Speaker Profiles

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Brendan Bateman is a recognised expert in all aspects of environmental, planning and administrative law. He has advised numerous government authorities and departments, as well as private sector clients on environmental and planning law issues, including the application of State and Commonwealth environmental impact assessment processes to major infrastructure projects. Brendan also advises on contaminated land, and has acted in some of the largest redevelopments of brown field sites in Australia. Brendan has particular expertise in environment and property-related litigation, including defending pollution prosecutions and acting in appeals relating to the compulsory acquisition of land. He also practises in administrative law with expertise in judicial reviews, freedom of information and investigations.

Brendan is also the co-leader of the National Clayton Utz Climate Change group. He provides advice to corporate clients and government on the business risks of climate change, and the implications of emerging government policy and legislation for a carbon constrained economy.

In particular, he has advised clients on voluntary greenhouse gas abatement schemes, trading in "green" rights and most recently, mandatory greenhouse gas and energy reporting obligations and potential liabilities under the proposed Carbon Pollution Reduction Scheme. Brendan is currently acting for Macquarie Generation in legal proceedings commenced by activist group Rising Tide in which it is alleged that the emission of carbon dioxide from its Bayswater power station constitutes the disposal of waste in contravention of NSW environmental legislation.

Graeme is an energy and resources lawyer with extensive experience in carbon trading, energy market regulation and reform, and general advice on major energy projects. Graeme has a reputation for developing innovative solutions for complex issues, particularly in trading, greenhouse and energy areas.

He has been at the forefront of developments for markets for power, gas and emissions trading, including derivative and futures contracts.

He authored, for the Australian Financial Markets Association, the AFMA Short-form Spot Contract for trading in Environmental Products. He also authored the AFMA Australian Gas Trading Addendum, and is a member of the International Swaps and Derivatives Association Committee for Energy, Commodities and Developing Products, which designs documentation for international and domestic trading in emissions. He also wrote the legal text “Australian Energy Law - Electricity”, which was published by CCH.

Graeme is also an author and contributing editor for the Australian Resources Law Reporter and the Australian Climate Change Law and Policy service, published by Lexis Nexis.
Good COP Bad COP
COP 15 - Copenhagen Breakfast Briefing

Brendan Bateman
Graeme Dennis

Tuesday, 22 December 2009

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"The international sound and light show otherwise known as Copenhagen"

(Hon Prime Minister Kevin Rudd)

Brendan Bateman
Graeme Dennis

Tuesday, 22 December 2009
COP 15 - Overview

• Background
  • UNFCCC
  • Kyoto Protocol
  • Bali Action Plan

• COP 15 - Copenhagen
  • Key issues/observations
  • Outcome - Copenhagen Accord
  • What it means for Australia
United Nations Framework Convention on Climate Change (UNFCCC)

• Adopted 1992, in force March 1994
• 192 parties (including US)
• Objective to stabilise GHG concentrations at level to prevent dangerous human interference with climate system
• Conference of the Parties (COP)
• Secretariat
UNFCCC (cont.)

- Standing Committees (SBSTA, SBI)
- Agreement to:
  - gather and share information on GHG, national policies and best practices
  - launch national strategies to address GHG, including financial and technological support to developing countries
  - co-operate in preparing for adaptation
- non-binding
UNFCCC (cont.)

- Parties to UNFCCC classified as:
  - Annex I countries (developed and economies in transition)
  - Annex II countries (subset of Annex 1 with special obligations to provide financial and technological support to developing countries)
  - Non-Annex 1 countries (developing countries)

- Article 17 - Protocols
Kyoto Protocol

- Complements the UNFCCC

- Adopted at COP 3 in Kyoto, December 1997

- In force, February 2005

- Binding reduction targets on developed countries

- 184 parties (not including US)

- First commitment period = 2008 - 2012
Kyoto Protocol (cont.)

- Kyoto flexible mechanisms:
  - Emissions trading / carbon market
  - Clean Development Mechanism (CDM)
  - Joint Implementation (JI)
- Adaptation Fund
COP 13 - Bali Action Plan

- COP 13 held December 2007 in Bali
- Adoption of the Bali Road Map and Bali Action Plan
- Bali Action Plan:
  - 2 year negotiating process culminating in COP 15
  - Ad Hoc Working Group on Long-term Co-operative Action under the Convention (AWG-LCA)
  - Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP)
COP/CMP - Structure (cont)
COP 15/CMP 5

• Held in Copenhagen from 7-18 December 2009
• Heads of State, Ministers and officials from 192 countries attending including US and China
• Aim for a politically binding agreement for post 2012 period
• 46,000 into 15,000 does not go
COP 15 - the lead up

• Four key issues:
  • Ambitious emission reduction targets for developed countries
  • Nationally appropriate mitigation actions of developing countries (NAMAs)
  • Scaling up financial and technological support for both adaptation and mitigation
  • An effective institutional framework with governance structures that address the needs of developing countries
COP 15 - Key observations

• Carbon colonialism
• The little island that roared
• US EPA endangerment finding
• One, two, three or no track
• The "political" solution
• Killing the Kyoto protocol
• MRV
• Split in G77 - emergence of BASIC
COP 15 - Spot the difference?
"Can I join you now? Are you ready to talk to me or do you need more time? I can go back and come again."

President Barack Obama
COP 15 - The Outcome

• No consensus on key issues - differences too great, too little time

• 5 countries decide the outcome outside UNFCCC process - US, China, India, South Africa, Brazil

• Objections in plenary to adoption of "deal"
COP 15 - The Outcome (cont)

- COP President replaced
- Compromise - COP/CMP "takes note" of Copenhagen Accord, extends mandates of AWGs - LCA/KP
COP 15 - The Copenhagen Accord

Copenhagen Accord

The Heads of State, Heads of Government, Ministers, and other heads of delegation present at the United Nations Climate Change Conference 2009 in Copenhagen,

In pursuance of the ultimate objective of the Convention as stated in its Article 2,

Being guided by the principles and provisions of the Convention,

Afferming decision 1/CP.15 and decision 1/CMP.5,

Have agreed on this Copenhagen Accord which is operational immediately.

1. We underline that climate change is one of the greatest challenges of our time. We emphasize our strong political will to urgently combat climate change in accordance with the principle of common but differentiated responsibilities and respective capacities. To achieve the ultimate objective of the Convention to stabilize greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, we shall, recognizing the scientific view that the increase in global temperature should be below 2 degrees and in the context of sustainable development, enhance our long-term cooperative action to combat climate change. We recognize the critical impact of climate change on countries particularly vulnerable to its adverse effects and stress the need to establish a comprehensive adaptation programme including international support.

2. We agree that deep cuts in global emissions are required, at least 50% on 1990 levels by 2050. Deep cuts in global emissions are required according to science, and as documented by the IPCC fourth assessment report, dependent on the development of appropriate low carbon technologies. We should cooperate in achieving the peaking of global and national emissions as soon as possible, recognizing that the time frame for peaking will be longer in developing and least developed countries as well as in countries and regions. Social and economic development and poverty eradication are the first and overriding priorities of developing countries and that a low-carbon development strategy is indispensable to sustainable development.

3. Adaptation to the adverse effects of climate change is a challenge faced by all countries, and enhanced and action and international cooperation on adaptation is urgently required to ensure the implementation of the Convention and enabling and supporting the implementation of adaptation actions aimed at reducing vulnerability and building resilience in developing countries, especially those that are particularly vulnerable, especially least developed countries, small island developing States and further taking into account the need of countries in Africa affected by drought, desertification and floods. We agree that developed countries shall provide adequate, predictable and sustainable financial resources, technology and capacity-building to support the implementation of adaptation actions in developing countries.

4. Annex A Parties to the Convention to reduce their emissions individually or jointly by at least 80% by 2050. They also commit to provide new and additional resources, including financial and technical assistance, to support the implementation of the Convention.

5. The Non-Annex I Parties listed in Article 2 have committed to undertake the nationally appropriate mitigation actions listed therein, in accordance with achieving a significant deviation below business as usual at around 30% of the economic cost of emissions targets for 2020, as listed yielding in aggregate reductions of greenhouse gas emissions of 8% per cent in 2020 compared to 1990 and 7% per cent in 2020 compared to 2005. Delivery of reductions and financing by developed countries will be measured, reported and verified in accordance with existing and any further guidelines adopted by the Conference of Parties, and will ensure that accounting of such targets and finance is rigorous, robust and transparent.

6. Developing countries should contribute to mitigation actions in the forest sector by undertaking the following activities: reducing emissions from deforestation, reducing emissions from deforestation, preservation of forest carbon stocks, sustainable management of forest, and enhancement of forest carbon stocks.

7. We decide to pursue various approaches, including opportunities to use markets, to enhance the cost-effectiveness of, and to promote, mitigation actions.

8. Sealed up, new and additional predictable and adequate funding as well as improved access shall be provided to developing countries, in accordance with the relevant provisions of the Convention, to enable and support enhanced action on mitigation, including substantial financial support to prevent deforestation (REDD-plan), adaptation, technology development and transfer and capacity-building, for enhanced implementation of the Convention. We undertake to work together to provide the financial and other resources, including transfer of technology, necessary to meet the obligations of the Convention.
COP 15 - The Copenhagen Accord (cont)

- Objective to limit increase to 2 degrees
- Cooperate to have emissions peak ASAP
- Developed countries to provide "adequate, predictable and sustainable financial resources" to assist adaptation in developing countries
- each party to specify commitments/actions:
  - Annex I - economy wide emissions targets for 2020
  - Non-Annex I - NAMAs
COP 15 - The Copenhagen Accord (cont)

- Commitments/actions to be submitted by 31/01/2010 and included in Appendices to Accord
- US$30bn "fast start" finance
- Copenhagen Green Climate Fund - US$100bn pa by 2020
- REDD+
- MRV
- Review in 2015
COP 15 - The Copenhagen Accord (cont)

- Not legally binding
- Parties to determine whether to "associate" with it
- So far 26 countries have "signed on"
- COP16 - Copenhagen take 2
COP 15 - Other decisions

- AWGs-LCA/KP - mandates extended
- AWGs-LCA/KP - draft text to form basis of ongoing work
- REDD+ - further work on measurement/reporting
- CDM - EB and processes reform
- CCS - SBSTA to work on possible inclusion in CDM
- Adaptation Fund - legal capacity
COP 15 - What it means for Australia

• 2020 target based on assessment of commitments
• REDD+: the one bright spot
• CCS = CDM?
• No impetus for CPRS
• US ETS
• Is Kyoto dead?
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