

THE LAVOISIER GROUP INC.

A0039775B



President: Hon Peter Walsh AO

Board: Hal Clough AO

Ray Evans

Bob Foster

Bruce Kean AM

Peter Murray AOM

Ian Webber AO

28 August 2000

The Secretary
The Joint Standing Committee on Treaties
Parliament House
CANBERRA A C T 2600

Dear Secretary

I attach a submission to the JSCOT Inquiry into the Kyoto Protocol from the Lavoisier Group.

I would be grateful for an opportunity to discuss the submission before the Committee during its hearings in Canberra, which I understand will be during 19 - 21 September next.

Yours sincerely

PETER WALSH

President

THE LAVOISIER GROUP INC.

A0039775B



President: Hon Peter Walsh AO

Board: Hal Clough AO

Ray Evans

Bob Foster

Bruce Kean AM

Peter Murray AOM

Ian Webber AO

28 August 2000

Submission to the JSCOT Inquiry into The Kyoto Protocol

Introduction

This submission is in three parts. The first and most detailed part takes up the issue which is central to the role of the JSCOT in our political life, the impact of Kyoto on Australia's sovereignty and national life as a democracy.

The second part considers the science underlying the Kyoto Protocol.

The third part considers the impact of Kyoto on Australia's economy and future prosperity.

Since the Inquiry will receive a large number of submissions on these two latter issues the Lavoisier Group's submission has sought to summarise the key points which the JSCOT must consider in its report to the Parliament.

Part One

Kyoto, Democracy and Sovereignty:

Australians tend take their democratic institutions, and their sovereignty, for granted and at the same time Australians assume that they know what democracy and sovereignty mean. Because we practice democracy from day to day, and because elections, and referenda, throw up surprising results from time to time, it is clear that we do understand our democracy and how it works. But our sovereignty is a different thing, and in this submission the Lavoisier Group argues that with the Kyoto Protocol we face the most serious challenge to our sovereignty since the Japanese Fleet entered the Coral Sea on 3 May, 1942. The Battle of the Coral Sea and its aftermath were events which changed Australian attitudes and understanding about ourselves, and our position in the world. It was a dramatic turning point in our history.

With Kyoto, however, few people have any appreciation that our sovereignty is under threat. And many of those who do understand the nature of the threat either welcome the prospect, or are indifferent to it. In order to advance the debate we need to refine our understanding of sovereignty; we need to reassess our attitudes towards it; and we need to awaken our fellow citizens to the implications of Kyoto.

Some scholars regard sovereignty as a multi-faceted thing, and speak of

- * "domestic sovereignty", by which is meant the capacity of those who are politically responsible within a state (in former times the sovereign), to actually exercise authority within the state's territory;
- * "interdependence sovereignty" by which is meant the capacity of the sovereign to control movements of people and goods across state borders;
- * "international legal sovereignty" referring to the mutual recognition of states or other entities; and
- * "Westphalian sovereignty" by which is meant the autonomy of the sovereign, within the territory of the State.^{i ii}

These distinctions can be useful when considering the special circumstances pertaining to a country like Taiwan, which is sovereign in every respect except that it is not recognised internationally as a sovereign state.

But in the debate over Kyoto, and the treaty which is being used as a legitimising precedent for Kyoto (the WTO Agreement), these distinctions are irrelevant. The facts are that under the Australian constitution, domestic sovereignty is shared between the States and the Commonwealth Governments, and that disputes between States and Commonwealth are adjudicated by the High Court; the Commonwealth Government controls the movement of goods and people across Australia's borders; Australia is recognised internationally as a sovereign nation-state; and that despite the fact that Australia has signed thousands of international treaties, we are autonomous in our capacity to repudiate them, if we deem it to be in our national interest to do so.

There is no treaty (including our defence agreements with the US) to which Australia is currently a signatory which we cannot repudiate if we wish to do so.ⁱⁱⁱ

The issue of repudiation is central to sovereignty. Australia has entered into nearly 2000 international treaties since we became, unquestionably, a sovereign nation following the passage of the Statute of Westminster on 11 December 1931. (We inherited some 300 treaties from the UK.) Many of these treaties relate to practical matters in which, for example, telecommunications standards, protocols for international shipping and air services, are decided. Other treaties are much more political. There are many UN conventions, to which Australia has acceded, which seek to establish a world-wide policy which is in accordance with the views of politically influential groups in North America or Western Europe. The UN Convention on the Rights of the Child, and the UN Convention on Refugees, are examples.

Australia has ratified a number of these conventions for no better reason than it seemed like a good idea at the time. The Teoh case, the problems now being experienced with illegal immigrants who claim refugee status, and the attempt by trade unions to invoke the ILO as an arbiter in Australian domestic politics, suggest that such ratifications may, in retrospect, not have been such a good idea. The US, where the Senate's approval is required, has ratified many fewer international conventions than Australia and its much higher level of discrimination in these matters has not reduced its global influence.

The essence of sovereignty is to be able to choose, as a polity, for good or ill. Nationhood and sovereignty are two sides of the same coin. A sovereign nation can make decisions which lead to its eventual dissolution as a political entity or, contrariwise, can make decisions which lay the basis for the expanding prosperity of its citizens and an increase in their number. The happy combination of increasing wealth, and growing population, leads to increasing prestige and influence for the nation, within the world political order.

To be able to choose one policy, one course of action, rather than another, and to implement that policy within the national territory, is thus an important part, perhaps the most important part, of the essence of sovereignty. The other side of that coin is the capacity, as a nation, to change our mind and to change political direction. In our century-old history as a nation-state, a number of important examples can be cited where this has occurred.

Two examples will suffice. Some years ago Paul Kelly wrote *"The foundation idea of the Australian Settlement was White Australia. It was the unique basis for the nation and the indispensable condition for all other policies"*.^{iv} One of the first Acts passed by the new federal parliament was the Immigration Restriction Act which received vice-regal assent on 23 December 1901, and which, through the mechanism of a Dictation Test in any "European language", enabled implementation of the White Australia Policy without the term appearing in legislation. This policy endured on a bi-partisan basis until Robert Menzies retired in 1966. His successor, Harold Holt, began the process of undoing the White Australia Policy and we now have, at least in terms of official rhetoric, an immigration policy which is completely non-discriminatory.

Similarly, in 1902, the first Commonwealth Tariff Act was passed, and thus began the process of national self-improvement which reached a crescendo in the 1930s under Jim Scullin and continued in the post-war period under Jack McEwen. In the 1980s the Hawke Government,

with the strong support of the Peacock led Opposition, began the process of dismantling protectionism. At the ALP national conference in Hobart on 1 August 2000, an attempt by the AMWU to restore protectionism as ALP policy was defeated, an event which, given the pivotal role of the ALP under the influence of Billy Hughes in bringing in protectionism in 1904, was a dramatic example of a profound change of mind.

Thus we see in these two profoundly important examples, sovereignty being exercised. A nation decided to go down a particular path, and having done so, decades later, decided that the wrong path had been chosen, changed its mind, and changed its course.

The sovereign capacity to change political direction is embodied in the centuries old understanding we have about our parliamentary system of government. No parliament can bind future parliaments. In Australia the constitution stands above both State and Federal parliaments and in a noteworthy example of Australian democracy in action, the Australian people voted on 6 November 1999, by a substantial margin, to maintain our present constitution in its monarchical form and declined to adopt a Preamble which was replete with currently fashionable political ideas. This vote took place despite overwhelming support from the media for the proposed constitutional changes.

In Australia therefore, our sovereignty and our democracy are intertwined. Our Parliaments are established and legitimised through elections. Government are accountable to the parliaments and to the people through parliamentary processes and elections. But none of these things would be of any consequence if decisions concerning Australian life were made in far-away cities, and imposed on Australia through international treaties which, for fear of invasion or other sanctions (in particular trade sanctions), we were unable to repudiate.

Protagonists for Kyoto are sensitive about the loss of sovereignty which is at the very centre of the Kyoto Protocol and they have called upon Australia's membership of the WTO as a legitimising precedent not only for Kyoto, but also for other international environmental agreements which seek to employ trade sanctions as instruments of extraterritorial coercion. These arguments are found in a paper given by Robert Butterworth, Head of the Policy Coordination Division of Environment Australia, at a conference run by the Melbourne Business School on 10 February 1999. He was standing in for his Secretary, Mr Roger Beale, and so this paper was an articulation of an understanding of the world, and Australia's position as a nation-state in the global polity, which is held within the highest levels of that department. These are the arguments and ideas which the Federal Minister for the Environment would receive from his officials on a day by day basis. They are therefore worthy of careful scrutiny.

Within this paper we find the following:-

"Imagine for a moment that you're the managing director of one of Australia's top 10 companies. You've just spent 50 years building up your business, steadily increasing your domestic market share and carving out markets abroad.

Thousands of Australians rely upon you each week for their pay checks and your business has become the backbone of communities across every State and Territory.

Suddenly it comes to your attention that the Commonwealth government has decided to commit Australia to an international agreement which cedes national sovereignty and has the potential to dramatically alter the prospects of your business.

On TV you see the Foreign Minister saying that while there may be some losers, the benefits to the nation as a whole justify this loss of sovereignty, (and presumably this loss of business for your company). Australians have to try to appreciate the big picture.

Familiar story? Yes indeed. And as you'll all have guessed, I'm not thinking of an environmental agreement, but of course - the General Agreement on Tariffs and Trade.

I mention this scenario because it's important that we keep in mind that every agreement to which the Commonwealth Government commits Australia involves some ceding of sovereignty. Very often these agreements also impact upon the activity of individual companies or entire sectors.

However, we tend not to hear many complaints about the loss of sovereignty involved in the signing of trade liberalisation agreements. Nor have we heard much complaining about the loss of sovereignty involved in deregulating the financial sector".

The statement that "every agreement to which the Commonwealth Government commits Australia involves some ceding of sovereignty" makes sense only if the treaty contains no withdrawal or repudiation clauses, or if it is argued that withdrawal would be impossible because we would suffer invasion or crippling trade sanctions as a consequence of repudiation. The idea that joining the WTO, or remaining in it, necessitates loss of sovereignty, is only plausible if one believes that sovereignty and international trade are mutually incompatible. On this basis sovereignty, then, is enhanced when we impose tariffs, and is lost when we reduce them. The nations, therefore, with the highest levels of tariff protection (why not go the whole hog and have zero international trade) are the most sovereign; and those with complete commitment to free trade have lost their sovereignty. This leads us to a position where North Korea was the most sovereign nation in the world (until it began dialogue with South Korea) and Iceland (which has a very high proportion of its GDP tied up in international trade) is the least sovereign.

There is clearly very great confusion within the highest levels of the pretentiously entitled department "Environment Australia" as to the essence of sovereignty, and its purposes in our political life.

The WTO's predecessor, the GATT was drawn up during the closing stages of WWII and, like the UN Charter, sovereignty was built into the GATT through a legal structure which constrained the obligations of the members to what they had agreed to accept, neither more nor less. Thus every trade round required exhaustive and detailed negotiations as the domestic forces of mercantilism, within each member state, were placated with trade-offs of one kind or another.

It has to be emphasised that no country is forced either to join the WTO, or to remain as a member. The fact that no country has withdrawn from the WTO, and that there is a long waiting list of applicants for membership, reminds us that membership of the WTO brings with it great economic and political benefits.

The value of GATT/WTO membership, from a geo-political rather than an economic point of view, is best understood by asking the question "What benefit would a country with a long-term, firm and consistent free-trade policy obtain from GATT (or WTO) membership?"

The answer is that GATT membership has provided, and under the WTO was intended to provide more effectively, a high level of protection for the sovereignty of the member state. This result was built into the GATT from the very beginning because, during the thirties, specific trade sanctions had been used as easy alternatives to military force, and these measures later came to be regarded as having been counterproductive.^v Further, the existence of effective appeal mechanisms to which aggrieved member states could turn for remedy, was the crucial differentiating element which distinguished the GATT from every other international body. And it was this distinguishing characteristic of the GATT which has aroused the deep and unrelenting hostility of our contemporary imperialists, who are found today, almost without exception, in green clothing. For example, Jessica Tuchman Mathews, Vice President of the World Resources Institute, columnist for the Washington Post, Senior Fellow at the Council on Foreign Relations, and close confidante of VP Al Gore wrote

*"Meanwhile, climate change, other environmental trends, and growing economic interdependence are undermining sovereignty in ways we cannot restore. **The United Nations Charter may still condemn outside interference in the domestic affairs of member states, but unequivocally "domestic" concerns are becoming an endangered species.**"^{vi}*

Just prior to the WTO Ministerial held in Singapore in December 1996, Ms Mathews let fly again with a broadside at the WTO and the Committee on Trade and Environment particularly.^{vii} She began with an attack against the GATT decision in the tuna-dolphin case.

The task of untangling the intricate links between trade and environmental protection had just begun when a 1991 GATT ruling on a dispute between the US and Mexico over tuna fishing methods threw the scene into chaos. Nations can use trade measures to protect natural resources - for example, air quality - said the GATT judges, but only within their own borders, not beyond. So what happens when the wind blows?

While perhaps a legally valid interpretation of the 45-year-old GATT agreement, the ruling was obviously preposterous.

She went on

With the signing of the Uruguay Round in 1994 came the next opportunity; the creation of an environment committee in the new World Trade Organisation. As will be clear at Singapore, this group, too, has achieved nothing. Even the simplest

issue - the legitimisation of multilateral agreements that use trade measures, a step that should have taken no more than a week - proved to be beyond it.

And finally

Five years of backsliding is enough. As the administration begins to establish its second-term priorities, this issue belongs on the list. As for the GATT/WTO, the message is: Get going or get out. If neither institution can meet the need, a new one may have to be created.

A telling summary of environmentalist ambitions was given by Elizabeth May, Executive Director of the Sierra Club of Canada, Edmonton Journal, 4 May, 1997.

"We don't have a global tax. We don't have a global police force. If you can't use trade sanctions to protect the environment what other enforcement mechanisms do you have?"

These quotes are characteristic examples of environmentalist sentiment in North America. The US is traditionally uninhibited about the use of trade sanctions as an instrument of extraterritorial power. The environmentalist movement within the US is politically highly influential, particularly within the Clinton-Gore administration.

It has been a constant refrain of local Kyoto protagonists that refusal by Australia to accept and embrace the Kyoto regime would have two consequences. The first was that Australia would, if it refused to sign the protocol, become an international pariah. The second was that trade sanctions would, as the manifestation of international disapproval, be used against us. Robert Gottlieb is one of a number of influential commentators who repeatedly use the threat of trade sanctions as a device to frighten those who find the Kyoto policies of carbon withdrawal bizarre and inexplicable. If Gottlieb were to cite the threat of invasion as a consequence of refusing to buy the Kyoto package, his arguments would be subject to greater scrutiny.

The rules of the GATT/WTO are very clear on this point. Trade sanctions to enforce Kyoto can only take place in the context of a complete collapse of the WTO, an ambition which Jessica Mathews made clear in 1996. The riots in Seattle in December last year were an important chapter in the attempt to realise this ambition.

What distinguishes the Kyoto Protocol from every other international treaty which Australia has considered ratifying is the enormous economic dislocation which must follow its implementation. Its architects are determined to ensure, as best they can, that it will be impossible for those nations who commit to it, to ever change their minds. In order to ensure that the sovereign rights of withdrawal (which are written into the UNFCCC and the Kyoto Protocol), can in practice never be exercised, a new imperial order will have to be created. Under this new global structure, decisions with the most profound and intimate effect on Australian economic and social life will be made by the Kyoto (UNFCCC) Secretariat based in Bonn^{viii} and Australia will only be able to escape from entrapment in this new imperialism through immense political upheaval of the kind experienced by George Washington and his colleagues when they rebelled against the authority of the British Crown and established the United States.

Such a precedent would doubtless be ridiculed by Kyoto protagonists. Before dismissing it as far-fetched, JSCOT members are urged to reflect upon the text of the Report of the Subsidiary Body for Implementation (SBI) on its 12th Session Bonn, 12 - 16 June 2000. The text is heavily square-bracketed and replete with competing euphemisms, but quoted here is text, with the square brackets ignored, taken from page 33 et seq:

Section IV. Outcomes and consequences of non-compliance or potential non-compliance, taking into account the implications of Article 18^{ix}

1. The compliance branch may, depending upon the case before it, decide upon one or more of the following consequences

- (a) Provision of advice and assistance to individual Parties regarding implementation of the Protocol;
- (b) Facilitation of financial and technical assistance, including technology transfer and capacity building to non-Annex I Parties;
- (c) Making recommendations;
- (d) Publication of non-compliance or potential non-compliance;
- (e) Issuing of cautions;
- (f) Initiation of the enforcement procedure set out in annexe b.

(The penalties set out in the following text comprise "fines" under which the offending Party has its CO₂ "allowance" reduced by a formula related to the amount of emitted CO₂ over and above the Kyoto target.)

Under

4. (d) *Compliance Action Plan*,
we find:

Option 1

The Party in question shall, within three months of the determination of the compliance body, determine and commit itself to a compliance action plan, approved by the compliance body, which shall include, inter alia:

- (i) An analysis of the reasons for the Party's non-compliance;
- (ii) Policies and measures that the Party intends to implement in order to restore 1.x times the excess emissions and an analysis of their expected impact on the Party's greenhouse gas emissions;
- (iii) A quantified assessment of the use of each of the mechanisms under Articles 6, 12, and if provided for by an amendment to the Protocol, Article 17 during the commitment period;
- (iv) A declaration not to make transfers under Article 3, paragraph 11, for the duration of the implementation of the compliance action plan;

- (v) Detailed information on the economic dimension of the implementation of any action under (ii) or (iii) above;
- (vi) A timetable for implementing the measures within a time-frame not exceeding three years, including clear benchmarks for measuring annual progress in the implementation;
- (vii) An assessment of the compatibility of the compliance action plan with the strategy developed by the Party to comply with its obligations during the commitment periods in which the compliance action plan is implemented.

Measures implemented under the compliance action plan shall not contribute to any Party's compliance with its quantified emission limitation or reduction commitments during the commitment period in which the compliance action plan is implemented.

There is no need for the Committee to inquire into the intricacies of diplomatic manoeuvring with respect to square brackets and other negotiating devices. The fact which should give us cause for great concern is that Australia had officers from DFAT and EA in Bonn, engaged in formal discussions with representatives of other countries concerning the establishment of an international tribunal which, if it is brought into effect, will have the power to transfer, or destroy, wealth and income within Australia on a massive scale.

The Kyoto protagonists are not prepared, at this point, to urge the use of military power against "recalcitrants" who refuse to accept their demands for carbon withdrawal as set down in the Kyoto obligations. Their repeated assertion is that trade sanctions will be used to enforce compliance. Such trade sanctions, however, are completely incompatible with the GATT/WTO rules. The future of the WTO is thus now inextricably tied in with the future of the Kyoto Protocol. If the WTO rules are amended or reinterpreted to allow trade sanctions to be used to enforce the Kyoto regime, then the sovereign rights of the WTO membership will have been destroyed, and either the WTO will be abandoned by its members and new institutions to facilitate international trade will have to be formed, or it will become an instrument of imperial authority.

Australian policy should now be focussed very strongly on ensuring that such a choice never has to be made. And it is for that reason that the Australian Government, as a first step, should immediately recall its delegates to the current meetings preparing for the November Conference of Parties, and instruct them that Australia will never be a party to granting police powers to the Kyoto Secretariat, and will never countenance the use of trade sanctions to enforce the provisions of the Kyoto Protocol.

As soon as such a policy position is clearly articulated, the deep contradictions within Kyoto become apparent. The economic costs of implementing a carbon withdrawal regime vary from country to country, but as soon as a carbon tax or its equivalent is imposed in order to reduce CO₂ emissions from a business-as-usual trajectory, then the economic cost begins to become visible. Jobs will be lost and industries will be shut down. The only way in which such policies can be sustained for more than the life of a parliament, in a democracy, is by removing decision making power from the elected governments, and transferring that power to unaccountable institutions in far-away places - such as Bonn. Furthermore, an international police power,

capable of close monitoring of emissions, and bringing recalcitrants to book, will be necessary to uphold the authority of such an imperial institution.

The WTO, pace Messrs Butterworth and Beale, is frequently cited as the precedent for the Kyoto Secretariat and the police powers which will be necessary to enforce the global regime of carbon withdrawal envisaged in the Kyoto Protocol. The WTO, however, has no police powers at all. The membership of the WTO continues to belong to that body, and observe the rulings given by the WTO's Appellate Body, because of the very great advantages which the WTO provides for its membership. If those advantages should disappear, then the membership would likewise disappear.

The Kyoto Protocol, contrariwise, offers nothing but economic upheaval to those countries who sign onto carbon-withdrawal regimes. Even those Kyoto Parties such as Russia and the other countries of the former USSR, who have been advised that they will reap substantial benefits from selling carbon credits to the US and Australia, will find that these transfers are only possible if they continue to remain in a state of economic stagnation.

In order to keep the Kyoto membership inside the global carbon-withdrawal structure, monitoring, compliance, and police powers will be essential. In other words, the substitution of an imperial structure in place of our current world of independent sovereign nation states will have to take place. In Australia's situation, our sovereignty will be relocated from Canberra to Bonn, and any attempt to retrieve it will be met with the threats and then the reality of trade sanctions. The WTO, of course, will have collapsed under the reality of a new imperial order.

Such a scenario seems far-fetched. But Cabinet debated for months whether to indemnify from any future carbon taxes, or not, the partners who sought to invest approximately \$4 billions in a new LNG project on the NW Shelf. This long drawn out cabinet debate was the first sign of what a carbon withdrawal regime can do to Australia. If it had been predicted, say in 1992 at the Rio Earth Summit, that such a situation would arise in 2000, the forecaster would have been dismissed as a doomsayer.

The logic of Kyoto is inexorable. Carbon withdrawal requires major economic dislocation, particularly for Australia, dependent as it is for much of its international trade on cheap coal-based energy. Democracies will not support policies which impose such dislocation except in times of national emergency such as the immediate threat of invasion. Thus for those who seek a carbon-withdrawal regime as a permanent and unalterable feature of Australian life, the capacity of our government to repudiate the Kyoto Protocol, and resume a business-as-usual economic life must be forestalled. This means that our sovereignty, therefore, must be terminated.

The UNFCCC was negotiated at Rio in 1992. The Berlin mandate (enforceable CO₂ targets) was negotiated in 1995 and Kyoto was negotiated in 1997. It has taken eight years for those industries which will be affected first by carbon-withdrawal to understand that their existence is on the line and to respond with some sense of urgency. There has been no proper debate within the political party structures which mediate between the people and the government. The JSCOT inquiry is the first manifestation of our democracy at work on this issue.

The Lavoisier Group urges JSCOT to recommend to the Government that we begin withdrawal procedures from the UNFCCC (which automatically encompasses withdrawal from the Kyoto Protocol), and to do so not merely on the grounds of lack of scientific evidence, nor on grounds of economic damage to Australia, but on the fundamental ground of refusal to compromise Australian sovereignty.

Endnotes

i. The world of nation states came about through the dissolution of Catholic Europe, as the competing Christian visions of Rome, Luther and Calvin struggled for not just survival, but for total victory. In these bitter disputes there is no doubt that economic interests were in play, but the drivers in this terrible conflict were the passionately held beliefs which then gripped Europeans about God and man, and the relationship between them.

The Thirty Years War, 1618-1648, was the last desperate attempt by the parties to win a knock-out blow, particularly by those who sought to maintain the medieval political and religious order as it was manifest in the Holy Roman Empire. It is said that between 30% and 40% of the German-speaking peoples of Europe died in this conflict. Out of it came the Treaty of Westphalia, which recognised that the Holy Roman Empire was spent; which proclaimed the full territorial sovereignty of the former members of the Holy Roman Empire; and resolved the religious issues by recognising the right of private worship, liberty of conscience, and the right of emigration, everywhere in Europe except for the hereditary lands of the House of Hapsburg. The Treaty of Westphalia laid the basis for the global order we have today, and the UN Charter of 1945 is a contemporary version of it.

ii. see Stephen D Krasner, *Sovereignty: Organised Hypocrisy*, 1999, Princeton University Press Princeton, New Jersey

iii. It should be noted that an answer given by the Attorney-General concerning Australian sovereignty over World Heritage Areas indicates that Australian sovereignty has been ceded to officials abroad. Senator Peter Walsh, on 17/10/91, put the following question on notice: "What legislation or regulation is required by Commonwealth law to delist from World Heritage status, areas which had previously been listed?" The answer stated, inter alia, "A Commonwealth Act or regulation could not operate to remove an area from the World Heritage List . . . A removal can only take place if approved by a majority of two thirds of the UN World Heritage Committee."

On 11 Aug 1994, Attorney-General Lavarch, in a letter to the AFR, supported journalist Christine Wallace who had quoted Judge Robert Bork '*under our constitutional system no treaty or international agreement can bind the United States if it does not wish to be bound . . . Congress may at any time override such agreement by statute*'. Wallace claimed 'Bork's statement is as true for us as it is for them', a position endorsed by Lavarch with the words, Wallace 'hit the nail on the head'.

Michael Costello, then Secretary of DFAT, put a similar argument in an article published in the AFR on 22 November 1994, and in a letter to the AFR on 18 January 1995. Gareth Evans, then Minister for Foreign Affairs, had claimed, with respect to the ratification of international treaties, on 6 December 1994, that "we retain the sovereign capacity to make and apply our own laws as we see fit". But neither Ministers Lavarch nor Evans ever stated unambiguously that any law passed by the Australian Parliament, or treaty ratified by

the Executive, may be amended, repealed or repudiated by a future parliament at any time. Nor have their successors, Ministers Williams and Downer.

This is not just semantic quibbling. The High Court has already shown its propensity to interpret our laws in accordance with international treaties when it deems appropriate (as in the Teoh case). An unambiguous statement from Ministers Downer and Williams might deter a political court from doing so again, at least with respect to Kyoto. Greenpeace has already attempted to litigate planning decisions on the basis that they conflict with our “Kyoto obligations”. The JSCOT should recommend to the Government that a statement affirming unfettered Australian sovereignty should be made, preferably by the Prime Minister.

The confusion between the answer given to Walsh in October 1991 and the Lavarch letter of 11/8/94, is presumably explained by the extreme reluctance of DFAT and AG officials to ever advise ministers that treaties can, through the withdrawal processes set out in each treaty, be repudiated. The time has come to advertise this fact and at the same time remove the spectre of trade sanctions from public discourse.

iv. Paul Kelly, *“The End of Certainty”*, 1992, St Leonards, Allen & Unwin, p.2

v. See Geoffrey Blainey, *“The Causes of War”*

vi. Washington Post, 2 February 1991.

vii. Washington Post, 14 October 1996.

viii. It is noteworthy that the German Government has extended substantial subsidies to the UNFCCC Secretariat in order to ensure that this rapidly expanding bureaucracy is housed in the parliamentary and public service buildings of the former West German Government. Given the strong commitment of successive German governments to the international carbon-withdrawal project, this generosity has obvious political consequences.

ix. Article 18 of the Protocol cites Article 14 of the UNFCCC with respect to dispute settlement procedures and states that the same procedures shall apply to the Protocol.

Part Two

Kyoto and the Science of Greenhouse:

The Kyoto project of mandatory carbon-withdrawal by the developed, industrialised countries (the Annexe I countries), is based on an hypothesis about the influence of carbon dioxide and other greenhouse gases on the world's climate. At least in terms of elementary logic, if that hypothesis is found to be fallacious, then the Kyoto enterprise has to be abandoned. It is worth stating this at the outset because there are influential voices within the Canberra mandarinat which hold the opposite view.

For example, a senior Australian Greenhouse Office (AGO) official, Dr David Harrison, spoke at a seminar organised by the Victorian Department of Treasury and Finance on 8 March last. This seminar, held in Melbourne, was attended by about 30 representatives of different industries, many of them from energy intensive industries, as well as some representatives of green groups. Dr Harrison came in for some hostile questioning and at one point, in an attempt to establish some authority in the debate, he explained to the audience that the science of greenhouse didn't matter any more.

“Even if some brilliant scientist was, overnight, able to show that science of global warming was invalid, it would not make any difference” he said. “One hundred and eighty nations have signed onto the Kyoto Protocol. There is no turning back”.

How widely Dr Harrison's views are shared is a matter for conjecture, but at that time it was common gossip within the Canberra bureaucracy that Australia was locked into the Kyoto targets of carbon-withdrawal, and that “there was no turning back”.

From a public policy perspective, global warming burst onto the stage during the unseasonably hot US summer of 1988. On 23 June, 1988, James Hansen, Director of NASA's Goddard Institute for Space Studies, testified before a US Senate hearing on climate change. He stated that the world was warmer than at any time in the instrumental record^{ix} and that some part of the recent warming was likely as a result of the build-up of greenhouse gases. He added that he was “99 percent certain” that some of the observed exchanges in climate were linked to the greenhouse effect. That testimony lit the greenhouse fuse, and later that northern summer unprecedented fires in Yellowstone National Park and then the damage caused by Cyclone Gilbert in northern Mexico and Texas during mid-September 1988, enabled those who saw advantages in pushing the global warming agenda to achieve considerable progress in shaping US public opinion to accept global warming as beyond argument and carbon-withdrawal as essential. The most prominent leader in this campaign was the then Senator Al Gore.

The same James Hansen has, as recently as August 2000, at least taken carbon dioxide off the hook. The London Telegraph, on 15 August, 2000, summarised a forthcoming paper by Hansen to be published in the Proceedings of the National (US) Academy of Sciences in which Hansen claims that “warming over the past century was not mostly driven by CO₂ from

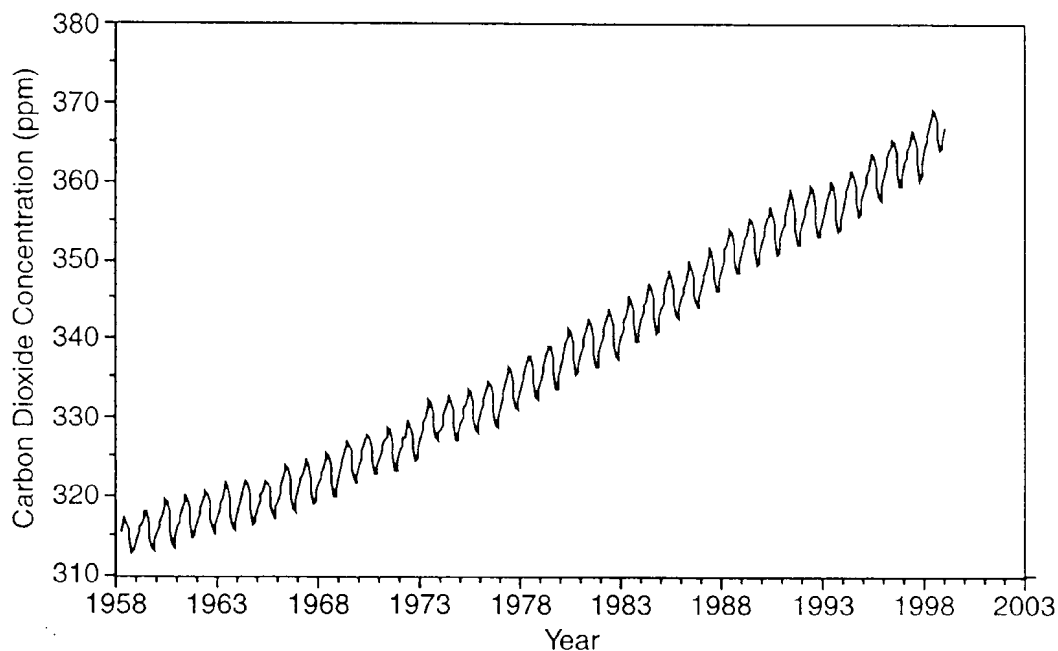
burning fossil fuels, but by other gases such as methane and chlorofluorocarbons (CFCs) so it should be more practical to slow global warming than is sometimes assumed”.

This recent clawback by Hansen is characteristic of the global warming establishment. Early statements of massive temperature increases and upsurges in cyclonic activity help to establish institutions such as the IPCC and the Kyoto Secretariat and in Australia, the AGO. Subsequently, as the scientific credibility of these early predictions becomes so tattered that some withdrawal is necessary, then withdrawals are duly made. But the institutions remain and because political credibility is now at stake (as in the PM’s November 1997 statement on renewable energy) the carbon-withdrawal machine can proceed, pace Dr Harrison, with or without the science. However, given James Hansen’s crucial role in establishing the global warming industry, his recent paper does provide a symbolically potent instrument allowing the JSCOT to urge delay or, even better, withdrawal from the Kyoto entanglement.

It is necessary to set out the chain of scientific argument which lies at the heart of the carbon-withdrawal project, and to reduce it to its essential elements.

1. The earth is maintained in its present state of climatic benevolence by the heat entrapment properties of the so-called greenhouse gases. The most important of these gases (98 percent) is water vapour, H₂O. The next important gas is carbon dioxide, CO₂ (less than 2 percent). To appreciate the relative insignificance of CO₂ the comments made by Professor Richard Lindzen are helpful.^{ix}
2. The atmospheric concentration of CO₂ has been rising since the industrial revolution began. However, most of the increase has taken place in the last 30 years.

MAUNA LOA CARBON DIOXIDE HISTORY



NOTE: The atmospheric concentration of carbon dioxide shows an annual cycle due to plants' uptake of carbon dioxide during the Northern Hemisphere summer.

It is widely assumed that this increase is anthropogenic in nature. If it is impossible to ascribe any changes (or lack of changes) to the world's climate to the increase in atmospheric CO₂ its anthropogenic nature becomes irrelevant. But what is noteworthy is that the role of CO₂ as essential plant food and fertiliser is never mentioned by the Kyoto protagonists. CO₂ is just as essential to life on earth as is oxygen. And, as every geologist knows, there have been periods in the earth's history when atmospheric CO₂ concentrations have been 20 times greater than at present^{ix}. But for the Kyoto protagonists CO₂ is a pollutant, the USEPA has been trying (so far unsuccessfully) to claim regulatory jurisdiction over CO₂ by labelling it as a pollutant, and the media invariably publishes, as a background to their greenhouse stories, pictures of power station cooling towers, presumably under the mistaken impression that the picturesque clouds of water vapour above these towers actually comprise carbon dioxide.

3. During the 1980s, the availability of fast and powerful digital computers made possible the construction of numerical models of the earth's atmosphere.. The first group of models, known as General Circulation Models (GCMs), sought to represent the behaviour of the earth's atmosphere with a minimum of eight non-linear three-dimensional differential equations which were solved numerically. These computer models were (and are) huge intellectual structures. The atmosphere is divided up into a

three dimensional grid and the physical properties of the atmosphere, and the fluxes at the boundaries have to be reconciled, at each point. There are 25 or 30 of these GCMs in the world and, in Australia, the CSIRO Division of Atmospheric Research at Aspendale, Victoria, has built one of them. Each model gives different forecasts, and that in itself is evidence of very great complexity of the physical reality of the earth's atmosphere and its relationship with the oceans, and above all the sun, from whence all our energy comes.

4. Early model predictions, based on the premise of a doubling of CO₂ concentrations in the atmosphere, proposed a global temperature increase of 4 degrees Celsius or more. More recent simulations have yielded predictions of 1.5 degrees Celsius expected for the year 2100. The credibility of these models was crucial to the scientific debate at that time.
5. Since the early to mid-1990s the credibility of the GCMs in predicting anything about global climate has been undermined to the point where they no longer feature in the debate. Their big problem was their incapacity to predict, ex post, the temperatures record which had already been experienced. At one point a research group claimed success in this regard but it soon transpired that the model had been “tuned” to produce the result which was desired. From that point on the global warming protagonists focussed on the alleged warming which had already taken place, a shift in the debate symbolised in the notorious statement from the oft-quoted Policy Makers’ Summary attached to the 1996 IPCC report:-
“the balance of evidence suggests a discernible human impact on global climate”.
6. As careful research into the IPCC temperature data supporting alleged recent global warming proceeds^{ix}, it seems likely that this approach will founder, just as surely as the arguments based on computer model predictions have foundered.
7. Dr Reid Bryson, Emeritus Professor of Climatology at the University of Wisconsin, and widely regarded as the founder of climatology as a scientific discipline in its own right, has made this comment of the attempt to connect changes on CO₂ concentrations to global temperatures.

“The climate has changed on the decade to century scale since the beginning of time and will continue to do so, mankind or no. The heart of the debate should be whether it can be proved that it is anthropogenic CO₂ that has been the causes of changes in the last century and not any of the other causes that have operated in the past. For this there has not been a definitive answer given. Full stop.

The total ignorance of climatic change in the past and its causes on the part of 99% of the putative climatologists talking about global change appals me. Even some of my own students have “forgotten” what I taught them in return for the big research bucks for carbon dioxide “research”. It is why I try to avoid public debate on the issue. I don’t have enough time left at 80 to give up the research I am doing on past climates.

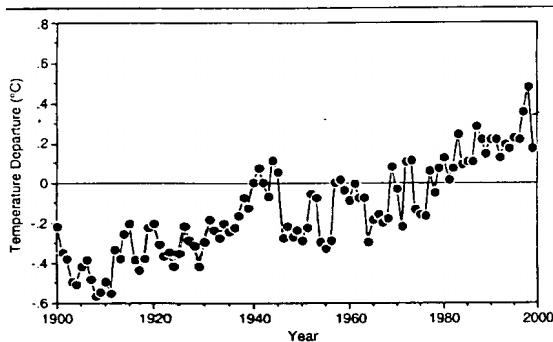
The total reliance on models which are fundamentally poor, and contain only CO₂ as a variable, in a theoretical algorithm, means that only CO₂ is seen as a valid variable causing climate change on the century to decade scale. That is one reason I say there is no credible evidence that CO₂ is a threat. The models can produce no other answers than they have given because they cannot, by virtue of their limitations. They do not for example include variable transparency of the atmosphere due to aerosols such as those from volcanoes, yet every so often there is a big flurry about that possibility - but without knowing that most century long variations in the past have been due to global clusters of eruptions.

The question is not whether the temperature has risen, but why. Where is the evidence that only CO₂ can make changes of a significant amount? There is none.^{ix}

8. In summary it can be said that from the late 1980s onwards the fundamental hypothesis connecting CO₂ concentrations in the atmosphere, and alleged global warming has suffered one reversal after another. The scientific establishment which grew prosperous and powerful on global warming, has fought back in attempts to maintain its hegemonial position. But in the US the checks and balances of power which allow Congress to thwart the Administration have allowed scientific critics of the Clinton-Gore policy on Kyoto to continue to operate, despite attempts by the Administration to deny them funding. One of the most important of these centres of independent scientific activity is the Earth System Science Laboratory at the University of Alabama, Huntsville AL, which established and maintained the system of satellite monitoring of tropospheric temperatures, around the globe, which is now over 20 years old. The satellite data has become a symbol of scientific integrity and independence which is constantly eroding the legitimacy of the Kyoto scientific elites, particularly the IPCC.

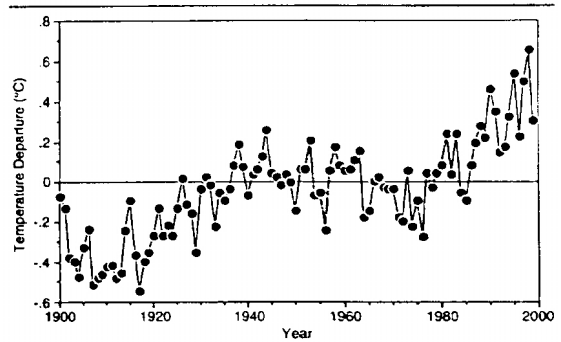
9. Since the Kyoto protagonists moved from reliance on GCM predictions to the temperature record itself, in particular the IPCC curve shown,

SOUTHERN HEMISPHERE ANNUAL TEMPERATURE HISTORY, 1900-1999



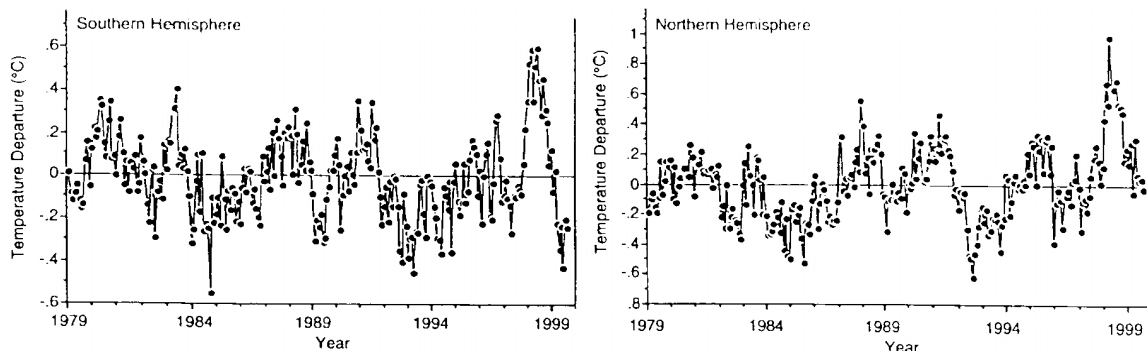
SOURCE IPCC, 1995 and updates.

NORTHERN HEMISPHERE ANNUAL TEMPERATURE HISTORY, 1900-1999



SOURCE IPCC, 1995 and updates.

the satellite temperatures have been a constant thorn in the side. During the period June - November 1998, when the satellites were showing a spectacular increase, a note of triumphalism was detected in the Kyoto camp.



Source: www/weather/msfc.nasa.gov/temperature/

At that point John Daly predicted that by February 1999 the temperatures would return to normal. His prediction was based on his observation that the satellite temperatures tracked the Southern Oscillation Index (SOI)^{ix} with a nine month lag. It was a courageous call and it turned out to be spot on.

10. The Kyoto establishment, having invested heavily in rising surface temperatures, will find it difficult to maintain its current hegemony if those rising temperatures turn out to be fallacious. The irony is, that as Reid Bryson has pointed out, rising temperatures, falling temperatures, or temperatures that have not changed much at all, prove nothing about carbon dioxide and its impact, if any, on global climate. But the Kyoto establishment (which in Australia includes much of the CSIRO and the Bureau of Meteorology) has gambled everything on rising temperatures and if that gamble turns out to be a loser there will be some important lessons to be learnt about the politics of science in Australia, and the undesirability of close connections between government and science.

In conclusion it can be said that the story of greenhouse and global warming is one of the most extraordinary episodes in the cultural history of the West. It is a story that is not yet concluded, but we can now see that the scientific hypothesis, on which the entire carbon withdrawal project has been based, is intellectually discredited, sustained only by massive subventions from governments in Western Europe, North America, and Australia. For how long the political machinery which has been created to ride on the back of this now discredited science, can survive without it, will soon be put to the test.

Endnotes

Part Three

Kyoto and Australia's Economy:

1. In the language of economists the impact of the Kyoto Protocol on the Australian economy will (if implemented) lead to :-

- * diversion of trade:
- * misallocation of resources
- * suppression of investment: and
- * regulatory failure.

All of these consequences will be harmful to Australia's future prosperity and many millions of dollars have been spent on the analysis of them.

2. Econometric models have been built or modified in order to produce numbers showing the various impacts of these outcomes and ABARE's work in this field is well known. More recently the Centre of Policy Studies at Monash University developed its MMRF-GREEN model in order to assess the economic dimensions of alternative greenhouse gas abatement policies. The results of this modelling work were incorporated into the Allen Consulting Group's study, commissioned by the Victorian Government, on the consequences for the six Australian States of various carbon-withdrawal policies. The Victorian Government was of course particularly interested in the consequences for Victoria and may have been surprised to learn that WA, according to the model, would be more seriously affected by carbon-withdrawal than Victoria. The results for Victoria, however, were serious enough.

3. All of this econometric modelling work has led to a discussion of the validity of the results which have been obtained. On the green side of the debate it has been said that the modelling fails to take into account the growth of new industries such as wind and solar power, renewable energy, etc etc, which would grow under a carbon-withdrawal regime. This is a criticism which is undoubtedly valid. It is impossible for these models to take into account the consequences of entrepreneurship at work in a new geo-political environment of mandatory carbon-withdrawal. But the same criticism cuts both ways. It is also impossible for these models to take into account the consequences of entrepreneurship at work in a geo-political environment where low-cost energy is recognised as an important international advantage and governments, understanding this, seek to reduce the transaction costs involved in establishing, for example, a world class magnesium industry, driven by low-cost energy, which would give Australia a globally dominant position in a new and potentially revolutionary industry.

4. What the models are able to do, and have done successfully, is to organise our thinking about the Australian economy; to validate and refine the intuitive conclusions which emerge from back of envelope calculations; to force us to consider the counter-intuitive conclusions which the models have revealed; and above all, to give us real numbers to feed into input costs for existing industries. Even though it is obviously impossible to give accurate predictions of what a carbon tax would have to be to suppress energy consumption to the levels required under the Kyoto targets, the fact that the AGO has supplied such figures enables those who

have management responsibilities for key industries to work out very quickly what the state of their industry, and of competing industries, will be if such a carbon tax regime comes into effect.

5. It is now accepted on both sides of this debate that the 108 percent target negotiated at Kyoto is far, far below Australia's CO₂ emissions by 2010 under any business-as-usual trajectory. The Kyoto deal is not yet three years old but Australia has already well exceeded 108% and current projections suggest CO₂ outputs, under a business-as-usual trajectory, of 145 percent or more by 2010. The Cabinet has now agreed to indemnify the investors in a \$4B LNG project for the NW Shelf against a carbon tax. This bitterly contested decision is of very great importance as it demonstrates the inexorable logic which our comparative advantage in energy products and commodities brings to bear in the global market. It does of course create a precedent whereby big development projects, which cannot proceed under a carbon tax, will go to Canberra and, very reasonably, claim national interest in obtaining exemption from the carbon tax. However, if at the same time, Australia has to meet the Kyoto targets, the rest of us will be paying much higher carbon taxes, in order to accommodate the big project emissions.

6. The greater part of our energy commodities, coal and LNG, are shipped to the NW Pacific. Energy consumption in Asia is growing rapidly again as these countries emerge from the severe economic contractions consequent to the Asian financial crisis. Every participant in the greenhouse debate accepts that energy consumption will continue to grow exponentially throughout Asia to the point where sometime after 2025 the combined CO₂ emissions of India and China will exceed 50 percent of the world's total emissions. Given our geography, and our resource base, it would be a perverse outcome if Australia were not to provide very substantial energy inputs to these developing countries; regardless of their own resources. At the same time, it would be equally perverse if Australia were to foreclose on opportunities to process minerals in order to export much higher value products; magnesium metal is just one of the better known opportunities which are appearing on the horizon. (A transport sector based on intensive use of magnesium would reduce fuel consumption by up to 30%. On its own such a development increases our existing oil reserves by up to 30%.)

7. In order to suppress energy use in Australia (whether to meet demand for domestic consumption or for export products) so as to meet the Kyoto targets, it will be necessary to either ration carbon based fuels, or to tax their consumption. Rationing requires political decisions on who receives consumption permits and who does not. A carbon tax does not decide between consumers; it merely increases the costs of consumption. In the end a rationing system can be regarded as equivalent to a carbon tax system, with those consumers who receive consumption permits being in receipt of government subsidies, compared with those who do not receive them. Every measure taken to suppress carbon consumption, (as in the current Renewable Energy Electricity Bill passed by the House last May) is equivalent to a carbon tax. That particular measure contains an implicit CO₂ tax of \$70 per tonne, which is more than \$200 per tonne of NSW black coal.

8. The carbon tax is usually expressed as so many dollars per tonne of CO₂ emitted. For example, the AGO published estimates in 1999 of the emitted CO₂ tax required to bring our emissions into accord with the Kyoto targets and came up with a figure of AUS\$30 per tonne of CO₂. The Monash University Centre of Policy Studies modellers came up with \$44 per

tonne, \$42 per tonne, and \$148 per tonne of CO₂ depending on which particular regime of carbon withdrawal was adopted by the Government. It is useful to be able to translate these figures into the equivalent tax on the input fuel, and at \$30 per tonne of CO₂ emitted we have a tax of between \$65 to \$80 per tonne on NSW black coal, depending on carbon content; \$25 to \$40 per tonne on Latrobe Valley brown coal depending on moisture content; \$93.50 per tonne on diesel fuel, and \$82.50 per tonne on methane. Current prices for these fuels are - \$25 per tonne for black coal at mine mouth; \$5 per tonne for LV brown coal in the slot bunker; \$250 per tonne for diesel fuel (excluding excises), and approx \$105 per tonne for methane (ex plant).

9. Immediately after WWII, Australia was critically dependant on wool exports for its prosperity. The Korean War wool boom caused an inflationary crisis, but it also generated the wealth which financed much of the minerals exploration of the fifties which, in turn, laid the basis for the minerals boom of the sixties, including the discovery of oil and natural gas in Bass Strait. If in 1946, for some bizarre reason, a key input into wool production, say grazing land, had been taxed at a punitive rate, and the wool industry was consequently suppressed to the point of vanishing, the post WWII history of Australia would have been very different and our present position in the world much inferior to what it now is. This remains true even though the wool industry is far, far less important to Australia's overall prosperity today, than it was in the late 1940s.

10. If we look across the Tasman and consider the economic history of New Zealand we see a small country with significant global comparative advantage in temperate climate primary production - dairy products, sheep and cattle, for example. When the UK joined the EC in 1972, even though NZ received some concessions, that country has never recovered from the loss of its major market for its most competitive products. What is being contemplated in Australia, with the introduction of mandatory carbon-withdrawal driven by the Kyoto Protocol, is an experiment in self-inflicted loss of comparative advantage which will surpass in its intensity the pain suffered by New Zealand post-1972.

11. International comparative advantage is always changing as the world economy changes. In the early part of the C19 Australia's prosperity was based on two industries - whaling and wool. At the beginning of the C21 Australia's prosperity is much more broadly based, but low cost coal, low-cost natural gas, and the low cost electricity which can be produced from them, is a vital component of our present structure of comparative advantage. We cannot predict where Australia will be placed in 2050, but the greater the level of prosperity we can achieve during the next ten years, the greater will be our capacity to push the envelope of comparative advantage into new and unforeseeable directions as the C21 unfolds. Imposing a regime of carbon-withdrawal through the imposition of carbon taxes, or their equivalents, will be similar in its consequences to a punitive tax on grazing land imposed in 1946.

12. All of the consequences listed in para 1 are harmful to Australia's economic well-being. Millions of dollars can be spent in modelling exercises, trying to find numerical answers to the magnitudes of the losses which are categorised under the headings of trade diversion, resource misallocation, investment suppression, and regulatory failure. It is impossible to find any predictive numbers which mean anything other than extrapolations of current economic relationships. But in every case the sign of the outcomes is not in doubt. They are all negative.

The political imperative is now one of extrication from an international entanglement which promises only economic loss.