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## CARBON TAX UNCONSTITUTIONAL: LEGAL OPINION

'The carbon tax is unconstitutional according to a legal opinion from expert, Bryan Pape, commissioned by the Institute of Public Affairs and reported in the *Australian Financial Review* this morning', said Tim Wilson, Climate Change Policy Director.

'Mr Pape is one of Australia's most respected administrative lawyers and led a 2009 case that nearly over-turned the Rudd government's stimulus package in the High Court'.

'The legal opinion concludes that the legislation can be challenged on a number of grounds, including:

1. The Commonwealth cannot tax State property. Legally carbon dioxide emissions are State property.
2. The Commonwealth cannot impose a carbon tax and other related penalties within the same Act.
3. The Commonwealth cannot introduce a carbon tax within its external affairs powers.

'The IPA commissioned a legal opinion because State governments have sat on their hands and let the Gillard government introduce a tax that they could potentially stop'.

'There's still a chance State governments could make Julia Gillard an honest politician by stopping a carbon tax under a government she leads'.

'Only the High Court can decide the Constitutionality of the carbon tax, but there are clear grounds to challenge it according to one of Australia's top administrative law minds'.

'Pending a possible legal challenge to the tax the full legal opinion is not being released. A copy is being provided to the Premiers and Attorneys-General of the States with the best legal standing for a potential challenge – New South Wales, Queensland and Western Australia'.

'The IPA is also writing to government MPs in each of these States making them aware that their government can act'.

'It's time State governments stood up against the carbon tax', Mr Wilson said.

**About Bryan Pape:** Mr Pape is a constitutional and administrative law expert with 35 years at the Bar and as a Senior Lecturer at the University of New England's School of Law. In 2009 Mr Pape nearly overturned the Rudd government's \$42 billion stimulus package with three of the seven High Court Justices siding with Mr Pape in *Pape v Commissioner of Taxation & Anor. [2009]*.

**Media Comment:** Tim Wilson Director of Climate Change Policy 0417 356 165