

2. Overview

Introduction

- 2.1 This report examines the *Paris Agreement* (Paris, 12 December 2015) and the Doha amendment to the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (Doha, 8 December 2012).
- 2.2 The *Paris Agreement* (the Agreement), a legal instrument adopted by the Conference of Parties to the *United Nations Framework Convention on Climate Change* (UNFCCC), was signed by Australia on 22 April 2016 and tabled in the Parliament on 31 August 2016.¹
- 2.3 The Doha amendment to the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* (Kyoto Amendment) was done on 8 December 2012 and tabled in the Parliament on 31 August 2016.²
- 2.4 The *Paris Agreement* will enter into force generally thirty days after the date on which at least 55 parties to the UNFCCC, accounting in total for at least an estimated 55 per cent of total greenhouse gas (GHG) emissions, have deposited their instruments of ratification, acceptance, approval or accession (**Article 21.1**). If Australia ratifies after this date, the Agreement will enter

¹National Interest Analysis [2016] ATNIA 10 with attachment on consultation *Paris Agreement*, done at Paris on 12 December 2015 [2016] ATNIF 31 (hereafter referred to as 'Paris NIA'), para 2.

²National Interest Analysis [2016] ATNIA 11 with attachment on consultation *Doha Amendment to the Kyoto Protocol* done at Doha on 8 December 2012 [2016] ATNIF 24 (hereafter referred to as 'Kyoto NIA'), para 1.

into force for Australia thirty days after the date on which Australia deposits its instrument of ratification.

- 2.5 On 5 October 2016, the United Nations Secretary-General, Ban Ki-moon, announced that the threshold had been met and that the *Paris Agreement* will enter into force on 4 November 2016.³
- 2.6 The Kyoto Amendment will enter into force on the ninetieth day after three-fourths of the Parties (144 of the 192 Parties) have deposited their instruments of acceptance.⁴ As at 23 September 2016, 70 Parties had ratified the Amendment.⁵
- 2.7 As the obligations for Australia under the agreements are closely related, the Committee chose to examine these two treaty actions together.

Background

- 2.8 The UNFCCC entered into force in 1994. To date 197 countries have ratified the Convention, including Australia.
- 2.9 According to the UNFCCC website, the objective of the Convention is to stabilize greenhouse gas concentrations 'at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system.' The Convention states that 'such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened, and to enable economic development to proceed in a sustainable manner.'⁶

³United Nations Secretary-General, Ban Ki-moon, 'Statement by the Secretary-General on the Paris Agreement on climate change', <<https://www.un.org/sg/en/content/sg/statement/2016-10-05/statement-secretary-general-paris-agreement-climate-change>>, accessed 13 October 2016.

⁴Kyoto NIA, para 7.

⁵United Nations Framework Convention on Climate Change (UNFCCC), 'Status of the Doha Amendment', <http://unfccc.int/kyoto_protocol/doha_amendment/items/7362.php>, accessed 13 October 2016.

⁶UNFCCC, 'First steps to a safer future: Introducing The United Nations Framework Convention on Climate Change', <http://unfccc.int/essential_background/convention/items/6036.php>, accessed 7 September 2016.

- 2.10 The Convention was 'operationalised' by the Kyoto Protocol, which was adopted in 1997 and ratified in 2005. Whereas the Convention *encouraged* countries to stabilise GHG emissions, the Kyoto Protocol *committed* them to do so. In its first commitment period (2008–2012), the Kyoto Protocol set 'binding emission reduction targets for 37 industrialized countries and the European community'.⁷
- 2.11 A second commitment period (1 January 2013–2020) was set by the Doha amendment to the Kyoto Protocol in December 2012.⁸
- 2.12 Australia was a founding member of the UNFCCC in 1992 and has set emission reduction targets under the Kyoto Protocol from 2008–2012 and 2013–2020.⁹

Overview and national interest analysis

- 2.13 According to the National Interest Analysis (Paris NIA), the *Paris Agreement*:
- aims to strengthen the global response to climate change, including by setting a collective goal to keep the global temperature increase to well below 2°C and pursue efforts to keep warming below 1.5°C above pre-industrial levels;
 - requires each Party to communicate their intended actions to address climate change (known as Nationally Determined Contributions, NDCs) every five years (the first of which is to apply from 2020) and increase their ambition over time;
 - requires each Party to be transparent and to account for progress towards their respective NDCs;

⁷UNFCCC, 'Making those first steps count: An Introduction to the Kyoto Protocol', <http://unfccc.int/essential_background/kyoto_protocol/items/6034.php>, accessed 7 September 2016.

⁸UNFCCC, 'Making those first steps count: An Introduction to the Kyoto Protocol', <http://unfccc.int/essential_background/kyoto_protocol/items/6034.php>, accessed 7 September 2016.

⁹Paris NIA, para 14.

- requires Parties to undertake appropriate adaptation planning and action; and
- requires developed country Parties, and encourages others willing to do so, to provide support to help developing countries to implement the Agreement.¹⁰

2.14 The National Interest Analysis for the Doha amendment to the Kyoto Protocol (Kyoto NIA) notes that acceptance of the amendment internationally affirms Australia's ongoing commitment to multilateral climate action¹¹, as demonstrated by its support for the *Paris Agreement*. The Kyoto Amendment formalises—and makes legally binding—Australia's second period commitment to limit average annual emissions over the period 2013–2020 to 99.5 per cent of 1990 levels. The Kyoto NIA states that this is consistent with Australia's 2020 target.¹²

Reasons for Australia to take the proposed treaty actions

Paris Agreement

- 2.15 Australia is currently committed to reduce emissions by 26 to 28 per cent below 2005 levels by 2030. According to the Paris NIA this will enable Australia to contribute to the global goal to keep the global temperature increase to well below 2°C and pursue efforts to limit the temperature increase to 1.5°C. The Paris NIA maintains that ratification of the Agreement will confirm Australia's commitment to this goal.¹³
- 2.16 The Paris NIA argues that collective global action under the Agreement is the most effective means of protecting Australia against the threats of climate change. It suggests that without effective global climate action, Australia will face risks to the health and resilience of its coasts and beaches including natural systems such as the Great Barrier Reef, cities and the built environment, agriculture, forestry and fisheries, water resources and natural ecosystems, as well as the health and wellbeing of Australians. This risk will

¹⁰Paris NIA, para 4.

¹¹Kyoto NIA, para 8.

¹²Kyoto NIA, para 8.

¹³Paris NIA, paragraphs 9 and 11.

have economic costs. The Paris NIA also warns that there are implications for disaster risk management and flow on affects for the resilience and security of the Asia-Pacific region.¹⁴

- 2.17 The Agreement signals a transition to a lower carbon global economy. The Paris NIA considers that this will create economic opportunities for Australia in the areas of renewable energy, sustainable cities, sustainable agriculture and climate resilient infrastructure. It may also present opportunities for foreign investment.¹⁵
- 2.18 The Paris NIA points out that climate impacts in the region, and the risk of climate-induced migration and displacement, could also have consequences for Australia.¹⁶
- 2.19 The Paris NIA indicates that the Agreement broadens the coverage of international climate action beyond the industrialised countries. All countries have concluded an agreement committing to limit or reduce national emissions and apply a common framework to transparently track and be held accountable for progress. The Agreement also recognises that climate finance is not exclusively a matter for developed countries.¹⁷
- 2.20 The Agreement lets Parties determine their own national emissions reduction pledges, subject to no-backsliding and improvement over time. The Paris NIA says that this overcomes the UNFCCC's previous binary approach under which only developed country Parties were required to reduce emissions.¹⁸
- 2.21 The Paris NIA argues for ratification in time for the entry into force of the Agreement to ensure Australia's influence in continued negotiations of rules and guidance. The outcome of these negotiations could influence how

¹⁴Paris NIA, para 10.

¹⁵Paris NIA, para 12.

¹⁶Paris NIA, para 13.

¹⁷Paris NIA, para 15.

¹⁸Paris NIA, para 16.

commitments and potential obligations under the Agreement are calculated and implemented.¹⁹

Kyoto Amendment

- 2.22 The Kyoto NIA claims that Australia is on track to achieve the second period commitment and 2020 target. The Kyoto NIA notes that Australia is already reporting in accordance with the Protocol's measurement, reporting and accounting rules, and its audit and transparency processes.²⁰
- 2.23 The Protocol and its rules include a number of mechanisms designed to provide flexibility for countries to efficiently manage emissions. One mechanism is 'carry over', which refers to the ability of Parties to the Protocol to count over-performance on their commitment in the first period towards their commitment in the second period. Article 3(13) of the original Protocol provides that a Party in Annex I whose emissions in a commitment period were less than its assigned amount in that period, can have the difference added to its assigned amount for the subsequent commitment period upon request. Carry over is designed to help countries to achieve their targets in the most economically efficient way by allowing them to distribute emission reduction effort over a broader time than a single commitment period. In addition to providing flexibility, this provision ensures there is not a perverse incentive for countries to do the minimum necessary in any given commitment period.²¹
- 2.24 According to the Kyoto NIA, Australia over-performed on its first period commitment by 128 million tonnes. Acceptance of the Kyoto Amendment will formalise Australia's ability to apply this over-performance towards its 2020 commitments.²²
- 2.25 Another flexibility mechanism is the use of international carbon units, generated under articles 6, 12 and/or 17 of the original Protocol, to assist countries to comply with their commitments through offsetting their

¹⁹Paris NIA, para 17.

²⁰Kyoto NIA, para 11.

²¹Kyoto NIA, paragraphs 12–13.

²²Kyoto NIA, para 14.

emissions. The Kyoto Amendment specifies in **Article 1(J)** that market-based mechanisms established under the Convention or its instruments may be used by the Parties in Annex I to assist them in achieving their limitation and reduction commitments under Article 3 of the Protocol. According to the Kyoto NIA, Australia currently holds approximately 24 million such units generated additionally to countries' assigned amounts and gifted to it by Australian businesses under the voluntary Waste Industry Protocol.²³

- 2.26 The Kyoto NIA states that, when the Kyoto Amendment was adopted in 2012, Australia made a non-binding political declaration that it would not purchase surplus Assigned Amount Units, representing the initial allocation of greenhouse emissions permissible under the Protocol, that were carried over by other countries from the first commitment period under **Article 3(13)**.²⁴
- 2.27 The Kyoto NIA cautions that, if the Kyoto Amendment is not accepted, Australian businesses currently using international units to voluntarily offset their emissions under the National Carbon Offset Standard, would be forced to use foreign registry accounts or become project participants to access these units.²⁵

Obligations

Paris Agreement

- 2.28 The Paris NIA explains that the proposed Agreement will establish legal obligations and create a number of non-binding principles, expectations, guidance and frameworks applying to all Parties collectively, or to groups of developed or developing countries (Australia is a developed country).²⁶
- 2.29 The adopting decision for the Agreement (the Paris Decision) also sets out principles, expectations and guidance.²⁷ Although the Paris Decision does

²³Kyoto NIA, para 15.

²⁴Kyoto NIA, para 16.

²⁵Kyoto NIA, para 17.

²⁶Paris NIA, para 19.

²⁷The Paris Decision can be found at: <http://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>

not establish any legal obligations, countries will be expected to comply with and/or meet these decisions.²⁸

2.30 The following summary of the Articles of the Agreement is taken from the Paris NIA, paragraphs 21-37.

Mitigation and Nationally Determined Contributions

- **Article 2.1:** the Agreement aims to strengthen the global response to climate change by setting a global goal to hold the increase in the global average temperature to well below 2°C and to pursue efforts to limit the temperature increase to 1.5°C. This is to be carried out without threatening food production and by making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development.
- **Article 4.1:** sets an expectation that Parties will aim to reach a global peaking of emissions as soon as possible, and achieve net zero emissions in the second half of the century.
- **Article 4.2:** requires each Party to prepare, communicate and maintain successive NDCs that it intends to achieve.
- **Article 4.3:** the NDCs are to build on the ambition in the respective Party's previous target and reflect its highest possible ambition.
- **Article 4.4:** sets an expectation that developed country Parties will continue to take the lead by undertaking economy-wide absolute emissions reduction targets. Developing country Parties are encouraged to move toward economy-wide reduction or limitation targets over time.
- **Article 4.8:** requires each party to provide the information necessary for clarity, transparency and understanding of their respective NDCs in accordance with the decisions of the Conference of Parties.
- **Article 4.9:** each Party shall communicate NDCs every five years.
- **Article 4.13:** Parties are required to account for their NDCs in a manner which, in accordance with the guidance of the Conference of parties, promotes environmental integrity, transparency, accuracy,

²⁸Paris NIA, para 20.

completeness, comparability and consistency and avoids double accounting.

- **Article 4.19:** encourages Parties to formulate and communicate long-term low greenhouse gas emission development strategies.
- **Article 6.2:** Parties choosing to use internationally transferred mitigation outcomes such as emission reduction units, towards their NDCs, are required to promote sustainable development, ensure environmental integrity and transparency and to apply robust accounting to avoid double counting.

Provision of Support

- **Article 9.1:** obliges developed country Parties to provide support in the form of financial resources to assist developing country Parties' efforts to implement the Agreement in continuation of their existing obligations under the Convention. Under the Paris Decision developed countries are collectively expected to provide and mobilise US\$100 billion per year by 2020 to developing country Parties for mitigation and adaptation. A new goal will be negotiated for post-2025, which may include a broader donor base.
- **Article 9.2:** other Parties are encouraged to provide support and communicate relevant information voluntarily.
- **Article 9.5:** obliges developed country Parties to provide information biennially, indicating the public financial support they have provided or will provide to developing country Parties, and, as applicable, information relating to the mobilisation of climate finance.

2.31 Other forms of international support required to be provided to developing country Parties include mitigation (**Article 4.5**), adaptation (**Article 7.13**), technology development and transfer (**Article 10.6**) and transparency (**Articles 13.14, 13.15**). Parties are required to strengthen cooperative action on technology development and transfer.

2.32 The Agreement creates an expectation that developed country Parties should enhance their support for capacity building in developing country Parties (**Article 11.3**) and for loss and damage associated with the adverse effects of climate change (**Article 8.3**). The Paris Decision clarifies that

Article 8 of the Agreement does not provide a basis for liability or compensation associated with climate change.

Reporting, review and compliance

- **Article 13.5:** establishes the ‘transparency framework for action and support’ to ensure a clear understanding of global action.
- **Article 13.7:** requires each Party to report on their emissions and progress towards their NDCs.

2.33 All Parties enhancing the capacity of developing country Parties are required to regularly communicate such actions or measures (**Article 11.4**). Each developed country Party is required to report on financial, technology transfer and capacity building support provided, and other Parties that provide support are encouraged to report this information (**Article 13.9**). Developed country Parties are also obliged to provide transparent and consistent information on support for developing country Parties that is provided and mobilised through public interventions biennially in accordance with guidance from the conference of Parties (**Article 9.7**).

- **Article 13.11:** requires each Party to participate in a facilitative, multilateral consideration of progress in finance provided and in implementing and achieving its NDC.
- **Article 14:** mandates a five yearly global stocktaking process commencing in 2023 that will assess collective progress towards meeting the purpose of the Agreement and its long term goals.
- **Article 14.3:** requires Parties to take into account the global stocktake outcomes in updating and enhancing their nationally-determined actions and support in accordance with the Agreement, and in enhancing international cooperation for climate action.
- **Article 15:** establishes a mechanism consisting of a committee to facilitate implementation and promote compliance, which is to operate in a ‘non-adversarial and non-punitive’ manner.

Other obligations

- **Article 7.9:** requires each Party, as appropriate, to engage in domestic adaptation planning and implementation.

- **Article 7.10:** encourages Parties to communicate such actions.
- **Article 12:** requires the Parties to cooperate in taking appropriate measures to enhance climate change education, training public awareness, public participation and public access to information.
- **Article 4.15:** requires Parties to consider the concerns of Parties whose economies are likely to be impacted as a result of actions taken to address climate change.

Kyoto Amendment

2.34 The following summary of the Articles of the Kyoto Amendment is taken from the Kyoto NIA paragraphs 19–26.

The second commitment period

- **Article 1:** establishes a second commitment period covering the years 2013 to 2020.
- **Article 1 (C):** creates a legally binding obligation on each Party included in Annex I to individually or jointly ensure that their emissions do not exceed their assigned amount calculated in accordance with their Quantified Emission Limitation or Reduction Commitments (QELRCs) for the second commitment period.
- **Article 1(F):** sets out how a Party's 'assigned amount' shall be calculated based on its QELRC.

Incentives and penalties for setting commitments in the second period

- **Article 1(G):** establishes incentives for each Party in Annex I of the UNFCCC to set a second commitment period QELRC in Annex B of the Protocol which is not less ambitious than its emission reduction performance in the first three years of the first commitment period (2008–2010). **Article 3(7)** achieves this by effectively penalising Parties that do not do so by establishing obligations to transfer any positive difference between the second commitment period QELRC and the average annual emission for such a Party in the years 2008–2010 to the cancellation account for that Party.

Nitrogen Trifluoride (NF₃)

2.35 The Kyoto Amendment adds NF₃ to the list of gases in Annex A to the Protocol. This creates an obligation to include the gas in the calculation of Australia's greenhouse gas emissions for the purpose of determining compliance with its commitment in the second period.

Relationship to existing obligations

2.36 Various existing obligations under the Protocol which applied generally in achieving the QELRC under **Article 3** for the first period will also apply in respect of achieving the QERLC in the second period.

2.37 According to the Kyoto NIA the Kyoto Amendment will have no further impact on Australia's existing international obligations under either the Protocol or the UNFCCC.²⁹

Implementation

Paris Agreement

Mitigation and Australia's National Determined Contribution (NDC)

2.38 Australia's NDC includes an emissions reduction target of 26-28 per cent below 2005 levels by 2030. According to the NIA the target will halve Australia's per capita emissions compared with 2005 levels and reduce the emissions intensity of the Australian economy by two-thirds. The NIA claims that the target compares well to other developed countries against a range of metrics and is consistent with strong economic growth and jobs.³⁰

2.39 The NIA maintains that the Government has existing legislation, policies and measures to enable it to achieve Australia's NDC and support obligations, including the Emissions Reduction Fund and its Safeguard mechanism, a Renewable Energy Target and a National Energy Productivity Plan.³¹

²⁹Kyoto NIA, para 26.

³⁰Paris NIA, para 38.

³¹Paris NIA, para 39.

Australia's provision of support, including finance

- 2.40 Under **Articles 9, 10 and 11** Australia can determine the priorities of its climate finance, technology transfer and development and capacity building programs. The requirement to include reporting forward looking plans on climate finance (**Article 9.5**), where available, is consistent with reporting under Australia's foreign aid program.³²
- 2.41 The NIA states that the Government has committed at least \$1 billion over five years from Australia's existing aid budget to support developing countries in their efforts to build resilience to climate change and reduce their emissions. The NIA also notes that Australia has pledged \$200 million over four years to the Green Climate Fund to support developing countries to grow their economies in a sustainable way and help adapt to climate change.³³

Reporting and review

- 2.42 In line with existing UNFCCC requirements, Australia reports information on Australia's climate change policies and programs. Australia has a national system for estimating anthropogenic emissions and reports a full national inventory to the UNFCCC annually. According to the NIA, further arrangements for reporting and review consistent with the obligations contained in this Agreement will be negotiated in advance of 2020 and are not expected to be significantly different from existing requirements.³⁴

Other

- 2.43 Australia's National Climate Resilience and Adaptation Strategy, which is consistent with the obligation under **Article 7.9** to undertake appropriate adaptation planning, was released in November 2015.³⁵

³²Paris NIA, para 41.

³³Paris NIA, para 42.

³⁴Paris NIA, para 43.

³⁵Paris NIA, para 44.

Kyoto Amendment

- 2.44 The Kyoto NIA maintains that legislation, policies and practices are already in place to implement Australia's obligations under the Kyoto Amendment, including the Emissions Reduction Fund, the Renewable Energy Target and the National Energy Productivity Plan.³⁶
- 2.45 The Kyoto NIA states that the *Carbon Credits (Carbon Farming Initiative) Act 2011*, which implements the Emissions Reduction Fund and Safeguard Mechanism, does not require further amendment as it operates on the basis that the Kyoto Amendment is in force.³⁷
- 2.46 The Kyoto NIA also maintains that Australia's official emissions projections to 2020 indicate that Australia is on track to meet its 2020 emissions reduction target.³⁸
- 2.47 Australia's National Inventory Report was submitted to the UNFCCC in May 2016 and the data underpinning the report will be subject to the annual international audit process.³⁹
- 2.48 According to the Kyoto NIA, the obligation relating to NF₃ has been implemented by including reporting of the gas against *Source Category 2.E Electronics Industry* in Australia's annual National Inventory Report, starting in the report published in May 2015. The Kyoto NIA states that, in accordance with UNFCCC inventory reporting guidelines, the Department of the Environment and Energy considers the emissions of NF₃ in Australia negligible and therefore not required to be reported.⁴⁰

³⁶Kyoto NIA, paragraphs 27 and 28.

³⁷Kyoto NIA, para 29.

³⁸Kyoto NIA, para 30.

³⁹Kyoto NIA, para 31.

⁴⁰Kyoto NIA, para 32.

Costs

Paris Agreement

- 2.49 The Paris NIA states that ratification of the Agreement will not trigger specific policy actions and/or associated costs beyond those associated with efforts to achieve Australia's NDC, and take appropriate adaptation action, under the existing policy framework.⁴¹
- 2.50 The Paris NIA points out that the full economic and budget impact of meeting the 2030 NDC, and subsequent NDCs, will depend on the design of the policies chosen. Continued advances in technology, and private sector investment in mitigation and adaptation, will play a role. The Paris NIA states that the Australian Government intends to regularly take stock of its policies to ensure they are capable of meeting its emissions reductions targets and are consistent with business confidence and strong economic growth.⁴²
- 2.51 Australia's contribution to collective climate finance commitments in the Agreement will be considered as part of the Budget process.⁴³
- 2.52 There are no prescribed penalties associated with failing to achieve obligations set out in the Agreement or NDCs submitted by Australia. However, the Paris NIA indicates that the reputational costs would be a serious consideration.⁴⁴
- 2.53 The Paris NIA maintains that, other than those listed, there are no additional costs to Australian business or industry, or to State and Territory governments, associated with ratifying the Agreement.⁴⁵

⁴¹Paris NIA, para 46.

⁴²Paris NIA, para 47.

⁴³Paris NIA, para 48.

⁴⁴Paris NIA, para 49.

⁴⁵Paris NIA, para 50.

Kyoto Amendment

- 2.54 According to the Kyoto NIA, the Kyoto Amendment will not create any additional costs to those associated with efforts to achieve the 2020 target under existing policy measures.⁴⁶
- 2.55 The Kyoto NIA states that the Kyoto Amendment will formalise Australia's use of its first commitment period over-performance and international carbon units generated under the Protocol to assist to meet its 2020 commitments, providing Australia with additional options for achieving the 2020 target in a cost-effective way.⁴⁷
- 2.56 The Kyoto NIA explains that the Protocol's international audit process can involve the adjustment of national emissions totals if Australia's emissions estimates are found to be inconsistent with Protocol obligations or rules. However, Australia has actively managed this risk to date.⁴⁸
- 2.57 The Kyoto NIA cautions that, should Australia not achieve the second period commitment, there are potential penalties that may be applied in subsequent commitment periods. However, the Kyoto NIA suggests that Australia is already on track to meet the 2020 target and therefore considers this risk negligible.⁴⁹
- 2.58 The Kyoto NIA states that the Kyoto Amendment will not alter the existing costs of remaining compliant with reporting and accounting obligations under the Protocol or the UNFCCC. Australia's contributions to the trust fund of the UNFCCC and the Protocol will not be impacted.⁵⁰

⁴⁶Kyoto NIA, para 34.

⁴⁷Kyoto NIA, para 35.

⁴⁸Kyoto NIA, para 36.

⁴⁹Kyoto NIA, para 37.

⁵⁰Kyoto NIA, para 38.

2.59 The Kyoto NIA does not foresee any additional costs to Australian business or industry, or to State and Territory governments, associated with this treaty action.⁵¹

⁵¹Kyoto NIA, para 39.

