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ORGANISED CRIME COULD TARGET MULTI-BILLION DOLLAR CARBON TRADE

Australia's multi-billion dollar carbon trading scheme could be targeted by organised crime seeking to defraud a lucrative and complex new system, warns a legal expert.

Mr Simon Harrison, a partner with leading Australian law firm Herbert Geer, says the Australian Federal Police will play a critical role in becoming the "carbon cops" to police the trading scheme and preserve its integrity when it is introduced in July, 2011.

Mr Harrison is an expert in emissions trading and climate change law, and says the extraordinary size of the national and global trading schemes will prove too tempting for unscrupulous people looking to make a big, fast and unlawful buck.

"The national carbon trading scheme is a huge market which is expected to be worth billions of dollars in Australia and trillions of dollars around the world in the next 5-to-10 years," said Mr Harrison.

"So as the Australian Federal Police have quite rightly pointed out, if someone is rorting the scheme by even one percent, we're talking multi-million dollar fraud."

Mr Harrison said it was vital that the Federal Government ensured that the AFP had the appropriate level of skill and resources so that they could police the legislation.

"The national carbon trading scheme is a massive fundamental change for Australian and global businesses. For the first time in our history, we will see the AFP play an integral part in the Australian economy going forward and the credibility of the carbon trading scheme will be tested from day one.

"There will be a whole new skill set required for the AFP, not to mention many more people and greater technology. Who knows, the AFP might even need to employ a team of economists and environmental scientists to provide the necessary brain-power."

Carbon trading is a new scheme for industry designed to reduce the amount of carbon pollution in Australia, and globally. Under the "cap and trade scheme", companies that need to increase their emission allowance must buy credits from those who pollute less.

An international carbon trade market is already underway and is proving "recession-proof" with the size and growth of trading insulating it from the global financial crisis.

The first "cap and trade" market, the European Union Market, increased in value from $1 billion in 2004 to an estimated $130 billion by the end of that year.

Judging by the success of that and other international markets, it is not surprising that by 2014 the global carbon trade market is projected to exceed two-thirds of a trillion Australian dollars (more than $669,000,000,000).

Mr Harrison said forecasts from the United States predicted the development of a US$3 trillion global market in the next decade.

He said there were three main ways the carbon trading scheme would be susceptible to fraud.

“Firstly, the price of carbon fluctuates wildly, which presents a plethora of opportunities to ‘rort the system’,” Mr Harrison said. “Site carbon emission meters, no matter how state-of-the-art, can be fooled and auditors can be bribed.

“Secondly profits from sales of credits will be reliant upon baselines. If a project produces fewer emissions upon completion than its pre-established baseline, the difference can be sold for substantial profit, providing project owners an incentive to exaggerate the baseline to receive more credits than they would otherwise be entitled to.

“And thirdly, we are likely to see the spectre of what Jim Lane of *Biofuels Digest* described as the “Potemkin factory”: i.e. a project built specifically to generate credits, much like the Soviet-era scam when so-called “Potemkin Villages” were portrayed to overseas investors as luxury dachas when in fact they were mere façades.”

Mr Harrison said such allegations had already been made around the planning of a refrigeration gas plant in China. Its critics alleged that the greenhouse gas produced could likely generate greater revenue than its core business.

He said the Australian Federal Police would have an escalating role in enforcing climate change laws, but it was in the area of carbon trade fraud that they would face their greatest challenge.

“It is of course only the AFP who can properly assess their resourcing needs for the tasks ahead,” Mr Harrison said.

“However the Federal Government needs to devote time, energy and resources now to ensure that the AFP understands every subtle nuance of the scheme and is given the powers and people to police it.

“No one should underestimate the time and commitment this task will demand. The draft legislation is complex and the potential for successful fraudulent activity is significant.

“It has the potential of being more expansive than tax fraud and we are in danger of seeing the AFP being pulled in too many directions and this would prove disastrous for the cap and trade scheme.

“Unless the markets are assured that the regulatory regime in Australia is to be effectively policed, independent of an auditing regime, then no end of refinement to the scheme itself will generate confidence in it.”

Mr Harrison was concerned that Australian businesses were not taking the necessary steps to review their risk management strategies and needed to make them more relevant and sophisticated. He said industry also had its role to play and should be the frontline watchdog against carbon fraud.

He said industry would need expert legal advice on climate change law interpretation, especially in the areas of risk management, litigation and class action avoidance.

Mr Harrison said he hoped the Australian cap and trade scheme would prove to be a state-of-the-art mechanism, both legally and economically as Australia had the luxury of being able to learn from the mistakes made by the EU and other overseas models.

On the plus side, he said the “new carbon age” presented Australian corporations, investors and industry with access to a vibrant and lucrative new market which had achieved stunning exponential growth in a short space of time.

ABOUT HERBERT GEER.
Herbert Geer is a strong east coast law firm working at the forefront of its selected areas of practice with offices in Melbourne, Sydney and Brisbane. Its company is committed to achieving intelligent and commercial solutions for clients through an application of specialist knowledge, technology and legal skills. Herbert Geer has a dedicated team of almost 300 people, providing services in specialist areas such as banking and finance, commercial dispute resolution, construction, corporate, employment and workplace relations, entertainment and environment and sustainability

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