

FEDERAL GOVERNMENT*Wayne Gumley***Ratifying the Kyoto Protocol**

On 3 December 2008 Prime Minister Kevin Rudd signed the instrument of ratification of the Kyoto Protocol, as the first official act of the new Australian Government, demonstrating its commitment to tackling climate change. Under United Nations guidelines, ratification of the Kyoto Protocol enters into force 90 days after the Instrument of Ratification is received by the United Nations. It is expected Australia will become a full member of the Kyoto Protocol before the end of March 2008.

In a press release issued the same day the Prime Minister outlined the steps his Government would take to help Australia meet its Kyoto Protocol obligations. This will include:

- Setting a target to reduce emissions by 60 per cent on 2000 levels by 2050.
- Establishing a national emissions trading scheme by 2010.
- Setting a 20 per cent target for renewable energy by 2020 to dramatically expand the use of renewable energy sources such as solar and wind.

The Prime Minister followed this announcement by taking a lead role in the Conference of the Parties held between 3rd and 15th December in Bali, Indonesia. See also the Bali Road Map article under the International section heading above.

(See Prime Minister's Press Release, 3 Dec 2007)

December COAG Meeting- Federalism for the Future

On 20 December 2007 the Prime Minister met with the Premiers, Chief Ministers and the Australian Local Government Association in a Council of Australian Governments meeting in Melbourne to set a new framework for co-operative Commonwealth-State relations and take practical steps to end the "blame game". Discussions at the Melbourne COAG included:

1. The future of Health and Hospitals in Australia, including:
 - Tackling elective surgery waiting lists
 - Investing in aged care, especially in transition care
 - Investing in public dental programs
 - Preventative healthcare
2. Education, Skills and Training – The Productivity Agenda, including:
 - Lifting the Year 12 retention target
 - Investing in Early Childhood
 - Promoting the study of Asian languages in our schools
 - Establishing Trades Training Centres in Secondary Schools
 - Implementing the Government's National Secondary School Computer Fund
 - Developing a National Curriculum

3. Climate Change and Water, including:

- Establishing a National Emissions Trading system
- Establishing a single national renewable energy target

4. Infrastructure:

- Establishment of Infrastructure Australia to audit Australia's infrastructure bottlenecks.

5. Business deregulation, including:

- Cutting red tape for Australian business

6. Housing, including:

- More streamlined development approval processes and measures to reduce infrastructure charges and developer costs
- Addressing rental affordability
- Homelessness

7. Other National Reform Initiatives

(Prime Minister's Press Release, 10 Dec 2007)

Port Phillip Bay Dredging management plan approved

On 5 February 2008, the Hon Peter Garrett MP, *Minister for the Environment, Heritage and the Arts* approved a strengthened Environmental Management Plan (EMP) for the Port Phillip Bay Channel Deepening project. The EMP is directed at the matters of national environmental significance for which the Minister is responsible – including Ramsar wetlands, migratory and threatened species and Commonwealth land. It requires new monitoring of water and tidal currents at the containment area, and restrictions on the handling of contaminated sediment on the dredge. The results of this monitoring are to be made publicly available and the Port of Melbourne must report both quarterly and annually against the standards set out in the plan.

(See Minister's Press Release, 5 February 2008)

CARING FOR COUNTRY – with LESS RED TAPE

On 14 March 2008 the Hon Peter Garrett MP Minister for the Environment, Heritage and the Arts and the Hon Tony Burke MP Minister for Agriculture, Fisheries and Forestry issued a joint press release to announce that the Federal Government will invest \$2.25 billion over five years on a new program to restore the health of Australia's environment and build on improved land management practices. The *Caring for our Country* program represents a new, coordinated approach to environmental management in Australia built on transparent and consistent national targets. The program will complement the \$130 million *Australia's Farming Future* initiative, which will ensure the primary industry sector has a vibrant and sustainable future in a changing climate.

The program will focus on the key goals of a healthier environment, which is better-protected, well-managed and more resilient against the challenges of climate change.

It will invest in projects which match six national priorities:

- Australia's national reserve system;
- Biodiversity and natural icons (including weeds, feral animals and threatened species);
- Coasts and aquatic habitats;
- Sustainable farm practices and Landcare;
- Natural resource management in remote and northern Australia; and
- Community skills, knowledge and engagement.

The new program will deliver on key Rudd Government election commitments including:

- The \$200 million Great Barrier Reef rescue plan;
- A strengthened Landcare;
- The \$50 million expansion of Indigenous Protected Areas;
- The employment of an additional 300 Indigenous Rangers;
- \$10 million to save the Tasmanian Devil;
- An extra \$2 million to fight the Cane Toad menace;
- \$100 million to protect and repair fragile coastal ecosystems; and
- \$5.25 million to improve water quality in the Gippsland Lakes.

Under a streamlined system, the World Heritage programs and others related to it will be overseen by the Minister for the Environment, Heritage and the Arts Peter Garrett and Landcare will be overseen by the Minister for Agriculture, Fisheries and Forestry Tony Burke. For more information see www.nrm.gov.au – or ring the hotline on 1800 552 008.

(See Minister's Press Release, 14 March 2008)

COAG's Adelaide Meeting

The Council of Australian Governments (COAG) held its 21st meeting in Adelaide on 26 March 2008. A number of important decisions were made across a very a wide range areas including matters of interest to environmental lawyers in business regulation, competition, water and climate change matters:

Business Regulation and Competition.

COAG endorsed a far reaching reform agenda for reducing the costs of regulation and enhancing productivity and workforce mobility in areas of shared Commonwealth and State responsibility. The agreed implementation plan is at www.coag.gov.au. This includes an agreement to harmonise occupational health and safety laws, trade measurement, environmental assessment and approval processes, rail safety regulation, product safety, trade licensing, further payroll tax harmonisation and institutional lending arrangements. COAG also agreed to an ambitious new COAG regulation reform agenda covering nine areas - standard business reporting, food regulation, mine safety, electronic conveyancing, upstream petroleum (oil and gas) regulation, maritime safety, wine labelling, directors' liabilities and financial service delivery.

Water

- COAG agreed in principle to a Memorandum of Understanding on Murray-Darling Basin Reform Governments will consult with stakeholders immediately on the implementation of the Memorandum of Understanding and have committed to sign an Intergovernmental Agreement at the July 2008 COAG meeting.
- The Commonwealth has agreed in principle to fund 90 per cent of the project costs, up to \$1 billion of the Stage Two Food Bowl Project in Victoria, subject to a due diligence assessment and delivery of half the gains in additional flows to the Murray River.
- In states such as New South Wales and South Australia, where infrastructure is privately owned, the Commonwealth will work with irrigators to ensure equitable consideration of funding proposals.
- Between now and the next COAG meeting the Commonwealth will agree with the governments of New South Wales, Queensland, South Australia and the Australian Capital Territory on priority water savings projects in the Murray-Darling Basin for priority Commonwealth funding.
- The Commonwealth has also agreed to take on the States' liabilities under the National Water Initiative risk sharing arrangements for new knowledge.
- COAG agreed to set in train immediately a series of actions to report by July this year to coordinate efforts in purchasing water for the environment, enhance the effectiveness of water markets and assess water supply in remote communities, including Indigenous communities.
- As part of a renewed approach to national urban water reform, leveraged through \$1.5 billion in new Commonwealth Government urban water security programs, COAG has agreed to release for consultation eight key principles for urban water reforms.
- COAG also commissioned the development of a comprehensive new work program of water reform to address over allocation and improve environmental outcomes, and to address the key challenges in urban water with the final proposal to be put forward for its consideration in October 2008.

Climate Change:

- The introduction of an emissions trading scheme to achieve emission reductions will constitute the most significant economic and structural reform undertaken in Australia since the trade liberalisation and financial market reforms of the 1980s.
- COAG stressed the urgency of the current work to bring together the different approaches on renewable energy targets to combine into one national scheme in order to provide consistency for investors looking to support Australia's renewable energy industry.
- In addition, COAG agreed to consider options for a harmonised approach to renewable energy 'feed in tariffs' in October 2008.
- COAG confirmed its commitment to cooperative concerted action to address climate change and agreed to finalise a comprehensive framework for addressing climate change at its October 2008 meeting.

(see COAG Adelaide Communique, 26 March 2008)

Garnaut releases Interim Report

The Garnaut Climate Change Review was commissioned by Australia's State and Territory Governments on 30 April 2007. The Review aims to examine the impacts of climate change on the Australian economy, and recommend medium to long-term policies and policy frameworks to improve the prospects for sustainable prosperity. It has been referred to as Australia's version of the Stern Review. In February 2008 Professor Ross Garnaut released an Interim Report designed to provide a flavour of early findings from the work of the Review, to share ideas on work in progress as a basis for interaction with the Australian community, and to indicate the scope of the work programme through to the completion of the Review. The executive summary states:

'Developments in mainstream scientific opinion on the relationship between emissions accumulations and climate outcomes, and the Review's own work on future "business as usual" global emissions, suggest that the world is moving towards high risks of dangerous climate change more rapidly than has generally been understood. This makes mitigation more urgent and more costly. At the same time, it makes the probable effects of unmitigated climate change more costly, for Australia and for the world.

The largest source of increased urgency is the unexpectedly high growth of the world economy in the early twenty-first century, combined with unexpectedly high energy intensity of that growth and continuing reliance on high-emissions fossil fuels as sources of energy. These developments are associated with strong economic growth in the developing world, first of all in China. The stronger growth has strong momentum and is likely to continue. It is neither desirable nor remotely feasible to seek to remove environmental pressures through diminution of the aspirations of the world's people for higher material standards of living. The challenge is to end the linkage between economic growth and emissions of greenhouse gases."

For the full report see:

<http://www.garnautreview.org.au/CA25734E0016A131/pages/reports-and-papers>

AMSA update by Lisa Crowle**New international regulations on harmful anti-fouling systems**

Legislation to give effect to the International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001 (AFS Convention) in Australia was passed in the form of the Protection of the Sea (Harmful Anti-fouling Systems) Act 2006, and Australia ratified the Convention in January 2007. The entry into force requirements for the AFS Convention have recently been met, and the Convention will enter into force internationally and for Australia on 17 September 2008.

A 'harmful anti-fouling system' is currently defined as any system that includes organotin compounds which act as biocides, although there is provision for additional harmful systems to be included in the future.

Compliance with the convention is achieved if the ship:

- Does not bear such compounds on its hull or external parts or surfaces; or
- Bears a coating that forms a barrier to such compounds leaching from the underlying non-compliant anti-fouling systems.

This applies to all ships except fixed or floating platforms, floating storage units (FSUs), and floating production storage and off-loading units (FPSOs) that have been constructed prior to 1 January 2003 and that have not been in dry-dock on or after 1 January 2003. While fixed or floating platforms, FSUs and FPSOs which have been constructed prior to 1 July 2003, but have not been into dry dock on or after that date, are not legally required to comply with the ban on bearing harmful anti-fouling systems, it is recommended that they do so as soon as is reasonably practicable.

The legislation includes a number of offences; in summary, it will be an offence for:

- Any person (including master or owner) to apply or re-apply a harmful anti-fouling compound to any Australian ship;
- Any person (including master or owner) to apply or re-apply a harmful anti-fouling compound to any foreign ship in an Australian port, shipyard or offshore terminal;
- The master or owner of a ship that does not comply with the Convention to take the ship to an Australian port, shipyard or offshore terminal;
- The master or owner of a ship that does not comply with the Convention to permit the ship to remain in an Australian port, shipyard or offshore terminal.

NEW SOUTH WALES

Dr Nicholas Brunton

Planning Reforms Discussion Paper

Last week, the Department of Planning released an in depth discussion paper on further planning reform in NSW. In the paper, the Government proposes a number of wide ranging reforms to the NSW planning system to make the planning system easier for families and small business and to tailor planning assessments and pathways to the scale, impact and significance of individual proposals.

The proposed changes include:

Changing the plan-making process

It is proposed to introduce a gateway screening system for land use changes prior to any re-zoning or LEP being commenced. A re-zoning or LEP would need to meet certain criteria. The criteria would vary according to the risks and scale of the re-zoning and apply regardless of whom initiated it. Smaller proposals would be delegated to other authorities. Re-zonings could be either temporary or permanent. There would be different processes for making the re-zonings depending on their scale. For example, small re-zonings could be made without the need for going through the entire plan making process. Private proponents would be required to pay a fee and consultation with State agencies would be provided at the gateway screening stage.

New development assessment regime

It is proposed to introduce a hierarchy of decision making bodies for development proposals. The Minister would delegate the majority of state level applications (other than critical infrastructure) to a newly established Planning Assessment Commission (**PAC**). The PAC could also undertake other planning functions including public hearings and advice to the Minister. Joint Regional Planning Panels (**JRPP**) would be established to determine applications of regional significance. These might include such things as applications by State agencies and development exceeding \$50 million. JRPPs would be modelled on the current Central Sydney Planning Committee. At the local level, Councils could be directed to establish an Independent Hearing and Assessment Panel to deal with certain development eg, a major SEPP 1 variation. These IHAPs would be advisory only and appointed from an accredited register.

For smaller application such as single dwellings and matters worth less than \$1 million, it is proposed to establish a system of planning arbitrators for eg, section 82A reviews and deemed refusals for small matters. The proposals would also introduce “deemed to comply” periods including a ten day period for complying development, twenty days for DAs not requiring exhibition, forty days for small scale development, sixty days for medium scale development and ninety days for development equivalent to designated development.