

EXECUTIVE COMPLIANCE NEWS

Independent news for Energy & Water



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Modern award transition closing

WFD: The award modernisation process is wrapping up with Fair Work Australia looking to terminate as many state awards and 'modernisable instruments' as possible by the end of the year as per the requirements of the Fair Work Act. On August 27, President Justice Geoffrey Giudice released a statement saying it had received 40 submissions about 119 awards and orders. FWA will hold hearings on Sept 21 and 22 in Melbourne to deal with those submissions and fix further dates for hearings. Any modernisable instruments which have not been the subject of submissions will be terminated on Oct 1, 2010. A full FWA bench will also hear submissions on the termination of Division 2B State Awards on Sept 20 in Melbourne. Those awards apply to employers in NSW, Qld, SA and Tasmania who were not trading as constitutional corporations on Jan 1, 2010 and who were previously covered by state workplace relations systems. From Dec 31, 2010, the Division 2B State awards will be replaced by modern awards and by that date FWA must determine the future of transitional arrangements related to the state awards. Any further proposals or responses on the matter must be filed by Sept 13.

(Source: Workforce 17425, 3 September, 2010)

Climate policy may be a clincher

It got little attention during the federal election campaign but the major parties' climate change policies look to be one of the deciding factors that will determine who will lead Australians. With Labor assured of 74 members' support and the Liberal-National Party 73, the three rural independents will decide Aust's govt. The two NSW independents, Tony Windsor and Rob Oakeshott, have repeatedly made clear they are disappointed about the parties' handling of climate policy and their priority for it to be dealt with in a more inclusive, less "politically toxic" manner in the parliament. Along with the newly elected Tas independent Andrew Wilkie, they've both publicly supported a carbon price. There's little doubt that was partly behind the deal struck between Labor and the Greens on Mon. The arrangement included a "well-re-

sourced", all-party parliamentary climate change committee to thrash out the issue. It would include independents and outside experts, the only proviso being all members accepting they would work towards introducing a carbon price. That automatically excluded Liberal-National Party members, at least as long as they support the Coalition's policy that opposes a carbon price. *Carbon Extra* understands the committee would operate much like a deliberative forum, so all perspectives and concerns could be worked through in search of a consensual position. The concept would appear to deal exactly with Windsor and Oakeshott's major complaint with past govts' handling of the issue. Windsor told ABC Radio on Thurs not only did he support the committee idea, the Liberal-National Party's refusal to join it because of its carbon price policy may cost them his support. The committee "may well be one of the things I'll put into some of the priorities that I've got. I think that would be an excellent idea", Windsor said. "If we just step back and look at what's happening in the world, look at what we can do not only in terms of market mechanisms but direct action ... there's a lot of very positive things that can happen." Branding the policy response to climate change as a "political mosh pit" last Sept, Oakeshott blamed climate politics for the demise of Labor PM Ken Rudd and Liberal leader Malcolm Turnbull. "Rudd, Gillard, Abbott and Turnbull all admit climate change action by the parliament is inevitable, yet it is extraordinary how politically toxic this inevitability is," he said in June. He called on them to stop the "energy policy warfare" and instead seek consensus on the issue. Oakeshott is on the parliamentary record as supporting the introduction of an ETS in preference to a carbon tax. He called for a federal gross renewable energy feed-in tariff and supported Labor's household energy efficiency measures. While there was no mention of climate policies in the deal struck between Labor and Tas Independent Andrew Wilkie yesterday, his 2010 election policies made clear his support for a carbon price "possibly as part of an enhanced emissions trading scheme". Wilkie told his electorate it was in the public interest to retain native forests for carbon sinks and he supported farmers

disadvantaged by native vegetation laws being compensated. Wilkie ran for the Greens in 2007 in the seat of Bennelong. Meanwhile, Qld Independent Bob Katter spelt out his opposition to an ETS yesterday in a letter to the major parties, a "guideline" to his priorities for the new parliamentary term. It included govt mandating that all petrol sold in Aust be 22% ethanol, presumably in support of Qld sugar producers. But it's not clear if his opposition on an ETS will be a deciding issue for Katter given his keenness to continue to work with Windsor and Oakeshott as a block in their dealings with the two parties on delivering a stable three-year govt. "We may not [agree] at the end of the day, but I'm very anxious and I would be very strongly influenced by the position of my colleagues, as I hope they would be by my position," he told *The Sydney Morning Herald* today.

(Source: *Carbon Extra 097*, 3 September 2010)

Uranium industry spooked by deal

Uranium miners are worried the Labor-Green deal (above) may put at risk federal Labor's policy to support uranium mining and limited exports. The Aust Uranium Assoc CEO Michael Angwin said in a statement he'd write to caretaker Prime Minister Gillard seeking "an assurance the ALP will not adopt the Greens' policy position on prohibiting uranium mining".

Labor's uranium policy 'unchanged'

Industry insiders have told *Carbon Extra* they fear uranium policy could become the focus of a political trade-off with the Greens, who are totally opposed to uranium mining and export, under a Gillard Labor govt. That was because the agreement struck between PM Gillard and Greens leader Bob Brown on Wed was "open-ended" on policy discussions between the parties. The deal would allow Greens MPs to submit their 2010 election policies and new policies to the PM's office to consider, and to the relevant minister and govt dept to analyse. The loose arrangement created uncertainty because major international industry partners, eg China and Japan, looking to secure new long-term uranium supplies for nuclear energy may perceive Labor's policy was open for debate. The Greens also support Labor's proposed mining resources tax being extended to uranium mining, something federal energy minister Martin Ferguson has assured AUA would not happen. Ferguson's spokesperson yesterday confirmed to *Carbon Extra* the govt's position on uranium mining was "unchanged". But the industry is less sure about his federal parliamentary colleagues' position and are worried state Labor policy in Vic, NSW and Qld banning uranium still stands despite support for the industry at the federal level. AUA wanted "acknowledgment of Labor's continuing support for the development of the uranium industry" direct from PM Gillard, Angwin said. "Even signalling

the Aust Govt might be re-considering a well-established policy permitting the international supply of uranium would damage Aust's reputation," he said. Of nine new uranium mine projects on the books in SA, WA and the NT, only one - the Honeymoon project in SA - is likely to begin production soon.

(Source: *Carbon Extra 097*, 3 September 2010)

Cmn needed for "pollution politics"

Aust needs new approaches to climate change to reduce the impact of scare campaigns and misinformation in policy makers, The Climate Institute's (TCI) CEO John Conner says. Welcoming the unveiling of the Labor-Greens deal (see *Climate policy may be a clincher* above) to support the election of a Gillard govt, Conner told *Carbon Extra* Australia had become "mired in party pollution politics. We need to get out of that and put more light and air into the debate". TCI has proposed an external, independent standing climate change commission be set up similar to one that the Fed Govt's former climate adviser Prof Ross Garnaut had recommended. Similar to the UK's climate committee's role, the commission would work alongside the proposed parliamentary climate committee, providing it with transparent and credible advice and help develop new climate change laws. It would "act as an open filter between what's the reality in terms of action around the world and the levels of industry assistance that we actually need", Conner said. The "key piece of the architecture" would "make our processes and shift to a low-carbon economy all the more swift and more stable", he said. "We have sunk so low that any industry sector that is willing to fork out a couple of million bucks for an advertising campaign can make our political leaders tremble. We're talking about a series of new approaches to democracy and a new approach to our pollution politics." TCI also called for which ever party wins fed govt to release the PM's energy efficiency task group report and begin a white paper process to implements its findings.

(Source: *Carbon Extra 097*, 3 September 2010)

Ferguson prepares to step down

Construction, Forestry, Mining and Energy Union construction and general division NSW secretary Andrew Ferguson will make way for a change of leadership this month as he prepares to run for the state Upper House in next year's election (*WFNSW 17345*). Ferguson said he was stepping down early to allow for an orderly transition to the leadership team. The CFMEU's management committee will make a final decision on the new executive on September 13. But Ferguson said state assistant sec Mal Tulloch already had members' "overwhelming support" for sec. Delegates will vote on the candidates following the committee's selection. Ferguson told *WFNSW* his sixth place on the Upper House

ballot put him in a "highly winnable" position, but said if he failed to win enough votes he would be happy to return to the union as an organiser.

(Source: *Workforce NSW 17425*, 3 September 2010)

Litigation risk 'can top D&O limits'

Risk managers need to be aware of the limits of cover provided under their directors & officers' (D&O) insurance policies, says an industry professional.

Willis Aust Ltd's professional risks account manager Roger Smith told an Aug 26 Aust Insurance Law Association seminar in Brisbane that an increase in shareholder class action claims brought against corporations that experienced share price downturns intensified the risk.

He said management could be left exposed to uninsured risks under corporate entity (known as side C cover) claims.

"The board of any listed company needs to ensure it has an element of cover for any company security claim," Smith said.

He warned that such claims had the potential to "blow" the limit of corporate cover available, which could leave individuals exposed to significant risk of future claims being made against them.

"Currently, it is difficult for some companies to understand the individuals who are insured as part of the company policy," Smith said.

He said insurers initially underpriced side C cover and were not cognisant of the huge quantum of claims to which they could be open. However, since there had been significant shareholder claims against companies, insurers were "now repricing for side C company protection".

Smith said there was now an environment where premiums were increasing as insurers were more aware of the growing risk.

But, even though premiums were on the rise, the huge amount of competition between D&O insurers had made the cover affordable. "A company deemed to have 'good' risk will be able to purchase cover at a reasonable price. But companies with a 'distressed risk' may have a problem getting cover and could pay a very high price," Smith said.

(Source: *The Risk Report 334*, 2 September 2010)

Energy regulator probes further

WA regulator EnergySafety will need to show government-owned electrical service provider Western Power was negligent if 2009 WA Toodyay bushfire victims are to secure compensation.

EnergySafety is the government body responsible for safety regulation in WA's electrical and gas industry. The

regulator has released a new report, dated Aug 10, that found, "on the available evidence", a Western Power pole fell and caused the fire. The power pole had brought an "active conductor into contact with the ground ... causing arc flashes which ignited barley stubble", EnergySafety's latest report said.

However, EnergySafety has begun another investigation to determine whether negligence was to blame for Western Power's power pole fault.

The regulator's latest conclusion was a back flip on a February report that cleared Western Power because investigators failed to determine whether a pole caused the fire (*RR 322*).

EnergySafety director Ken Bowron said earlier evidence was questioned because additional witnesses were identified and their statements taken into account. "Our earlier [February] report relied on evidence available to us at the time and we were unable to make a finding about whether electricity started the Toodyay fire," Bowron said.

In an August 13 statement, Bowron said EnergySafety was "looking into whether or not Western Power had complied with the Electricity (Supply Standards & System Safety) Regulations 2001 with respect to the power line involved".

Western Power MD Doug Aberle said he was "unable to accept the new findings", and the report "contained significant inconsistencies". Aberle said the report had "reached an opinion, not a finding, on what caused the fire" and therefore it had not found Western Power to have breached any laws. "It is not possible, from reading this report, to conclude whether the pole fell after it was burned or before the fire. Timber experts gave evidence that either scenario was possible," Aberle said.

Damage from the Dec 29 fire, which destroyed 38 homes, 20 sheds and 2,900ha of bush, was estimated at \$100m.

(Source: *The Risk Report 334*, 2 September 2010)

Look inside for most fraud offences

"Opportunistic" executives and other staff still pose the single, largest business fraud threat in Aust, with managers, directors and other employees accounting for most offences, says Gary Gill, who heads KPMG Forensic.

Manipulating accounting systems represented about half the internal corporate offences in the six months to June 30, said KPMG's latest *Fraud Barometer* readings, released on Aug 26.

The average value of big criminal fraud cases was \$2.36m in Jan to June. That was less than the average \$2.69m in the six months to Dec 2009 but far more than the average \$1.45m in the half year to June 2009.

"A surge in 'supercases' has provided the second highest average fraud result" since KPMG compiled its first fraud barometer in 2008, Gill said.

(Source: *The Risk Report 334*, 2 September 2010)

'Reputation' a risky business

Reputation protection through sound risk management systems is vital, regardless of whether a business is in a low or high-hazard industry, RMIA's Qld chapter has been told.

Peter Walker, Gallagher Bassett's GM - business development, said reputation risk management was fundamentally important in demonstrating strong corporate governance.

"Client confidence, or trust, can take time to build and, if we do something wrong that impacts on a client, that reputation can be quickly tarnished."

Walkersaid an enterprise risk management (ERM) framework was as important for a low-hazard business, like claims manager Gallagher Bassett (GB), as it was for a high-hazard one.

"It is extremely unlikely GB, as a professional services provider, is ever going to kill a member of staff from a paper cut or RSI. Unlike say, a structural engineer, even if we give wrong professional advice, it doesn't have the potential to kill anyone, although it could cost a sizeable sum of money," he said.

However, it was vital clients could trust GB to "look after their interests and their money".

GB's ERM framework ensured a better structure to the previous process of informal risk assessment.

The ERM process formalised recording and reporting of work already being done.

"The transparency generated enabled the RM process to become auditable and that helped it become part of every-day life," Walker said.

"Creating visibility and enabling an independent, corporate review ensures the maximum bang for our risk mitigation buck."

(Source: *The Risk Report 334*, 2 September 2010)

Disqualified directors on the rise

ASIC disqualified 13 directors from April to June 2010, compared to eight directors in the same three-month period in 2009.

The regulator's latest disqualifications brought the total for the year ended June 30 to 70.

ASIC said the increase followed a sharp rise in insolvency activity during the GFC.

ASIC Cmr Dr Peter Boxall said disqualification removed directors' rights to manage companies and be protected by limited liability.

"Disqualification action assists to protect future creditors, investors and employees who may otherwise become involved with these individuals," he said.

Seven of the 13 most recent disqualifications resulted from liquidator investigations into the circumstances of company failures and reports, where appropriate, of director misconduct to ASIC.

ASIC also successfully prosecuted 158 company officers from April 1 to June 30, 2010, mostly for Corporations Act breaches.

ASIC's banned and disqualified persons register is at www.asic.gov.au.

(Source: *The Risk Report 334*, 2 September 2010)

Zurich beefs up D&O cover

Zurich Financial Services Aust has beefed up its D&O cover in response to a global trend towards more boardroom litigation. Zurich national underwriting manager - financial lines Susan Elias said there was growing evidence Aust and NZ was part of the global litigation trend against boards, directors and senior management. "In particular, Aust and NZ companies face potential legal issues in overseas markets and vice versa - global companies face potential legal threats here." She said Zurich's global D&O cover had added clauses to protect against financial interest loss and environment mismanagement.

(Source *Cover Note 1694*, 2 September 2010)

Cougar Energy angers Qld Govt

Cougar Energy Ltd, operator of a suspended trial underground coal gasification (UCG) plant near Kingaroy, has angered the Qld Govt and now faces a second environment order accompanied by a legal threat from the minister. Environment minister Kate Jones on Wed accused the company of failing to provide all the information demanded of it in a July environmental evaluation notice issued by her dept under the Qld *Environmental Protection Act*. Jones met on Wed with Kingaroy farmers concerned about June tests that revealed low levels of benzene and toluene in groundwater monitoring bores near the plant. Cougar also failed to report the results for two weeks, the Dept of Environment and Resource Management (DERM) alleged. Jones told the meeting the operation would "remain suspended" until the govt was satisfied Cougar could meet regulatory requirements. "The operating conditions of the company's environmental authority were clear: no contamination of groundwater was allowed and, indeed, it had to ensure groundwater was properly protected," Jones said (*EM777*, 776). Referring to a maximum \$2m fine for breaching the Act, she said: "If there is any evidence this company has failed to meet its legislative requirements, we will not hesitate to take action against them." Jones

also revealed to the meeting the govt had rejected Cougar's Aug 16 response to the notice DERM served on it. Cougar was told to "investigate the source, cause and extent of groundwater contamination resulting from its operations" and report to the govt. But its final report had failed to answer all the dept's questions, DERM director-general John Bradley said.

Cougar upset the govt further by telling the ASX on Thurs it was "surprised and confused" by what it claimed were contradictory statements by Jones and DERM. "Contrary to [the] statement by the minister, Cougar Energy provided answers to all" the dept's questions it claimed. DERM responded on Friday, saying not only was Cougar's claim "incorrect" but its report was "inadequate". The dept's acting assistant director-general Natasha Patterson revealed DERM had rejected the company's Aug 13 draft report, warning that its evaluation methodology "needed to be credible. They need hard scientific evidence to support their assessment, particularly regarding the contamination".

A DERM spokesperson told *EM* the dept would meet this week with Cougar to discuss "what was required" to meet the first notice and a second notice. The company said in an ASX statement yesterday (Aug 30) it would "respond as quickly as possible to any requests for further information and ... in the manner requested". It remained committed to restarting the project and would "work with DERM to demonstrate the company's UCG activities have not and will not harm the environment". DERM's restriction on farmers using water from bores within 2km of the Cougar plant was lifted after tests showed the contamination was very low.

(Source: *Environmental Manager* 781, 31 August 2010)

NT fines 'no deterrent' for polluters

NT environmental groups have labelled the govt's doubling of pollution fines "a slap on the wrist". The govt passed legislation on Aug 17 to double fines for corporations and individuals found intentionally polluting or failing to report incidents in the territory's ports and waterways. Environment minister Karl Hampton said corporations could now be fined up to \$2.5m. Penalties for intentionally failing to report an incident increased from \$250,000 to more than \$512,000 for a corporation. But Dr Stuart Blanch, Environment Centre NT co-ordinator, told *EM* the higher fines were still "not a significant deterrent". "For the resources companies involved, this is loose change. The legislation doesn't bring us in to line with other states, let alone the US and Europe. Dumping must become a criminal offence," he said. "There needs to be a higher level of liability, even jail time, for negligence from the top down ... not just punishment for work crews." The NT would continue to be seen as a "last frontier" unless the penalty regime was toughened, he said. A full govt audit of all NT ports would "commence

in the near future", a spokesperson said. The govt also set up a new pollution incident hotline.

(Source: *Environmental Manager* 781, 31 August 2010)

NSW feed-in tariff under review

Having reached its 50 megawatt milestone, NSW's generous feed-in tariff under its solar bonus scheme is already up for review, with the govt taking public submissions until Sept 30. Since Jan 1, 30,000 householders had been paid 60¢ a kilowatt to feed their energy back into the grid, four times what it cost to buy energy, according to the Total Environment Centre (TEC).

TEC executive director Jeff Angel told *EM* the feed-in tariff was "generous and effective" but the next step was to allow bigger industries, eg commercial renewable energy projects, to access it. That "would lead to GHG saving and create jobs", he said.

NSW energy minister Paul Lynch said legislation locked in some part of the scheme terms, including its length and the tariff rates. Any changes would need to amend the legislation, but the govt promised they would not be applied retrospectively. That meant "no customers who have already entered the scheme will be affected by the review", Lynch said.

The review was scheduled to be tabled in parliament before the end of the next session. A further review by the Auditor-General must take place in early 2011.

(Source: *Environmental Manager* 781, 31 August 2010)

Climate impact, water pricing tender

The fed environment dept and the National Water Commission (NWC) are seeking experts to analyse climate change impacts on key aquatic ecosystems in northern Aust. The desktop analysis would cover surface and groundwater systems and basins within the Timor Sea and Gulf of Carpentaria, and coastal drainage north of Cairns. The successful consultancy would model the likely impacts, identify the thresholds and recommend how to manage and monitor the likely human-induced impacts that ecosystems faced. Tenders close on Sept 26.

NWC is also seeking an environmental manager to help it make the case for further economic reform in the water sector by exploring competition opportunities in urban water sector. The tender also involves analysing progress made under the commission's national water initiative actions. Tenders close on Mon Sept 6.

(Source: *Environmental Manager* 781, 31 August 2010)

Eagle species a wind farm issue

Nesting by two protected eagle species on land proposed for a Tas wind farm means the project needs the fed environment minister's approval under the fed *Environment Protection and Biodiversity Conservation Act*.

NP Power Pty Ltd's project would see 50 and 75 turbines sited on the shores of Lake Echo at Cattle Hill in Tas's central highlands.

In its submission to the Tas EPA, the company noted large numbers of wedge-tailed eagles and white-bellied sea eagles inhabited the central highlands. A survey revealed two eagle nests were present on the 3,500ha proposed for the wind farm. The company said it would prepare a management plan "to mitigate any potential impacts on local eagle populations". NP Power's proposal is open for public discussion ahead of state and Fed Govt approval.

(Source: Environmental Manager 781, 31 August 2010)

Reef 'runoff hotspots' named

Sediment and nutrient hotspots along the Qld coast affecting the Great Barrier Reef (GBR) have been quantified in new research from the Australian Centre for Tropical Freshwater Research at James Cook Uni. Researchers who analysed contaminant flows found 70% of all suspended sediment, nitrates, phosphates and some pesticides came from 20% of the catchment area. In particular three "catchment hotspots": the Mackay-Whitsunday coast; Fitzroy and Burdekin River basins; and Johnstone, Tully, Herbert, Russell-Mulgrave, and lower Burdekin. Environmental scientist and project leader John Brody said the data would be used to prioritise management to reduce the levels of suspended sediment under the reef water quality protection plan 2009, which set targets for contaminants entering the GBR by 2013 and 2020.

(Source: Environmental Manager 781, 31 August 2010)

Diary

2010 eco-buy green purchasing expo. Melb, Sept 7. See www.ecobuy.org.au/director/events/

Environmental auditor certification workshop. Hobart, Sept 27-30. See Thomson Reuters

Practical responses to climate change national conf. Melb, Sept 29-Oct 1, Engineers Aust, Planning Institute Aust. See www.climatechange2010.org/hosts.asp

SD2010 - the business of sustainability. Mandurah, WA, Oct 11-15. Minerals Council of Aust. Contact Sarah Leavitt. Ph (02) 62330643 Email events@minerals.org.au or see www.sdconference2010.com.au

Australian energy user - EUAA annual conf 2010. Bris, Oct 12-13. Energy Users Assoc of Aust. Ph (03) 9898 3900 or email euaa@euaa.com.au

Behaviour change for sustainability national congress. Syd, Oct 10-11. 3 Pillars Network and NSW Dept of Environment, Climate Change and Water. See www.3pillarsnetwork.com.au/

(Source: Environmental Manager 781, 31 August 2010)

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