

A Submission to the Garnaut Review, 2007-2008

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I welcome your ambitious goals for greenhouse gas abatement. As a legal scholar who has done some research in the area of climate change (mitigation and adaptation), I urge you to consider the following submissions:

Emissions trading should be one part of a comprehensive package

A trading scheme for carbon emissions needs to be one part of a bigger policy picture. This is because a number of factors may combine to frustrate the practical impact – that is, the emissions reduction function - of emissions trading schemes. These include:

1. Vested interests, political pragmatics or whatever, may combine to fix the price at too low a level to make a significant difference quickly.
2. Price elasticity: We don't know how much of the cost will simply be absorbed (with or without inflationary impacts) instead of leading to reductions in emissions.
3. These mechanisms assume rational behaviour on the part of polluters – which is not always the case.¹

In the light of these concerns, I urge you not to “put all your eggs in one basket” but to work on a complete package that is *coordinated, comprehensive and creative* and includes, but is not limited to, an emissions trading scheme.

Greenhouse gas abatement strategies and policies should be based on a clear normative framework consistently applied and widely understood.

Long term policies require consistent application based on some widely supported – or at least well reasoned and widely understood - principles. My analysis of municipal and international jurisprudence offers the following guiding principles that could usefully influence the design of a comprehensive and long term abatement strategy:

(a) Intergenerational equity

Sustainable development is development which meets the needs of the present without compromising the ability of future generations to meet their needs. Promoting equity – or fairness-

¹ De Sadeleer, N, *Environmental Principles*, 2006, OUP, p.36

between and within generations is a key element of sustainable development which generally requires that – development options, overall environmental quality and access to resources are all conserved and protected for future generations.

In practical terms, the principle of intergenerational equity lends support to some further and more concrete propositions, such as:

(b) Polluter pays principle

As endorsed in Australia's own National Strategy for Ecologically Sustainable Development (NSES), 1992, the polluter pays principle asserts that, in general, the costs of environmental pollution should be borne by the polluter.²

(c) Cost effective action should not be delayed or postponed

Intergenerational equity requires that, if the costs of delaying action on climate change issues are likely to be significantly greater than the cost of applicable measures at the current time, then the costs of abatement or adjustment should be borne by the present generation. The Queensland Climate Change Adaptation Strategy is one document endorsing this principle. It states:

Efforts aimed at sustainability will ensure that future generations are not forced to disproportionately carry the costs of adaptation, and that any benefits are shared across the community now and in the future.³

(d) Considering and Internalising Abatement Costs in New Development

Intergenerational equity means that, when considering new development, decision-makers are required to take into account any significant impact on greenhouse gas emissions arising from that development (*Gray v Minister for Planning* [2006] NSWLEC 720). Although there is some case law stating otherwise, the time is rapidly approaching when all new major development should be required to minimize or offset its greenhouse gas emissions. The Bligh government's decision to power its new desalination plant by renewable electricity is a welcome decision in this respect.

(e) Developing Synergies Between Abatement and Adjustment Policies

There is a good deal of overlap between policies to mitigate greenhouse gas emissions and policies to deal with life in a carbon constrained future (eg. promoting public transport; shade and ventilation in new buildings etc). Strategies with multiple benefits for both abatement and adaptation should be pursued vigorously. At the very least, adaptation responses that undermine mitigation efforts (eg increased use of air conditioners) must be thwarted.

² *Rio Declaration*, Principle 16: National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

³ *Climate Change Adaptation 2007-2012: An Action Plan for Managing the Impacts of Climate Change*, 2007, Qld Government, Climate change Centre of Excellence, p.11.

(f) **The Precautionary Principle**

Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation. This principle is recognized in international, national and state wide legal instruments.⁴

(g) **Transparency, accountability and education**

In fairness to present generations, abatement strategies should include measures to ensure accountability, transparency and education. For instance, my work with local governments over the past year has highlighted the need for guidance on the responsible release of sensitive information.

These normative principles should be applied when fiscal policies and the distribution of costs across society are discussed and developed.

The principles referred to above suggest fiscal and other incentives should be based on a combination of:

- The polluter pays principle
- Cost effectiveness
- Equity (intra and intergenerational)

To date, I have read about a plethora of separated initiatives but have seen little justification for them based on – the polluter pays principle; cost effectiveness or equity. Subsidies for the purchase of solar panels are a case in point. There is a massive federal subsidy for private individuals to install solar panels on domestic buildings but the cost of so doing is still prohibitive for the majority of people. In effect, this assistance is a massive subsidy to wealthy people – arguably with very little impact on total greenhouse gas emissions. When the cost of electricity goes up, wealthy people will have been helped by tax payers to buy out of the system while others will have paid the cost of subsidizing them and the cost of price rises.

A more *equitable* policy might focus on –

- Delivering solar panels to *all* schools, government and community buildings and/or
- Supplying the provision of solar panels to public housing (whose occupants are most at risk from electricity price rises)
- Distributing and actually installing free low energy light bulbs in every home
- Cancelling fringe benefits and other forms of tax relief that actually subsidize pollution (company cars, free petrol etc)
- Income related subsidies for high efficiency washing machines and other essential white goods

⁴ *Rio Declaration*, Principle 15; the NSESD; the *Integrated Planning Act*, Qld, s.1.2.3.

- Allowing the purchase of solar panels as a tax deductible expense available through salary sacrificing or other fringe benefits– for those who can afford it

A more *cost effective* (ie. high impact on emissions) policy might focus on –

- Encouraging the installation of gas powered heating or solar powered air pumps (both more competitively priced than solar power without a subsidy)
- Extending the network of piped gas to existing communities
- Rapidly phasing out traditional electrical hot water systems and high energy light bulbs – these need to come off the market as soon as possible.

Strategies premised on the *polluter pays principle* might focus on:

- Phasing out or taxing inefficient electrical appliances on the market
- Placing a carbon tax on the purchase of air conditioners, swimming pools and other domestic energy guzzlers. These are luxury items so there is no reason why the polluter should not pay a greater part of the real costs associated with them.
- Eliminating subsidies that provide incentives for pollution across the board

Penalties and taxes should be directly linked to *compulsory* energy efficiency measures

Whatever taxes or price hikes there are need to be accompanied by positive messages about what people can do to reduce their energy consumption and ample opportunities to make those reductions. At present, there is a HUGE scope for reducing emissions quickly and with little or no cost to the consumer - but no positive incentive to do so. The matter should not be left to chance or to the vagaries of the market (as in an emissions trading scheme) where inertia, irrational behaviour and/ or short term resource constraints may prevent a rapid and effective conversion to lower emissions. Direct and compulsory links & policies promoting immediate and cost effective reductions in energy consumption are needed to ensure the rapid success of an emission trading scheme. Further, these measures will reduce the negative inflationary impact of price increases and send home a positive message about the importance of - and responsibility for - abatement. For instance:

- Energy penalties or taxes on the purchase of inefficient electrical appliances or new luxury appliances could take the form of (tradeable?) credits towards the future purchase of solar panels, free public transport credits or of recognized off sets.

At the very least, as emissions trading is introduced and increased, appropriate technology and methods for reducing energy consumption must be researched, publicised and promoted with equal vigour. This lends some fairness to the market and assists those who will struggle to overcome the inertia or resource constraints that prevent rapid conversion to a lower emissions trajectory.

Every level of society and every tier of government has a role to play in reducing greenhouse gas emissions

Common but differentiated responsibility is a catch phrase in international negotiations on climate change and the same could be said for action on the municipal front. The sooner respective spheres of action, partnership and priority are more clearly defined across different spheres of government, the sooner cost inefficiencies, pollution subsidies and inequitable practices may be replaced by a comprehensive, coherent and creative strategy to effectively reduce our emissions. Some proposals for allocating responsibilities between different spheres of government are identified below (Appendix 1).

Please don't miss this opportunity to make comprehensive, cross sectoral and far reaching recommendations that extend beyond an emissions trading scheme for the big end of town.

Good luck with your endeavours.

Dr Philippa England

Appendix 1

Mitigation ideas for local, state and national government

Action	Local	State	National
Major development projects	<p>Implementing & monitoring standards & conditions (carbon cops)</p> <p>Partnerships & development conditions for off sets</p>	<p>Life cycle planning (Construction; consumption; waste disposal)</p> <p>Alternative energy sources Off sets</p>	<p>R & D</p> <p>Funding to maximize efficiency</p> <p>Accounting & credits for off sets</p>
Infrastructure & transport	<p>Invest in gas – requisite for all new development and transport</p> <p>Make community buildings community models (solar polar; connectivity; reduced air conditioning etc)</p> <p>Plan for and promote</p>	<p>Make community buildings community models (solar polar; connectivity; reduced air conditioning etc)</p> <p>Decentralize</p>	<p>Grants</p> <p>Develop guidelines for community buildings</p>

	walking & cycling Promote and invest in public transport Reduce the car fleet and insist on energy efficient models	government work force Promote and invest in public transport Reduce the car fleet and insist on energy efficient models	Invest in public transport Reduce the car fleet and insist on energy efficient models
Building construction /development	Insist on gas Implement & monitor energy efficiency standards & conditions Add your own if justified (in a systematic way) Showcase new designs; be a leader	Insist on gas Develop energy efficiency guidelines & (compulsory) standards Showcase new designs; be a leader	Insist on gas Develop energy efficiency guidelines & (compulsory) standards Showcase new designs; be a leader
Agriculture	Implement & monitor new standards & conditions Add your own if justified (in a systematic way) Off sets Partnerships	Develop and enforce new standards and guidelines	Develop and enforce new standards and guidelines Incentives Off sets
Forestry	Partnerships / offsets	Partnerships / offsets	Incentives Offsets (record & account for)
Renewable energy	Choose solar or gas (require in all new development) Increase awareness of opportunities Broker deals with local industry, developers, communities Develop local sources of alternative energy	Develop a regime of incentives & penalties & conditions Increase awareness of opportunities Funding	Develop a regime of incentives & penalties & conditions Increase awareness of opportunities Funding R&D
Land fill /waste	Adopt new technology for dealing with methane – sell the carbon credits	Grants; develop expertise & technical support	Grants R&D
Government	Decentralize	Decentralize	Grants

buildings & work force	<p>Choose energy efficiency and alternative energy supply</p> <p>Showcase new designs; be a leader</p> <p>Encourage use of public transport</p> <p>Encourage working from home</p> <p>Redirect polluting subsidies into energy efficient ones eg switch from petrol allowances & parking permits to commuter passes or solar power rebates</p>	<p>Choose energy efficiency and alternative energy supply</p> <p>Showcase new designs; be a leader</p> <p>Encourage use of public transport</p> <p>Encourage working from home</p> <p>Redirect polluting subsidies into energy efficient ones eg switch from petrol allowances & parking permits to commuter passes or solar power rebates</p>	<p>Develop guidelines & standards for energy efficiency</p> <p>Encourage use of public transport</p> <p>Encourage working from home</p> <p>Redirect polluting subsidies into energy efficient ones eg switch from petrol allowances & parking permits to commuter passes or solar power rebates</p>
Energy Efficiency (including reducing wasteful consumption)	<p>Distribute light bulbs</p> <p>Door knocks and displays for cheap gizmos and ideas</p> <p>Partnerships with local industry – turn off lights etc</p> <p>Awareness campaigns & incentives for existing home owners – insulation; lighting; star ratings</p>	<p>Fund local government efforts</p> <p>Partnerships with local industry – turn off lights etc</p> <p>Awareness campaigns & incentives for existing home owners – insulation; lighting; star ratings</p>	<p>Extend compulsory and uniform labelling</p> <p>Standard setting</p> <p>Incentives & penalties – credits for energy misers; graded user fees; pollution tax on energy guzzlers</p> <p>Grants</p> <p>Partnerships with Cities for Climate Protection (CCP)</p> <p>Education, advertising</p>
Recording, accounting & institutional development	<p>Community liaison</p> <p>Identifying & promoting opportunities within local government and communities, negotiating partnerships etc</p>	<p>Training carbon cops</p> <p>Liaison across departments & major industry players</p>	<p>Recognize as many savings as possible as marketable carbon credits</p> <p>Funding for training</p> <p>R&D</p>