet unknown, way the present "system" we call 'sustainability' must be made to work, which is more than it is doing at present. Sustainability, which Australia and the United States have been attempting to make something out of since about 1999, is very largely a voluntary initiative fuelled by willingness on the part of some of the public to 'do the right thing'. To this is added some regulation (MRET), some rationing (home electricity) copious advertising (described as 'education'), the hope that big businesses can be influenced to change their practices in order to achieve a better image and targets that are merely aspirational. So far, the ability of sustainability to do the job is more aspirational than real except in that we have reduced carbon emissions by sending manufacturing off shore and by some reduction in beef numbers due to the drought. Government's assessments of the net effect of the various sustainability initiatives in reducing carbon

emissions (with the exception of MRET) remain dubious because in most cases they are merely assumptions that cannot be accurately verified and which do not make allowances for a range of means by which they may be overturned. The initiatives in any event are very much introductory and not designed as elements of a final solution.

### **Technological Solutions**

However, the government anticipates bringing technological solutions, notably geo-sequestration (burying CO<sub>2</sub>) and nuclear energy into play some time in the future which, when implemented, would reduce greenhouse gas emissions substantially. Both solutions, however, have drawbacks. Geo-sequestration will double or treble energy costs; both initiatives will face substantial public opposition and the actual implementation of each initiative is about two or three decades away. In the meantime, Australia's level of carbon emissions continues to rise alarmingly. While awaiting the implementation of those technological solutions Australian emission levels, checked only by sustainability, will rise to somewhere between 140%-150% of 1990 levels. At the same time, Australia will be faced with a reduction of its carbon emissions target from 108% of 1990 levels for the first commitment period of 2008-2012 to a target probably in the vicinity of 60% of 1990 levels by the sixth commitment period of 2033 – 2037. In this scenario lies the reason why a carbon market has become inevitable and why it needs to be implemented without delay.

### **Effect on Australian Exports**

Failure to reduce its carbon emissions to its Kyoto target level, places a defaulting nation in danger of protective tariffs being imposed on its exports by importing nations. That imposition would most likely occur at the request, and in protection, of its nationals whose goods compete with those Australian exports. It is not, however, beyond imagination that the imposition might also be triggered by importers (also being nationals of the importing nation) of competing goods from a third nation which was complying with its Kyoto obligations.

344For those who might argue that World Trade Organisation requirements prevent restrictive tariffs such as this, I refer you to the WTO Appellate Body decision (United States – Import Prohibition of Certain Shrimp and Shrimp Products AB-1998-4, WT/DS58/AB/R (98-0000) (commonly known as the Shrimp/Turtle decision). The result of the imposition of tariffs would be to increase the cost of the Australia exports. The revenue raised by the importing nation in the process would be used in some way to reduce carbon emissions.

### **Conclusion**

On the evidence therefore it is this paper's conclusion that whatever the merits of technological solutions might be, Australia is simply not in a position to wait until after 2030 or thereabouts, when our carbon emission level will be over twice the level of our Kyoto target, before taking significant action to reduce the emission level.

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