

Federal By Felicity Deane

Australia's second Kyoto commitment period

Australia has agreed to a second commitment period under the Kyoto Protocol from 1 January 2013 and a 'bipartisan target of reducing emissions to five per cent below 2000 levels by 2020'.⁶ This commitment ensures Australian businesses will have access to international credits under the Clean Development Mechanism.⁷ Although the announcement has been welcomed, Greens leader Senator Christine Milne suggested that the Doha negotiations were nothing more than 'tiny steps'.⁸

Currently all parties to the United Nations Framework Convention on Climate Change are working towards a global agreement with binding emissions reductions commitments. These negotiations are progressing on the assumption that the eventual agreement will include China, the United States, the European Union, India, Japan, Brazil and South Korea. This global agreement is to be finalised by 2015; to commence in 2020.⁹

Australia legislates for international emissions trading links

On 26 November 2012, the Clean Energy Amendment (International Emissions Trading and Other Measures) Bill 2012(Cth) passed the Senate.¹⁰ This legislation establishes a link between the Carbon Pricing Mechanism ('the CPM') and the European Union Emissions Trading System ('EU ETS'). The units issued under the EU ETS, referred to as allowances, may be surrendered as payment for a CPM liability from 2015. This legislation also had the effect of eliminating the price floor that was to apply from 2015. From 2015, liable entities may also surrender other eligible international emissions units as payment under the Australian CPM, but with some limitations.¹¹

New carbon farming methodologies approved

On 6 February 2013 the Acting Minister for Climate Change and Energy Efficiency announced the approval of four new Carbon Farming Initiative ('CFI') methodologies.¹² Two are in the forestry sector – the *Human Induced Regeneration of a Permanent Even-Aged Native Forest*, and *Reforestation and Afforestation*.¹³ The piggery sector is also a beneficiary of a new methodology, which is labelled the *Destruction of Methane from Piggeries using Engineered Biodigesters*.¹⁴ This methodology will involve the capture and combustion of methane produced from pig manure. The final methodology approved is the *Diversion of Legacy Waste to an Alternative Waste Treatment Facility*. This applies to the landfill sector and involves preventing methane — emitted as a result of decaying landfill — from entering the atmosphere.¹⁵

Protection of water resources from coal seam gas development and large coal mining development

On 13 March 2013, Federal Minister for the Environment, the Hon. Tony Burke MP, introduced the Environment Protection and Biodiversity Conservation Amendment Bill 2013 (Cth) for the protection of water resources from coal seam gas development and large coal mining development. The Bill amends the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') to create a matter of national environmental significance for coal seam gas and large coal mining developments which are likely to have 'a significant impact on a water resource'; and establish penalties and offences to prohibit such action. There are currently 53 projects in relation to which certain stages are not yet approved.

The Amendment Bill, which derives its power from section 51(xx)¹⁶ of the Commonwealth Constitution, creates a new matter of national environmental significance that applies to all coal-seam gas activities and any related activity including exploitation. The Bill has limited scope however, as it is restricted to coal seam gas only. Arguments have been made for example, that South Australia's shale oil

6 Greg Combet and Mark Dreyfus, 'Australia Joins Kyoto Protocol Second Commitment as World on Track to 2015 Climate Change Agreement' (Media Release, GC 329/12, 9 December 2012).

7 Ibid.

8 Christine Milne, 'Doha's Tiny Steps Demonstrate Lack of Leadership' (Media Release, 9 December 2012).

9 Greg Combet, 'Australia Ready to Join Kyoto Second Commitment Period' (Media Release, GC 302/12, 9 November 2012).

10 Greg Combet, 'Australian ETS to Link up with the World's Largest ETS' (Media Release, GC314/12, 27 November 2012).

11 *Clean Energy Act 2011* (Cth) ss123A, 133(7A).

12 Chris Evans, 'Extra Income for Landholders through Carbon Farming Projects' (Media Release, GC11/13, 6 February 2013).

13 Carbon Credits (Carbon Farming Initiative) (Human Induced Regeneration of a Permanent Even-Aged Native Forest) Methodology Determination 2013; Carbon Credits (Carbon Farming Initiative) (Reforestation and Afforestation) Methodology Determination 2013.

14 Carbon Credits (Carbon Farming Initiative) (Destruction of Methane from Piggeries using Engineered Biodigesters) Methodology Determination 2013.

15 Carbon Credits (Carbon Farming Initiative) (Diversion of Legacy Waste to an Alternative Waste Treatment Facility) Methodology Determination 2013.

16 The 'Corporations power'

industry should be included. Hydrologists are reported to regard the Bill as sound.

The Department of Sustainability, Environment, Water, Population and Communities invites interested parties to submit material towards the Significant Impact Guidelines.

Coal Seam Gas and Coal Mining Scientific Committee established

A bill to amend the EPBC Act was passed by the Parliament in October 2012.¹⁷ The legislation establishes an Independent Expert Scientific Committee ('the IESC') to provide advice on coal seam gas and large coal mining projects.¹⁸

The IESC will scope and advise on bioregional assessments in areas where coal seam gas and large coal mining developments are proposed. These assessments include scientific analysis of the ecology, hydrology and geology of an area. In essence, these assessments will determine instances of risks to water resources as a result of this type of project.

Floating LNG facility approved

Bonaparte Floating Liquefied Natural Gas Project ('the Bonaparte') was approved by the Minister for Sustainability, Environment, Water, Population and Communities ('the Minister') in October 2012.¹⁹ The Bonaparte will be located 250km west of Darwin and will produce and subsequently export liquefied natural gas ('LNG'). Only one other floating LNG facility has been approved in Australia. In November 2010 the 'Prelude' was approved as a floating LNG facility northeast of Broome in Western Australia.²⁰

The approval of the Bonaparte is subject to 15 conditions designed to minimise project impacts on migratory and threatened species and the marine environment. They require the implementation of a 500 metre caution zone between whales and vessels. Caution zones generally include requirements for maximum vessel numbers and strict speed rules.

National wildlife corridors plan released

The Australian Government released the National Wildlife Corridors Plan on 4 November 2012. The objective of this plan is to enable the connection of protected areas across the Australian landscape.²¹ This plan does not actually nominate areas of land for the government to 'lock up'. Rather the plan provides a process for communities to identify and nominate areas that they believe should be part of the network of corridors. In this regard, the National Wildlife Corridors Plan establishes criteria for areas that may become part of the network, rather than nominating the areas explicitly.

New book: *Innovation for 21st Century Conservation*

The Australian Committee for IUCN, the South Australian Department of Environment, Water and Natural Resources and The Nature Conservancy are partners in a new publication – *Innovation for 21st Century Conservation*.

The publication illustrates a rich variety of innovation including new partnerships and models for the establishment, management, financing and governance of both protected areas and initiatives on other lands. Its key purpose is to illustrate that new approaches are possible and workable and to give impetus to these directions, consistent with the Aichi Targets of the Convention on Biological Diversity. The book suggests that despite many efforts of all sectors to address sustainability challenges, particularly in building a National Reserve System, most indicators of species and ecological health suggest that current efforts are inadequate to stem species losses, especially in the face of increasing threats from invasive species and climate change. This has driven a commitment to seek integrated conservation management across many tenures to support protected areas.

Publication support was provided by the Thomas Foundation and the Australian Government Department of Sustainability, Environment, Water, Population and Communities. Read more <www.natureaustralia.org.au/news/innovation-for-21st-century-conservation.xml> and <www.environment.sa.gov.au> and <www.aciucn.org.au>.

17 Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012.

18 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, Coal Seam Gas Amendment Bill Passes Parliament (10 October 2012) <www.environment.gov.au/minister/burke/2012/mr20121010a.html>.

19 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, Floating LNG Facility Receives Environmental Approval (25 October 2012) <www.environment.gov.au/minister/burke/2012/mr20121025.html>.

20 Shell Australia, Prelude <www.shell.com.au/aboutshell/who-we-are/shell-au/operations/upstream/prelude.html>.

21 Tony Burke, 'National Wildlife Corridors Plan Released' (Media Release, MR20121104, 4 November 2012) <www.environment.gov.au/minister/burke/2012/mr20121104.html>.

The status of the 'Super Trawler'

In the preceding NELR Federal updates it was reported that the *FV Abel Tasman*, the so called 'Super Trawler', would be prevented from fishing in the Small Pelagic Fishery until a thorough assessment of the impacts could be undertaken. On 19 November 2012 the Minister announced that commercial fishing by the Super Trawler in the fishery would be prohibited for 24 months whilst an expert panel undertook an assessment.²²

On 6 February 2013 an expert panel was appointed. The four member panel is chaired by Ms Mary Lack, and includes Professor Peter Harrison, Associate Professor Simon Goldsworthy, and Dr Cathy Bulman. The report from the panel will be presented to the Minister no later than 22 October 2014. This report will influence decisions for this type of fishing in the future.²³

On 25 February 2013, the Super Trawler was prohibited from operating as a freezing and processing vessel.²⁴ The declaration to prevent the Super Trawler from being supplied by other vessels in the Small Pelagic Fishery applies for a 60 day period. The Minister will make a decision whether the same two year ban will apply to this activity prior to the expiry of this 60 day period.²⁵

Murray-Darling Basin legislation passes Parliament

On 7 February 2013, the Water Amendment (Water for the Environment Special Account) Bill was passed into law. The Act amends the *Water Act 2007* (Cth). The stated purpose of the amendment is to protect the environmental assets of the Murray-Darling Basin ('the Basin'), along with biodiversity of species that are dependent on the Basin Water.²⁶

The Explanatory Memorandum to the Bill notes that:

This Bill supports the Government's commitment to the Murray-Darling Basin reform, by establishing the Account and special appropriation for funds of \$1,775 million for the next 10 years.²⁷

The majority of this funding will be channelled towards improving irrigation efficiency.²⁸

In response to this legislation, there have been suggestions that the reform does not address the issues associated with returning water to the system to ensure sustainability of the Basin.²⁹

Ella Bay integrated resort approved

The Minister approved the Ella Bay Resort Development ('the Development') on 19 December 2012. The Development will be located 88km south of Cairns and 9km north of Innisfail.³⁰ The Development is promoted as a sustainable master planned community that will transform a 450ha cattle station over a 15 year period.³¹

The Development approval is conditional on the fulfillment of 19 conditions. These conditions include minimising the impacts of the development on the world heritage listed Queensland Wet Tropics and the Great Barrier Reef.³² Despite these conditions, there are concerns from environmental groups in regards to the impacts of the Development on the ecological landscape and on endangered species, including the Southern Cassowary.³³

22 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, Super Trawler Banned while Expert Assessment is Carried Out (19 November 2012) <www.environment.gov.au/minister/burke/2012/mr20121119.html>..

23 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, Expert Panel Appointed to Assess Environmental Impacts of the Super Trawler (6 February 2013) <www.environment.gov.au/minister/burke/2013/mr20130206a.html>..

24 Tony Burke, 'Super Trawler Stopped Again' (Media Release, MR20130225, 25 February 2013) <www.environment.gov.au/minister/burke/2013/mr20130225.html>..

25 Ibid.

26 Water Amendment (Water for the Environment Special Account) Act 2012 (Cth) s86AA.

27 Explanatory Memorandum, Water Amendment (Water for the Environment Special Account) Bill 2012 (Cth) 3.

28 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, Historic Murray-Darling Basin Legislation Passes Parliament (7 February 2013) <www.environment.gov.au/minister/burke/2013/mr20130207.html>..

29 Sarah Hanson-Young, 'Basin Plan, From River's Greatest Hope to Environmental Risk' (Media Release, 28 November 2012).

30 Ella Bay, Ella Bay - An Integrated Master Planned Community <www.ellabay.com.au>..

31 Ibid.

32 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, Ella Bay Integrated Resort Development Approved (19 December 2012) <www.environment.gov.au/minister/burke/2012/mr20121219b.html>..

33 Cairns and Far North Environment Centre, Burke Approves Inappropriate Ella Bay Resort Development (20 December 2012) <<http://cafnc.org.au/2012/12/burke-approves-inappropriate-ella-bay-resort-development/>>..

Koongarra Project Area Act 1981 (Cth) repealed

The *Completion of Kakadu National Park (Koongarra Project Area Repeal) Act 2013* (Cth) which received Royal Assent on 30 March 2013, repeals the *Koongarra Project Area Act 1981* (Cth). The repealed legislation had varied the boundary of the Kakadu National Park to enable mining in the Koongarra Area.³⁴ The French Mining company, AREVA currently holds mining licences in the area.³⁵

In 2011 the United Nations Educational, Scientific and Cultural Organization (UNESCO) World Heritage Committee modified the boundary of the World Heritage listed Kakadu National Park to include the Koongarra area.³⁶ Once Koongarra is formally proclaimed part of the Kakadu National Park, the EPBC Act will prohibit any mining in the area.

Tarkine National Heritage listing limited to Indigenous values

On 8 February 2013, the Minister announced that the National Heritage listing of the Tarkine region in Tasmania's north west would be limited to the Indigenous values of the region. Prior to the decision, the Australian Heritage Council had recommended that 433,000ha of the region be added to the National Heritage List³⁷ because the region houses the largest temperate rainforest in the southern hemisphere.

The Minister announced that the decision was based — in part — on the high unemployment levels in the region.³⁸ The Minister also suggested that the industrial history and current industrial activity in the Tarkine means the area is not the 'pristine area pretty much covered in rainforest' that a person may expect to see when visiting the area.³⁹

The Australian Greens leader Senator Christine Milne labeled the decision to limit the listing as a 'crime against the environment'.⁴⁰ Currently, 86 mining tenements are held, or are being applied for, in the Tarkine.⁴¹ The Tarkine National Coalition has requested that the Minister release formal reasons for the decision.⁴²

Minister approves Shree Minerals Nelson Bay River mine⁴³

On 18 December 2012, the Minister approved the development of the Shree Mineral's Nelson Bay River Magnetite and Hematite Mine in the Tarkine region of Tasmania. The proposal includes both an open pit mine and a processing plant.⁴⁴

The project was approved on the basis of 29 conditions.⁴⁵ The approval conditions, amongst others, include:

- a site-wide management plan for the protection threatened species
- a pre-clearance survey for masked owl, spot-tailed quoll, Tasmanian devil and Tasmanian wedge-tailed eagle
- environmental awareness training
- travel restrictions around and to and from the mine
- a requirement to fund and resource a Tasmanian devil monitoring strategy on the mine site.

Environmental groups are particularly concerned about the impacts of the project on the endangered Tasmanian devil and five other threatened species.⁴⁶

34 Koongarra Project Area Act 1981 (Cth).

35 Australian Conservation Foundation, *Historic Day as Koongarra Protected from Uranium Mining* (6 February 2013) <www.acfonline.org.au>.

36 World Heritage Committee, *Decision: Communication 35 COM 8B.49, 35th sess, UN Doc WHC-11/35.COM/20* (7 July 2011) 244.

37 SBS World News, *Most of Tarkine Outside Heritage Listing* (8 February 2013) <www.sbs.com.au/news/article/1734984/Most-of-Tarkine-outside-heritage-listing>.

38 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, *Tarkine Added to National Heritage List* (8 February 2013) <www.environment.gov.au/minister/burke/2013/mr20130208.html>.

39 Ibid.

40 Christine Milne, 'Burke Allows Mining in Areas Even John Howard Protected' (Media Release, 8 February 2013) <<http://christine-milne.greensmps.org.au/content/media-releases/burke-allows-mining-areas-even-john-howard-protected>>.

41 Helen Kempton, 'Tarkine Answers Sought' *The Mercury* (online) 24 February 2013 <www.themercury.com.au/article/2013/02/24/373099_tasmania-news.html>.

42 SBS World News, *Most of Tarkine Outside Heritage Listing* (8 February 2013) <www.sbs.com.au/news/article/1734984/Most-of-Tarkine-outside-heritage-listing>.

43 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, *Environment Minister Approves Shree Minerals Nelson Bay River Mine* (18 December 2012) <www.environment.gov.au/minister/burke/2012/mr20121218.html>.

44 Environmental Protection Authority Tasmania, *Shree Minerals Ltd – Nelson Bay River Mine* <<http://epa.tas.gov.au/regulation/shree-minerals-ltd-nelson-bay-river-mine>>.

45 Tony Burke MP Minister for Sustainability, Environment, Water, Population and Communities, *Environment Minister Approves Shree Minerals Nelson Bay River Mine* (18 December 2012) <www.environment.gov.au/minister/burke/2012/mr20121218.html>.

46 Christine Milne and Peter Whish-Wilson, 'Tarkine Trashed in Cynical Pre-Christmas Dump' (Media Release, 18 December 2012).

Approval for Maules Creek, Boggabri and Gloucester projects

Three mining projects received approval in northern New South Wales in February 2013.⁴⁷ The Boggabri and Maules Creek mines in northwestern NSW were approved amidst protests from environmentalists and farmers. The Gloucester project — a coal seam gas methane project on the northern coast of NSW — was also approved.⁴⁸

The Maules Creek and Boggabri proposals are situated in the area of the Leard State Forest, and are expected to impact on adjoining farmland. The approvals of the projects are subject to conditions in each instance.

In regards to the Maules Creek and Boggabri mine approvals the conditions include:

- limitations on native vegetation clearing
- offset areas totalling more than 15000ha
- management plans to improve the 'extent, condition and connectivity of the ecological community and listed threatened species habitats'
- \$2.5m dollars of investment in rehabilitation research and contributions to threatened species recovery actions.

The Gloucester project will also be subject to conditions. The IESC has concerns regarding the potential for changes in surface and shallow groundwater availability and surface and groundwater quality as a result of depressurisation of the coal seams, which could have an impact on the habitat of the Giant Barred Frog and the Green and Golden Bell Frog.⁴⁹

The Minister has noted that the approval of the Gloucester project requires the development of a hydrogeological model based on further field studies and analysis.⁵⁰

Great Keppel Island development approved

On 5 March 2013, the Minister announced that the Great Keppel Island tourism and marina development had been approved. This development includes the construction of a 250 berth marina, 750 resort villas, 300 apartments, a hotel and a golf course.⁵¹

Great Keppel Island is located within the Great Barrier Reef Marine Park. The resort facilities on the island closed in 2008. In 2009 a proposal for development on the island was refused approval. The Minister suggests that the current proposal is 'significantly different' from the development that was deemed unacceptable. These differences include a reduced scale of development and the modification of the previous development plans to reduce environmental impacts.⁵²

The approval of the Great Keppel Island Development is subject to 96 conditions. These conditions include:

- the development of a management plan for Indigenous and other heritage values
- requirements to address the likely impacts on marine species and migratory birds
- management of stormwater and wastewater to ensure no adverse impacts on the Great Barrier Reef
- assurances that no partially treated wastewater will be released into the ocean
- reporting requirements based on consultation with traditional owners.

47 Tony Burke Minister for Sustainability, Environment, Water, Population and Communities, 'Conditional Approvals Granted for Maules Creek, Boggabri and Gloucester Projects' (Media Release, MR20130211a, 11 February 2013) <www.environment.gov.au/minister/burke/2013/mr20130211.html>.

48 Christine Milne, 'Another Big Sell-out by the Minister Against the Environment' (Media Release, 11 February 2013) <<http://christine-milne.greensmps.org.au/content/media-releases/another-big-sell-out-minister-against-environment>>.

49 Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development, 'Advice to Decision Maker on Coal Seam Gas Project: Proposed Action: Gloucester Gas Project (EPBC 2008/4432) (Final Advice, 20 December 2012) <www.environment.gov.au/coal-seam-gas-mining/project-advice/pubs/iesc-advice-gloucester.pdf>.

50 Tony Burke Minister for Sustainability, Environment, Water, Population and Communities, 'Conditional Approvals Granted for Maules Creek, Boggabri and Gloucester Projects' (Media Release, MR20130211a, 11 February 2013) <www.environment.gov.au/minister/burke/2013/mr20130211.html>.

51 Tony Burke, 'Great Keppel Island Tourism and Marina Development Receives Federal Approval' (Media Release, MR20130305, 5 March 2013).

52 Ibid.