



## Issue 19 – Q1 February 2013

### Contents

1. COP 18 in Doha – Political will falls short of technological and financial capabilities

### National Update

#### *Law*

2. Carbon emission restrictions waived for Liquid Natural Gas project in Western Australia
3. Carbon emissions fall following introduction of Clean Energy legislation

#### *Policy*

4. EDO NSW policy submissions
4. Environment Protection Authority South Australia reports that wind farm turbine infrasound levels are 'insignificant'
5. Clean Energy Regulator announces 'Auction Solution' for 2014 Australian Carbon Unit auction

### International Update

#### *Law*

6. California's cap-and-trade carbon offset program methodology survives in *Citizens Climate Lobby v. California Air Resources Board*
7. Mexican government makes fuel efficiency rule more flexible following legal challenge by car manufacturers

#### *Policy*

8. United States President calls attention to climate change and renewable energy

### Media, Reports, and Other News

9. Bloomberg: *Australian Wind Energy Now Cheaper Than Coal, Gas, BNEF Says* (7 February 2013)

10. Sydney Morning Herald: *Figures behind Kyoto may be too low* (11 February 2013)
  11. ABC News: UN group links heatwave to climate change (15 January 2013)  
Renewable energy cheaper than fossil fuels in Australia
  12. The Age: *Solar and wind energy catch fire* (13 February 2013)
  13. GLOBE International Climate Legislation Study released
  14. OECD report on taxing energy use shows Australia's carbon price is 5th lowest of 34 OECD countries
  15. Invitation to Join EDO NSW's Scientific Expert Register
  16. The future of EDO NSW lies with you
- 

## **1. COP 18 in Doha – Political will falls short of technological and financial capabilities**

In the [previous issue of the Climate Law Bulletin](#) we reported on expectations for the 18th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 18). COP 18 was held in Doha, Qatar, in November and December 2012. Some of the expected outcomes were achieved, including an agreement on the duration of its second commitment period of the Kyoto Protocol. However, the Executive Secretary of the United Nations Framework Convention on Climate Change (UNFCCC), developing countries, and non-government organisations have all criticised developed countries for failing to make meaningful commitments and changes to combat the impacts of climate change.

### ***The Kyoto Protocol and the new agreement***

As part of the [Doha Amendment](#), nitrogen trifluoride was added to the list of greenhouse gases listed in the Kyoto Protocol for reduction. [The Intergovernmental Panel on Climate Change \(IPCC\) has reported that](#) nitrogen trifluoride has a global warming potential 17,200 times that of carbon dioxide over 100 years.

Parties to the Kyoto Protocol also agreed that the second commitment period (KP2) will be in force from 1 January 2013 until 31 December 2020. Parties to the first commitment period of the Kyoto Protocol (KP1) had committed to reducing greenhouse gas emissions by 5 per cent from 1990 levels. KP2 sees an increase in these commitments, with parties pledging to cut greenhouse gas emissions by 18 per cent from 1990 levels. However, some KP1 parties failed to sign up for KP2, including Russia, Japan, Canada, and New Zealand.

Parties decided that emissions reductions achieved in surplus of those pledged for KP1 may be able to be transferred to KP2 if parties fail to meet their reduction pledges for this second period. This move has been criticised by non-government organisations. A representative of Climate Action Network Europe said 'these surpluses are not linked to [emissions reduction] policies, but to economic crises

either in the 1990s or in the last couple of years. We are calling upon countries to revise the current position to allow the carry-over of these unused surpluses both into KP2 and after 2020.'

The Executive Secretary remains positive about the KP2 agreement, [saying that](#) it was 'seven years in the making' and 'puts those industrialised countries in KP2 under the legally binding obligation that they have assumed here in writing.' However, she looks forward to a new, more comprehensive agreement, saying that 'it is important to remember that in Durban, governments already agreed to work towards a universal agreement, applicable to all, covering 100 per cent emissions, which will be reached by 2015.' At COP 18, parties agreed that the draft text for this new legally binding agreement, which will be applicable to all countries, will be ready for discussion six months before they meet in 2015.

### ***Financial support for developing countries***

The Executive Secretary was also positive about additional climate change response measures being negotiated by parties, including pledges of financial support for developing countries facing the impacts of climate change, [saying](#), 'Countries are working on means and ways of increasing ambition before 2015, and they have begun to discuss how they will do that. There is a total of approximately \$6 billion that has been pledged, mostly by European countries and the European Union, for funding for next year. We expect that this will be complemented by further commitments.'

Small and developing countries believe in the value of these climate talks, seeing them as a vital way to engage in international discussions about climate change. However, they are unhappy with the progress of the financial support promised at previous COPs. A [representative of the Alliance of Small Island States \(AOSIS\) said](#), 'The engagement that this platform affords small countries is essential to our survival. If we don't have this platform then what do we have? We think it is just as important to us as it is to our larger partners in this effort, but there can be no doubt that there is deep disappointment amongst those of us who had confidence that our partners in development would come up with promises made in earlier meetings.'

Non-government organisations are also disappointed with the failure of developed countries to honour their prior commitments. Developed countries pledged financial assistance at previous COPs, but have failed to deliver on their promises, with only \$6 billion pledged of an expected \$60 billion in public finance to be made available by 2015. A [representative of Oxfam said](#), 'Finance is a make or break issue in Doha. Developing countries are sick of coming and people not keeping their word. The least responsible people for climate change are going to be the ones who foot the bill.'

Developing countries are also willing to make commitments and changes. A [representative of the African Group said](#), 'We all have a commitment under the convention to do something. The level that developing countries can commit is proportional to the level that developed countries can commit. This is not in isolation, we are trying to commit as well.'

### ***Looking forward***

The message to come out of COP 18 is a recurring theme of these climate change talks. The only way forward is for governments to muster the political will to not only commit to but exercise real and meaningful action on climate change, and the private sector must support these efforts. The [Executive Secretary said](#), 'We are increasing in emissions. The window to 2 degrees is closing in on us. However, we have the technology, and we have the finance for us to be able to stay safely within the 2 degrees, so what is needed is the political will of governments. It is urgent for the corporate sector to move forward and contribute to the efforts. This is not something that governments can solve alone, this is very much a partnership of government, corporations, and civil society, in which everyone needs to assume their responsibility and contribute according to their respective capabilities.'

## **National Update**

### ***Law***

#### **2. Carbon emission restrictions waived for Liquid Natural Gas project in Western Australia**

The WA Environment Minister has granted US energy company Chevron's request that carbon emissions restrictions be waived for its Wheatstone LNG project. Chevron argued that the conditions of approval imposed by the WA government relating to carbon emissions would be redundant because they duplicated restrictions (including the carbon pricing scheme) under the Federal government's Clean Energy legislative package. However, the [Western Australian Environmental Protection Authority](#) maintained that the WA government's conditions were complementary to the Federal government's, and would not result in duplication.

Despite the [EPA's advice](#), and Chevron's estimates that Wheatstone will emit 10.4 million tonnes of carbon emissions a year when fully operational (representing an increase in WA's total greenhouse gas emissions of up to 13.5 per cent), the WA Environment Minister has removed the conditions.

[Click here](#) to read an ABC News article about the Minister's decision.

#### **3. Carbon emissions fall following introduction of Clean Energy legislation**

The Australian government has [reported](#) that greenhouse gas pollution from the electricity sector have fallen by 7.5 million tonnes, or 8.6 per cent, since the

introduction of the carbon pricing scheme, part of the Clean Energy legislative package.

[Click here](#) to read a transcript of the Minister for Climate Change and Energy Efficiency's interview with ABC.

## ***Policy***

### **4. EDO NSW policy submissions**

#### **4. Environment Protection Authority South Australia reports that wind farm turbine infrasound levels are 'insignificant'**

The [South Australia EPA has released report](#) on the findings of a study it undertook in SA into the level of infrasound near wind farms compared to urban and rural environments away from wind farms.

The report [Infrasound levels near wind farms and in other environments](#) concludes that, 'the level of infrasound at houses near the wind turbines assessed is no greater than that experienced in other urban and rural environments.' The report also finds that 'the contribution of wind turbines to the measured infrasound levels is insignificant in comparison with the background level of infrasound in the environment.'

Interestingly, one of the houses assessed near a wind farm had the lowest infrasound levels measured of any of the urban or rural locations included in this study, including those away from wind farms.

In related news, [EDO NSW made a submission to the NSW government](#) on the draft *Protection of the Environment Operations Amendment (Wind Farms) Regulation 2012* (NSW), which would add large wind farm developments as a 'scheduled activity' regulated by the *Protection of the Environment Operations Act 1992* (NSW). This proposal is aimed at regulating noise pollution from large wind farms. In this submission, EDO NSW noted the important findings of the [NHRMC](#) and the [CSIRO](#) in relation to wind farms, that 'There is currently no evidence linking noise impacts with adverse health effects'.

#### **5. Clean Energy Regulator announces 'Auction Solution' for 2014 Australian Carbon Unit auction**

On 1 July 2015 the carbon pricing mechanism under the Clean Energy legislative package will move to a fully flexible price as part of an emissions trading scheme, with the price determined by the market. The Australian government will issue a fixed number of carbon units each year, with some of these carbon units being sold at auction.

The first auction of carbon units will take place in the first half of 2014 and will be conducted by the Clean Energy Regulator, who has announced that Deloitte Touche Tohmatsu will provide an 'auction solution', including software to assist the auction process.

[Click here](#) for more information.

## International Update

### Law

#### **6. California's cap-and-trade carbon offset program methodology survives in *Citizens Climate Lobby v. California Air Resources Board***

Citizens Climate Lobby and Our Children's Earth Foundation applied to the California Superior Court challenging the California Air Resources Board's use of standardised additionality mechanisms in the state's cap and trade carbon offset program under the *Global Warming Solutions Act 2006*. The Act aims to improve the economy of California while decreasing the state's greenhouse gas emissions. The program caps the amount of greenhouse gases that can be emitted by entities including manufacturers, electricity generators, and fuel suppliers, and permits allowances to be issued or auctioned to these entities allowing them to emit greenhouse gases up to the cap. These allowances include offset credits.

The groups argued that the use of standardised additionality mechanisms were not permitted under the *Global Warming Solutions Act 2006* and that the four protocols designed by the California Air Resources Board to assess projects were arbitrary and capricious. They also argued that relying on general project standards and thresholds to determine whether a project's reductions of greenhouse gases are additional to what would be achieved in the absence of the financial incentives provided by offset credits would be inaccurate, and would risk awarding offset credits to non-additional projects. The groups held concerns that offset credits will become so easily available, and that prices will fall so low, that entities will simply purchase credits rather than reduce emissions. They argued that the California Air Resources Board should be required to assess each individual project to determine whether its reductions are additional to ensure the integrity of the program.

The Court held that the standardised additionality mechanisms were allowable under the *Global Warming Solutions Act 2006* and that the four existing standardised additionality mechanisms were valid, and dismissed the groups' application.

[Click here](#) to read the full statement of decision.

#### **7. Mexican government makes fuel efficiency regulation more flexible following legal challenge by car manufacturers**

The Mexican government has relaxed its fuel efficiency regulatory program after several car manufacturers filed separate legal challenges to NOM163, a regulation that is part of Mexico's [new climate change legislation](#) which aims to reduce greenhouse gas emissions by 30 per cent by 2020 and by 50 per cent by 2050.

Progress on the regulation was halted in late 2012 when Toyota applied to the Tribunal Federal de Justicia Fiscal y Administrativa to stop NOM163 from being considered, arguing that Mexican car manufacturers would lose their competitive edge against foreign manufacturers who would be able to export their vehicles at lower prices. The Court agreed with Toyota, and issued an injunction preventing the government from proceeding with the regulation. Other manufacturers also filed lawsuits challenging the regulation, and the Mexican Auto Industry Association complained that the proposal was stricter than a similar program in the United States.

Following this, the government has relaxed the regulation, making it more flexible by allowing manufacturers to carry over credits in years where they fail to meet targets from years where they exceed efficiency requirements. NOM163 aims to reduce public spending on federal subsidies for fuel prices, and is expected to decrease carbon dioxide emissions by 160 million tonnes.

The Mexican Environment Minister said that some of the legal challenges have now been withdrawn, and hopes that the regulation will be implemented from January 2014.

[Click here](#) for more information.

## *Policy*

### **8. United States President calls attention to climate change and renewable energy**

US President Obama has emphasised the need for the country to respond to climate change, and has indicated a transition to renewable energy in his Second Inaugural Address, saying that the government will respond to 'the threat of climate change' by pursuing renewable energy.

In his 2013 State of the Union address, the President elaborated on this sentiment, linking the need to respond to climate change with opportunities to create new jobs in the US, saying, 'we must do more to combat climate change. We can make meaningful progress on this issue while stimulating economy.'

The President urged Congress to take a bipartisan approach in developing policies to combat climate change while creating new jobs. If Congress does not, the President said that his Cabinet would commit to creating initiatives which reduce pollution, develop adaptation and mitigation strategies, and accelerate the move towards renewable energy, saying 'as long as China keeps going all in on renewable energy, so must we.'

[Click here](#) for the President's Second Inaugural Address. [Click here](#) for the President's 2013 State of the Union address.

## Media, Reports, and Other News

### **9. Bloomberg: *Australian Wind Energy Now Cheaper Than Coal, Gas, BNEF Says* (7 February 2013)**

Wind is now cheaper than fossil fuels in producing electricity in Australia, the world's biggest coal exporter, according to data compiled by Bloomberg.

Electricity can be supplied from a new wind farm in Australia at a cost of A\$80 per megawatt hour, compared with A\$143 a megawatt hour from a new coal-fired power plant or A\$116 from a new station powered by natural gas when the cost of carbon emissions is included, according to a [Bloomberg New Energy Finance report](#). Coal-fired power stations built in the 1970s and 1980s can still produce power at a lower cost than that of wind, the research shows.

Relying on fossil fuels to produce electricity is getting more expensive because of the government's price on carbon emissions imposed last year, higher financing costs and rising natural gas prices, BNEF said. The cost of wind generation has fallen by 10 per cent since 2011 on lower equipment expenses, while the cost of solar power has dropped by 29 per cent.

[Click here](#) to read the full article.

### **10. Sydney Morning Herald: *Figures behind Kyoto may be too low* (11 February 2013)**

Greenhouse gas emissions in the 1990s could have been underestimated by billions of tonnes, throwing doubt on some of the maths behind the Kyoto Protocol, research by Australian and international scientists suggests.

The research team measured real-world changes in the amount of CO<sub>2</sub> building up in the atmosphere against the amount of gases that each country said it emitted. And, like a jigsaw puzzle with one or two missing pieces, the picture did not quite match. The group's findings are contained in a paper published in the journal [Nature Climate Change](#).

[Click here](#) to read the full article.

### **11. ABC News: *UN group links heatwave to climate change* (15 January 2013)**

The United Nations' (UN) chief climate science body says there is no doubt last week's extreme heat in Australia is part of a global warming trend.

More than 250 of the world's top climate scientists are meeting in Hobart today to prepare the next major report from the Intergovernmental Panel on Climate Change (IPCC). They have vowed to deliver "scientifically defensible" findings when the report is released in just over eight months' time.

Speaking to AM, IPCC chairman Rajendra Pachauri says the world is on track for a rise in temperature of between 1.1C to 6.4C.

[Click here](#) to read the full article.

### **12. The Age: *Solar and wind energy catch fire* (13 February 2013)**

Solar and wind-power generation are soaring at home and abroad as falling costs combine with rising prices for fossil-fuel alternatives to reshape electricity markets. Australians installed about 1 gigawatt of solar photovoltaic (PV) panels on their roofs last year, increasing the existing capacity by more than two-thirds, according to the Australian Solar Council.

The rush to take advantage of generous feed-in tariffs before they were cut saw Queensland more than double its PV sales, adding almost 400 megawatts of capacity in 2012. Victorians also came close to doubling PV capacity, while New South Wales increased capacity by about one-third.

[Click here](#) to read the full article.

### **13. GLOBE International Climate Legislation Study released**

[GLOBE International](#) has released the 3rd edition of the [Climate Legislation Study](#) and formally launched the GLOBE Climate Legislation Initiative. The study is the most comprehensive inventory of climate legislation across the world's major developed and emerging economies. The study included 33 countries and over 300 laws that are relevant to climate change.

The study finds that 32 out of 33 major economies have progressed or are progressing significant climate and/or energy-related legislation, and that much of this legislative progress on climate change in 2012 occurred in emerging economies, including China.

A key aim of the study is to provide legislators with a 'repository of experience', allowing lawmakers to examine existing legislation and discuss the practical challenges of putting in place climate change laws.

[Click here](#) for more information and to read the study.

#### **14. OECD report on taxing energy use shows Australia's carbon price is 5<sup>th</sup> lowest of 34 OECD countries**

The Organisation for Economic Co-operation and Development (OECD) has released a report which provides the first comparisons of the effectiveness of the taxation of different sources and uses of energy, and sets out a cross-country summary of the results of the analysis. [Taxing Energy Use: A Graphical Analysis](#) finds that 29 countries have higher 'effective' carbon prices than Australia.

The report shows that effective taxes on carbon dioxide from energy within OECD countries range from EUR 107 per tonne in Switzerland to EUR 2.80 per tonne in Mexico. The weighted average of all OECD countries is EUR 27 per tonne. Australia's carbon price of \$23 (EUR 18) is placed 30 out of 34 countries, making it lower than carbon prices in New Zealand, Japan, and the UK.

The [Climate Institute](#) welcomes the report, which shows that carbon pollution from energy is taxed in every OECD country, saying, 'The claims that Australia's carbon price is unique or unusual fail a basic fact check, as demonstrated by this analysis from the trusted and impartial OECD.'

[Click here](#) to read the report.

#### **15. Invitation to Join EDO NSW's Scientific Expert Register**

EDO NSW is seeking scientific and technical experts with 10 or more years' experience in a range of fields to join our [Expert Register](#). PhD students are also encouraged to apply.

The Expert Register is a list of scientific experts who are willing to assist EDO NSW with public interest environmental matters on a pro bono basis. A key aim of the service is to increase the public's capacity to participate effectively in the environmental planning and development assessment process.

EDO NSW is also seeking to develop relationships with research organisations and environmental consultancies interested in doing pro bono work.

If you would like more information on how to be involved in the scientific work of EDO NSW, and have expertise in climate science or a relevant environmental field, please contact EDO NSW on 02 9262 6989.

## **16. The future of EDO NSW lies with you**

Thank you to everyone who has already responded to our recent request for financial assistance. If you haven't yet and you are able to help us make up our funding shortfall and avoid slashing services, please donate today.

Your support for EDO NSW will help us to continue to provide legal advice and representation to community members wanting to use the law to protect the environment. It will help EDO NSW seek improvements to environmental laws, and provide community legal education such as publications and workshops.

Donations over \$2 are tax-deductible.

[Click here](#) for more information or to give now to EDO NSW's Environmental Defence Fund.