

27/4/2011

Andrew Donnelly

Submission to Parliament Concerning the Carbon Tax

Summary

The belief that anthropogenic greenhouse gases are causing any sort of climate change at all, let alone harmful climate change, is a scientifically-unsupported dogma. This dogma is based on **deception, including the use of the use of the word “carbon” in such terms as “carbon tax” or “carbon pricing mechanism.”**

The carbon tax is unconstitutional for a number of simple, easy-to-understand reasons. These reasons are the same as those for which the GST is unconstitutional.

Despite what many would assume, it is quite possible for a political and legal establishment to ignore simple provisions in the law, such as the injunctions against a carbon tax, for a time. The persecution of Pauline Hanson and others provides an example of a law that was widely ignored by the establishment but eventually upheld. Even if introduced, a carbon tax will always be vulnerable to being overturned. The more people who are made aware of its fundamental unconstitutionality, the more likely this is to happen.

All or nearly all Federal politicians are at the very least willing to refrain from using some of the best arguments against the carbon tax and desire at all costs to control of the terms of the debate. This extends to politicians who supposedly oppose the carbon tax.

If a carbon tax is introduced, this may force many angry people into examining for themselves what the Constitution says about such a tax.

A Note on the Terms of Reference

On the front page of the information mailed to me about making a submission, in the section "Information about the Inquiry, there are several sections covered by this submission. I am discussing the carbon taxes specified in (a) (ii). Presumably my discussion of constitutional issues fits into (e) *any administrative implementation issues at a Commonwealth, state and territory level*. If not, then it certainly fits into (h) *any other related matter*, as do the other points I make in this submission.

The Context of Carbon in Australia, ca. 2011

I) A Brief Comment on the Science Behind the Carbon Tax

II) "Carbon": A Public Relations Deception

III) Taxing Carbon Dioxide-a dangerous precedent

Constitutional Quandaries of the Carbon Tax

IV) GST and Carbon Tax-Unconstitutional, and for the same reasons

V) The Carbon Tax- Aren't we supposed to have a referendum?

VI) International Treaties or Agreements are no Excuse

VII) The GST as a Controversial Issue- Dead and buried?

VIII) What Can the Persecution of Pauline Hanson Tell Us About the GST and the Carbon Tax?

Politicians' Deception and Collusion re the Carbon Tax

IX) Julia Gillard's Promise of No Carbon Tax-what did she really mean?

X) A Wider Problem with Politicians

XI) Concluding Remarks

The Context of Carbon in Australia, ca. 2011

I) A Brief Comment on the Science Behind the Carbon Tax

I will state flat out from the outset that I regard any discussion of Co2 as a pollutant as scientifically unfounded.. I have the same attitude in regards to any other anthropogenic greenhouse gases that may come under the rubric of so-called carbon pricing. Insofar as anything can be disproven in science, the role of human-generated gases in any sort of climate change has been disproven many years ago. I see no point in making any arguments to back up these assertions. The information is available to anyone who is not wilfully blind to it. Any scientific arguments I could make, no matter how valid, would only be preaching to the converted.

II) “Carbon”: A Public Relations Deception

The use of the term “carbon tax” is questionable.

The term “carbon pricing” as used by Julia Gillard and others, hides the true nature of the subject. Most people are basically fair-minded and do not mind paying for things they use. The term “pricing” plays on this. After all, only freeloaders don’t want to pay a price for something. If it is a tax she should call it a tax.

I do not know who started to refer to carbon dioxide as “carbon” but this usage is lazy and self-serving on the part of those who wish to see taxes and emissions trading schemes brought in under the pretext of reducing “carbon emissions.” It relies on public ignorance as to the true nature of what is to be taxed or traded.

What does “carbon” refer to?

So-called fossil fuels contain carbon, which upon burning (oxidation) is combined with oxygen to form carbon monoxide and carbon dioxide.

The tax will be on “carbon emissions.” If this is meant to refer to emissions of the element carbon, this is misleading because pure carbon is not emitted It is equivalent to calling a tax on emissions from petrol-fuelled motors a crude oil tax. If it is meant to refer to carbon dioxide and carbon monoxide, then some terminology could be used that make this clear. Perhaps “carbon compound emissions” might be used. In any case, the use of the term “carbon” to describe two different substances which are only partly composed of carbon, is misleading and dishonest.

The use of the term “carbon” also obscures the nature of the proposed tax, in that other gases such as methane may also be taxable.

“Carbon” conjures up images of soot suspended in the air and piles of unwanted slag. “Carbon dioxide” on the other hand, sounds like it contains oxygen, which indeed it does. This would make people aware of a dimension to all of this the promoters of a carbon tax would rather not have them made aware. People learn at school that you exhale carbon dioxide, so would be made aware that at least in principle, the carbon levy is a tax on breathing. Try breathing without exhaling-obviously it is impossible. Further on the presence of something that sounds like “oxygen” in “carbon dioxide,” the point can be made that one takes in oxygen when breathing in. “Carbon dioxide” sounds too much like oxygen, and in practical terms the taxing of what is inevitably exhaled by humans is also the taxing of what is inevitably inhaled.

III) Taxing Carbon Dioxide-a dangerous precedent

This is unprecedented and highly dangerous. I would go so far as to call it sinister.

Never before has a substance that is constantly essential to the maintenance of life been mooted as a subject of a tax or trading scheme.

Taxing an inescapable component of the air we breathe is in practical terms the same as taxing the air itself. The carbon tax, insofar as it taxes carbon dioxide, is an air tax. Air is essential for humans for the purposes of breathing and breathing is in turn essential for life. I have trouble believing I even have to make these points in my effort as an elector to stop this tax, so surreal has this situation become.

The same principle also applies to other human respiratory gases that are harmless from an environmental point of view but which may come under the carbon tax, such methane.

Of course any substance is harmful in excessive concentrations, but considering how totally spurious the science behind these moves to curb or to put a price on gases emitted in the process of human respiration really is, there is clearly an agenda that has absolutely nothing to do with science or protection of the environment.

Plants need Co₂, animals need oxygen and plants. The nexus of necessity binding plants and animals and for the web of life on earth as a whole, be it plant, animal or otherwise, makes a Co₂ tax a tax on breathing and a tax on life

The difference between Co₂ and cadmium or mercury or some other industrial pollutant that may need to be regulated, is that Co₂ is emitted by the human body on a constant and inevitable basis.

A Co₂ tax essentially equates the human body with industrial pollution. Such a tax regards human beings as smokestacks in principle and if electors are not careful, eventually in practice. Make no mistake: a so-called carbon levy will tax Co₂ emissions. At present the proposed tax is only aimed at the biggest emitters, but if Co₂ is a pollutant it only makes sense to tax any and all emitters if this is deemed necessary to address the supposed problem.

A carbon tax would continue and expand upon the trend in recent decades, for example illegal road tolls and the regulation of water as a commodity by the Murray-Darling Basin Authority . We are being made to pay for things we never had to pay for before

Constitutional Quandaries of the Carbon Tax

IV) GST and Carbon Tax-Unconstitutional, and for the same reasons

Quoting The Commonwealth of Australia Constitution Act, 1900, ch.1, pt. sn. 55 Quick and Garran *Annotated Constitution of the Australian Commonwealth*, 1900)

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only”:

The same volume also contains the Commentaries on the Constitution. These are considered by constitutional lawyers to be canonical and essential to a proper understanding of the Constitution Act. See sn.256, p. 678 for reinforcement of this stricture.

Since I have never seen or heard of anyone claiming the GST or the carbon tax is accustoms or excise duty, and it seems commonsense to me they are not, these taxes would appear to contravene the Constitution. See below.

I would like to know if the carbon tax in reality have as its subjects a number of other greenhouse gases.

If this is so, would a carbon tax contravene sn 55 of the Commonwealth of Australia Constitution Act? Does this also apply to the GST, in that the GST is a tax on goods-more than one-and services-more than one-as well as taxing both goods and services.

I raised this point in a letter to my Federal MP, Ms Sussan Ley. In her reply she referred to a High Court decision which affirmed the status of the GST as a Tax.

I raised the question of the constitutionality of the GST and the proposed carbon tax in a letter to my federal MP, the Hon. Sussan Ley. In her reply she referred to a High Court which affirmed the status of the GST as a tax She quotes from *O’Meara v Commissioner of Taxation (2003) FCA 217*, that the legislation establishing the GST is ‘unquestionably a law imposing taxation’. Again, no-one is arguing that the GST is not surrounded by official-looking endorsement, including, obviously, having been passed by Parliament.This of course would also apply to the carbon tax if passed. I argue, however, that because it is unconstitutional all of this merely means the GST has the colour of law and is not a real law at all. It is a pseudo or quasi law. The High Court ruling quoted above is of course disappointing, but does not preclude the possibility that a future High Court may decide correctly.

Ms Ley also wrote “The GST is a tax that [is] authorised under section 51 (ii) of the Constitution, which provides that the Parliament can make laws for the peace order and good government in relation to taxation.”

The top of sn 51 states,

The Parliament shall, subject to the Constitution, have powers to make laws for the peace, order and good government of the Commonwealth, with respect to-

Note well it states here 'subject to the Constitution'. One example of such a law would be a tax that conforms to sn55, a test passed by neither the GST nor the carbon tax.

As far as Ms Ley's referral to *O'Meara v The Commissioner of Taxation* is concerned, I am not aware of any cosmic law that makes it certain that courts, even the High Court, will always make the right decision.

Concomitantly with this, anyone can simply read what the Constitution says. Anyone can *simply read* what the Constitution *simply says*. They say a little knowledge is a dangerous thing, but I ask if it is feasible that the drafters of the Constitution ever intended that document to be indecipherable to the layperson. Anyone who can read and is of normal intelligence can see what the Constitution says about the GST and about the carbon tax.

In addition, I am personally acquainted with a constitutional lawyer who has won more than 90% of the 110 or more cases he has been involved with. It was this individual who brought to importance of sn 55 to my attention. If those in favour of the GST or the carbon tax want to cite expert opinion, I am also able to do so equally if not more validly.

I would answer yes to the following questions:

Will a carbon tax have multiple, indeed effectively infinite, subjects of taxation because it would encompass any activities that emit carbon dioxide (misleadingly referred to as "carbon")?

Would a carbon tax, if it does include other greenhouse gases, have been deceptively promoted by the Government as tax on a single subject, when the Government is fully aware that this is not so?

Does a so-called carbon price (carbon tax) discriminate between different states and parts of states because, for example, people in some areas use more fuel? Does this also apply to the GST?

If so, would this violate sn 51(ii)? Given that a carbon tax would obviously tax fuel used in the delivery of goods interstate, would a carbon tax violate sn.92, the provision that the Commonwealth has no right to tax interstate commerce discussed in sn164 "Taxation" in *Commentaries on the Constitution, Restraint on the Taxing Power*, Quick and Garran, *The Annotated Constitution of the Australian Commonwealth* p.551?

The inescapable conclusion is that a carbon tax would be just as illegal as the GST. Andrew Bolt and other critics have called it a Great Big Tax on Everything. That would only be hyperbole if it were not true. Unfortunately, it contains way too much truth to be dismissed as a mere slogan.

V) The Carbon Tax- Aren't we supposed to have a referendum?

The Constitution needs to be changed before a carbon tax can be brought in. Such a change is supposed to happen by referendum, not parliamentary fiat. The GST needed to be put to a referendum for much the same reasons.

VI) International Treaties or Agreements are No Excuse

The *Commentaries on The Constitution* advises that government powers in any given domain are only what the Constitution says they are and not a jot more.. As stated in sn33,p346,

What is not granted to the Parliament of the Commonwealth is denied to it

Parliament making the rules up as it goes along, for example ignoring sn55, clearly goes against what is written in this canonical work. For this reason, international treaties or agreements such as the Kyoto Protocol can never be a valid reason for the Commonwealth to arrogate powers for itself. Basic constitutional principles cannot be brushed aside by invoking international treaties or agreements.

External affairs powers are of course granted to the Commonwealth (sn51, xxix), but their nature and limitations are discussed in pp631/32 of the *Commentaries on the Constitution* in Quick and Garran.

All of the above is quite apart from the unnecessary and dangerous nature of a carbon tax.

VII) The GST as a Controversial Issue- Dead and Buried?

Most people think the debate about the GST is dead and buried as far as its existence as a feature of the workings of government finances is concerned. The details may be debated, but most people are completely unaware that the GST is built on constitutional quicksand.

VIII) What Can the Persecution of Pauline Hanson Tell Us About the GST and the Carbon Tax?

An article by David Ettridge in the latest issue of *Uncensored* magazine shows that it is perfectly possible for a political establishment, in this case the one in Queensland, to blatantly disregard the law when convenient. Clear provisions on the Electoral Act were blatantly ignored in order to persecute Ms Hanson and others. For example, prosecutions went ahead after the statute of limitations for the supposed offenses had expired, and Ms Hanson's prison sentence was longer than the maximum stipulated.

After much contention, the aggrieved parties had their names cleared. On that basis they could be said to have won a qualified victory. Obviously, the story of Ms Hanson, David Ettridge et al is still being written. They have to date received no financial compensation, nor have their persecutors been brought to justice.

Two lessons can be drawn from their case. Firstly, it is possible to beat the system, though that may take great commitment. Second, it is indeed possible for police, parliaments and courts to totally ignore the law-not merely to twist the law, not merely to provide a convoluted interpretation, but to break simple provisions that require no interpretation. It is unwise to assume they are always above doing this.

However, the sheer blatancy of what was done to the founders of One Nation is a cause for hope.

Hanson's persecutors relied partly on people in the wider community not knowing how clearly the Electoral Act was being violated. This exactly illustrates my point about how easy it is to see for oneself that the GST and the carbon tax are unconstitutional. All that needs to happen is for people to know.

If in Queensland the Electoral Act can be ignored for a time but eventually upheld, then nationally the constitutional prohibitions on the GST and the carbon tax may eventually also be reasserted.

Politicians' Deception and Collusion re the Carbon Tax

IX) Julia Gillard's Promise of No Carbon Tax-what did she really mean?

Julia Gillard promised before the last election,

"There will be no carbon tax under a government I lead,"

We now have a government led by her and intent on implementing a carbon tax, or apparently so.

I have encountered an argument that this was said before Ms Gillard knew she would need independents and greens in order to form a majority in Parliament. I say to this that it is not credible she would not have anticipated this as a possible or even likely outcome.

She said

"under a government I lead." Perhaps she does not lead this government. Perhaps that honour goes to Sen. Bob Brown.

Then again, perhaps she really had no intention of bringing in a carbon tax or saw no opportunity to do so. Given the efforts of her government in introducing a carbon tax, this seems highly unlikely. Anything is possible, though, including that the whole effort to

introduce a carbon tax is some sort of gigantic diversion-in which case, of course, Ms Gillard would still be lying, but about something else.

Ms Gillard at the moment appears to have the raw numbers to bring in this tax when the new Parliament sits in July. In my opinion, factors such as public opinion and legal questions may force her to back down

X) A Wider Problem with Politicians

In any case, Ms Gillard's deceptive and ambiguous language bespeaks a wider problem with the credibility of our politicians.

I have written to the Hon. Julia Gillard, the Hon. Wayne Swan, the Attorney- General the Hon.. Robert McClelland, Sen. Stephen Conroy, Sen. Cory Bernardi and as I have mentioned, my Federal Member the Hon. Sussan Ley, about my constitutional concerns relating to the carbon tax.

My questions about the constitutionality or lack thereof of the GST and of the carbon tax were simple and only need a simple answer. If answers to my questions are considered to be legal advice then something is very wrong. What is construed as legal advice to the public needs to be changed.

I obtained my reference to sn 256 from Quick and Garran's *The Annotated Constitution of the Australian Commonwealth*, and I was referring to *Commentaries on the Constitution* contained in this text when I mentioned "The Constitution." I believe it should have been obvious to anyone in the Attorney-General's Department charged with responding to my letter, as to what I was referring to, even if I used the term "The Constitution" incorrectly to mean the entire volume. Anyone answering my letter would

also have known that, as mentioned in Part IV) of this submission, what is written in Quick and Garran in sn 256,p678 is far from irrelevant to any debate as to the constitutionality of a tax.

None of the politicians I wrote to showed any willingness to answer my questions about any financial interests they may have in a carbon tax, with the partial exception of Sussan Ley.

If Tony Abbott were sincere in his opposition to the carbon tax, he would be raising the constitutional issues I have raised in this submission and he would have visited Peter Spencer when the opportunity and need were there.

In my view, the carbon tax has support from all or nearly all Federal politicians, even those functioning as a kind of safety valve for popular objections to the tax.

Clearly anyone who raises constitutional questions about the carbon tax will be given the runaround. It is commonsense to conclude that politicians are terrified of these questions, especially since, as I have endeavoured to show, the questions are really quite short and simple.

This leads to the question of *why* politicians are so reluctant to discuss the constitutional matters raised in this submission. If questions such as about sn55 have no substance, what harm is there to set a member of the public right? It is obvious that the system is hiding things from ordinary people.

XI) Concluding Remarks

Any parliamentarian who votes for the carbon tax will be breaking the law.

Even if there are perfectly innocent explanations for all the questions I have asked in this submission, does the government want these questions to be common knowledge? Clearly it does not. The very fact that parts of the Constitution such as sn 55 can be quoted, potentially introduces a new dynamic to any management of public perception of the carbon tax. People are already angry and scared about the carbon tax. Do politicians want to stir up a hornet's nest by bringing in this tax?

Yours faithfully,

Andrew Donnelly

27 April 2011