



**FOREIGN  
AFFAIRS AND  
TRADE**

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**Ambassador for the Environment**

5 September 2000

Mr Grant Harrison  
Secretary  
Joint Standing Committee on Treaties  
Parliament House  
CANBERRA ACT 2600

Dear Mr Harrison,

**INQUIRY INTO THE KYOTO PROTOCOL**

Please find enclosed a submission from the Department of Foreign Affairs and Trade (DFAT) for consideration by the Joint Standing Committee on Treaties in its inquiry into the Kyoto Protocol.

This submission is in response to the first of the Committee's terms of reference, namely "the implications for Australia of proceeding or not proceeding to ratify the Kyoto Protocol and meeting its target emissions levels by 2008 with regard to anticipated and/or predicted economic, environmental and social outcomes both nationally and in specific regional areas." It should be read in combination with parallel submissions prepared by the Australian Greenhouse Office (in cooperation with other Commonwealth agencies) and the Commonwealth Scientific and Industrial Research Organisation which address the other terms of reference of the Inquiry.

I would be happy to appear before members of the Committee should they desire further information.

Should you have any questions regarding this submission, please contact Steve Moran, Director, Climate Change Section in DFAT on telephone 6261 3045.

Yours sincerely,

Ralph Hillman

Ambassador for the Environment

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**SUBMISSION TO**

**JOINT STANDING COMMITTEE ON  
TREATIES**

**INQUIRY INTO THE KYOTO PROTOCOL**

**Implications of Ratification**

**August 2000**

## Overview

The Terms of Reference for the Joint Standing Committee on Treaties Inquiry into the Kyoto Protocol include an examination of:

*“the implications for Australia of proceeding or not proceeding to ratify the Kyoto Protocol and meeting its target emissions levels by 2008 with regard to anticipated and/or predicted economic, environmental and social outcomes both nationally and in specific regional areas.”*

This submission explores:

1. the factors influencing the possible entry-into-force of the Kyoto Protocol and Australia’s ratification decision;
2. the extent to which the Protocol would be binding on Australia (if Australia decides to ratify it); and
3. the implications of the Protocol for Australia (if it comes into force and Australia decides to become a party to it).

A number of issues need to be resolved **before** Australia could consider ratification, including the rules for the flexibility mechanisms, the treatment of carbon sinks and developing country commitments.

Negotiations on these outstanding issues are continuing. Decisions on sinks and the flexibility mechanisms are due to be taken at COP6 in The Hague in November 2000. The Parties have not agreed a timetable for dealing with the question of developing country commitments.

Australia is committed to designing a global framework within which the emission targets set out in the Protocol may be achieved at least cost to the global economy and at least cost domestically. The adoption of an economically implementable framework will maximise the likelihood of parties being able to meet their respective targets under the Protocol, thereby maximising the potential for the environmental objectives of the Protocol to be achieved.

## 1. Ratification of Kyoto Protocol

### 1.1 Conditions for Entry into Force

1.1.1 The Protocol will enter into force upon satisfaction of the following conditions:

- ratification by 55 Parties to the UN Framework Convention on Climate Change (UNFCCC);

- the 55 ratifying countries must include Annex I countries <sup>1</sup> which accounted for at least 55 percent of the 1990 level of carbon dioxide emissions of the Annex I countries.

1.1.2 The United States is the largest emitter of greenhouse gases, accounting for approximately one third of emissions of Annex I countries. As such, ratification of the Protocol by the United States would go a long way towards satisfying the second part of the ratification formula.

If the United States did not ratify the Protocol, the Protocol could still enter into force if it was ratified by a sufficient number of other countries, such as the EU, Eastern European countries, Russia and Japan. It would be possible for the Protocol to enter into force without the United States, Canada and Australia.

1.1.3 Commitment to the emission reduction targets through ratification of the Protocol would impose costs and obligations on the ratifying Party, and possibly place it at a competitive disadvantage compared to countries that had not ratified the Protocol. Consequently, it would remain to be seen whether other key countries would proceed with ratification in the event of the United States holding back.

## 1.2 Factors Relevant to Australia's Ratification Decision

1.2.1 In his press release dated 29 April 1998 at the time of Australia's signature of the Kyoto Protocol, Senator Hill indicated that several outstanding issues would need to be resolved before Australia could consider ratification. These include:

- developing **rules for the flexibility mechanisms** (including international emissions trading);
- a more comprehensive **treatment of carbon sinks**; and
- engagement of **developing countries** (which do not have emission reduction targets under the Kyoto Protocol).

Of the issues left unsettled at Kyoto, these three will have the greatest impact on the cost of Australia meeting its target in the Protocol to restrict emissions to 8 per cent above 1990 levels in the 2008-2012 commitment period, and on its international competitiveness. Decisions on the first two of these issues are due to be taken at COP6 in The Hague in November 2000. There is no agreed timetable for dealing with the question of developing country commitments

1.2.2 This submission will address each of these issues in turn.

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<sup>1</sup> Annex I countries are the developed countries and economies in transition listed in Annex I of UNFCCC.

### 1.3 Flexibility Mechanisms

1.3.1 The Kyoto Protocol establishes three mechanisms aimed at giving countries opportunities to meet their respective emissions reduction targets at least economic cost:

- international emissions trading (IET) - IET is the mechanism by which carbon credits can be traded internationally by developed countries;
- joint implementation – this provides the means by which Annex I countries can undertake emissions reduction projects in other Annex I countries, with a resultant transfer of credits between countries;
- the clean development mechanism (CDM) - The CDM allows governments and companies from Annex I countries to undertake emissions reduction projects in the developing world (consistent with host countries' sustainable development needs) and claim carbon credits from these projects. The CDM also provides a means of engaging developing countries in greenhouse gas mitigation activities and facilitates the transfer of clean technologies.

1.3.2 These flexibility mechanisms hold the prospect of substantially reducing the cost of implementing the Kyoto Protocol compared to a situation where each country meets its target by domestic measures alone. The challenge for Australia, and the other Umbrella Group countries<sup>2</sup>, in the current negotiations is to design, agree and implement rules for the Kyoto mechanisms that allow emission targets to be achieved at least cost to the global economy, and to individual Annex I countries. The adoption of an economically implementable framework will maximise the likelihood of parties being able to meet their respective targets under the Protocol, thereby maximising the potential for the environmental objectives of the Protocol to be achieved.

Australia, and the other Umbrella Group countries, are in favour of adopting rules and modalities for the operation of the Kyoto mechanisms which are uncapped, open, market-based, transparent, comprehensive, equitable and which minimise cost.

1.3.3 The Kyoto mechanisms would allow Australia, as a likely net purchaser of carbon credits, to have access to low-cost carbon credits in other countries, thereby reducing the cost of meeting our commitments under a ratified Kyoto Protocol. Modelling by ABARE indicates that IET alone would reduce the cost to Australia of meeting its Kyoto target by 20%<sup>3</sup>.

1.3.4 The EU, on the other hand, argues that the extent to which a country can use the flexibility mechanisms to meet its emissions target should be limited. They argue that to be environmentally effective, the flexibility mechanisms should not be used to

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<sup>2</sup> The Umbrella Group consists of Australia, Canada, Iceland, Japan, New Zealand, Norway, Russia, the Ukraine and the United States.

<sup>3</sup> ABARE: Economic Impacts of the Kyoto Protocol – Accounting for the three major greenhouse gases (May 1999)

avoid rigorous domestic emission reduction actions. The EU has suggested a formula that would limit this amount to about 5% of a country's target.

1.3.5 Some developing countries in the G77-China group<sup>4</sup> also support the policies advocated by the EU, including supplementarity. They are antagonistic towards the Kyoto mechanisms, which they see as allowing developed countries to avoid their responsibility to abate emissions domestically.

## **1.4 Treatment of Sinks**

1.4.1 Action on sinks can make a valuable contribution towards both sustainability objectives and in addressing greenhouse gas emissions. At present, sink activities that can be used to meet the Protocol's targets are restricted to afforestation, reforestation and deforestation. The precise definition of these terms is still to be negotiated. The inclusion of additional sink activities (eg. revegetation activities, agricultural soil management) is also being negotiated.

1.4.2 Sinks offer an important vehicle for low-cost, flexible greenhouse gas abatement. Furthermore, the inclusion of sinks delivers additional environmental benefit by ensuring that all avenues for reducing emissions are addressed. Promoting revegetation in order to sequester carbon enhances biodiversity and reinforces other sustainable land management policies. Australia supports the inclusion of additional sink activities as a means of minimising abatement costs and delivering additional natural resource management benefits.

1.4.3 The EU has proposed policies on sinks that would significantly restrict their contribution to the achievement of Annex I targets. The EU has also repeatedly raised concerns about measurement uncertainties associated with sinks. Some G77-China countries, most notably the Association of Small Island States (AOSIS), also advocate severe restrictions on the rules for sinks. The AOSIS position is based on their general view that Annex B countries<sup>5</sup> should focus on reducing their greenhouse gas emissions at source.

## **1.5 Developing Countries**

1.5.1 The absence of emission commitments under the Protocol for developing countries has the potential to undermine the global environmental effectiveness of abatement action undertaken in developed countries, and impact upon the competitiveness of some Australian industries.

1.5.2 The forecast growth in global emissions is driven largely by high projected emissions growth in developing countries, highlighting the importance of engaging developing countries in reducing emissions growth. ABARE projects that emissions from developing countries will surpass emissions from Annex B countries well before

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<sup>4</sup> G77/China is the developing country negotiating bloc.

<sup>5</sup> Annex B countries are countries with emission reduction targets under Annex B to the Kyoto Protocol.

2010<sup>6</sup>. Consequently, despite the efforts of developed countries to meet their emission reduction targets under the Protocol, global emissions will continue to rise.

1.5.3 The adoption of emission reduction targets by some countries, and their resultant implementation of abatement policies, will lead to increased costs of production in those countries. In effect, the Protocol is placing a price on carbon, a previously cost-free commodity. This cost must be factored into all actions that produce greenhouse gas emissions.

The absence of commitments from developing countries means that carbon will remain cost free in those countries. This will give industries in developing countries a savings on production costs compared to industries in developed countries. Consequently, shifts in global trade and resource flows from developed countries towards developing countries may occur, as may changes in the production of greenhouse gas-intensive goods. This would undermine the environmental effectiveness of abatement action undertaken in accordance with the Protocol.

1.5.4 While the Parties have agreed to reach decisions on many outstanding issues at COP-6, there is no agreed timetable for developing countries to assume emission reduction commitments. This will be a key factor in the ratification decisions of Australia and other countries, especially the United States. Through a number of means, Australia is seeking to engage a range of key developing countries on this issue. We support capacity building initiatives, such as the World Bank National Strategy Studies (NSS) program, which aims to build the capacity of developing countries in the Asia Pacific region to explore the opportunities and potential benefits of participating in the CDM. Australia also supports bilateral projects with regional developing countries which could improve their support for the CDM.

1.5.5 G77/China countries however resist the inclusion of developing country commitments. The developing countries contend that as developed countries are historically responsible for the rise in greenhouse gases, they should bear the burden of taking emission reduction action. The developing countries wish to avoid additional burdens to their own continued industrialisation.

1.5.6 Two developing countries that have taken steps towards the assumption of voluntary targets are Argentina, which voluntarily committed at COP5 to a dynamic emissions reduction target, and Kazakhstan, which has volunteered to become a Party included in Annex I.

## **1.6 Other Relevant Considerations**

1.6.1 The satisfactory resolution of the key issues identified by Senator Hill at the time of signature remains necessary for Australia's consideration of ratification. Other factors, such as the Protocol's compliance regime (which is currently under negotiation), ascertainment of a 1990 emissions baseline, and other countries' moves to ratification, will also be relevant.

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<sup>6</sup> ABARE: The Kyoto Protocol and Developing Countries (June 2000)

## Compliance

1.6.2 A decision on compliance is expected at COP-6. Most developed country Parties are reluctant to ratify the Protocol until they are aware of the consequences of a failure to meet their emissions targets. The nature of the compliance system will also affect the cost of a Party meeting its emission target. The relationship between the compliance system and the mechanisms is particularly relevant to the potential cost impacts of the compliance system. Under some proposals opposed by Australia, compliance procedures may form a barrier to accessing the mechanisms, thereby increasing the cost of a Party meeting its emission target.

1.6.3 Compliance penalties might also have an economic impact on Parties that have failed to reach their target at the end of the commitment period. This effect might be direct (via payment of a financial penalty), or indirect (if the party is required to put in place additional domestic measures). Proposals for removing a Party's access to the mechanisms for a subsequent commitment period would increase the cost for that Party in meeting its next target. Australia does not support these options, preferring non-punitive consequences which help a Party improve its performance and repair the environmental damage of the breach.

## Ascertainment of 1990 Emissions Baseline

1.6.4 Another relevant consideration to Australia's ratification decision is the ascertainment of a concrete 1990 emissions baseline, without which we cannot assess the magnitude of Australia's emission reduction target.

1.6.5 Emissions from land clearing activity is to be included in the 1990 baseline. However, at present, there is uncertainty in the estimates of land clearing emissions. The National Carbon Accounting System has been established to provide robust estimates of emissions connected with land-based activities. It is expected that a clear picture of 1990 land clearing emissions will be available in the second half of 2001.

## Other Countries' Moves to Ratification

1.6.6 Twenty-two countries have already ratified the Kyoto Protocol, mainly small island states and small developing countries. No Annex I country has ratified the Protocol.

1.6.7 The European Union has a stated position of bringing into force the Kyoto Protocol by 2002, pending a satisfactory outcome at COP6. 2002 would be the tenth anniversary of the Rio "Earth Summit". Other countries to support entry-into-force by 2002 are Japan, New Zealand, many developing countries and the negotiating group representing the small island states.

1.6.8 If COP6 produces decisions on the flexibility mechanisms and sinks, many of these countries, including the EU, will be in a position for their ratification processes to begin. For others however, in addition to the right outcomes at COP6, a satisfactory arrangement on developing country commitments would need to be found before ratification could be considered.

1.6.9 The United States has linked its ratification decision to the issue of developing country commitments. In June 1997 the United States Senate passed, in a vote of



95-0, the Byrd-Hagel Resolution (S. Res. 98) which expressed concerns about the UNFCCC. The Resolution stated, *inter alia*, that the United States should not be party to climate change agreements unless they contained “new, specific scheduled commitments to limit or reduce greenhouse gas emissions for developing country parties within the same compliance period”.

President Clinton responded to this Senate resolution by stating that there needed to be “meaningful participation” by developing countries before the United States would consider ratification. The United States is currently pursuing this issue informally through bilateral contacts and small group meetings. The cost of implementing the Protocol is also a crucial factor for the United States.

## **2. Extent to which the Protocol is Binding on Australia**

2.1 The Kyoto Protocol will become legally binding on those countries that have deposited their instruments of ratification 90 days after the requirements for entry into force have been met (see section 1.1.1). The most important feature of the Protocol is the individual country targets it sets for the reduction and limitation of greenhouse gases. Upon becoming a Party to the Protocol, Australia would be legally obliged to restrict its emissions of greenhouse gases over the period 2008-2012 to 108% of those emitted in 1990. This would require a cut of more than 30% in our emissions growth from business-as-usual over this period through some combination of domestic abatement action, sequestration through sinks and securing credits through the flexibility mechanisms (see Section 1.3).

A failure to meet this target would be a breach of an international treaty obligation. The consequences that would flow from a breach are currently being negotiated and will form a key part of the Protocol’s compliance system. The Protocol provides that binding consequences may only be adopted by amendment of the Protocol. Australia would not be subject to any amendment to the Protocol to introduce binding consequences unless it separately ratified that amendment.

2.2 In demonstrating whether they have met their targets, Parties would be required to count both emissions by sources and removals from the atmosphere by carbon sinks since 1990. The Protocol includes an obligation on Parties to measure and report their emissions and removals on an annual basis. However, the Protocol allows Parties the discretion to pursue their targets through the policies and measures best suited to their national circumstances.

2.3 As set out above, the Protocol provides for a number of flexibility mechanisms that provide Parties with opportunities to meet their targets at least cost. Parties have a right under the Protocol to use these mechanisms but are not obliged to do so. Once they choose to exercise this right, they are, however, obliged to follow the provisions in the Protocol laid down for their operation. The Protocol also provides for additional detail on the operation of the mechanisms to be set out in decisions of the Conference of the Parties or Meeting of the Parties. (These decisions may not be legally binding as they will not be subject to formal ratification procedures but will carry substantial political weight.)

2.4 The Protocol also contains a number of provisions relating to assistance to developing countries (eg. on technology transfer and on minimising the impacts on

them from the way developed countries meet their targets) which Australia would have to strive or “take all practicable steps” to meet. Developed countries would also have an obligation to provide financial assistance to developing countries in their efforts to monitor and report emissions. The level of this assistance remains under negotiation.

2.5 An indicative list of the obligations that would be imposed on Australia, if Australia ratified the Protocol and the Protocol entered into force, is set out in Attachment 1. This list is not comprehensive. There may be additional obligations imposed on Australia, as a result of the current negotiations.

### **3. Implications of the Protocol**

3.1 As has been detailed above, the Kyoto Protocol left a number of issues essential to its implementation for further negotiation. These outstanding issues have created considerable uncertainty about the potential cost to Australia of meeting our target, should we decide to ratify the Protocol.

3.2 Negotiations on these outstanding issues are continuing. As a result, it is currently impossible to predict the final practical nature of the Protocol that Australia may eventually contemplate ratifying. Nor is it possible accurately to predict its implications for Australia at this stage.

3.3 If the Protocol enters into force (due to satisfaction of the conditions set out in Section 1.1.1 above), there may be implications for Australia, even if Australia does not ratify the Protocol. At present though, an assessment of the possible implications would be a purely speculative exercise. We cannot predict the final practical nature of the Protocol, nor can we predict the composition of the Parties who might ratify the Protocol thereby bringing it into force. These are both huge variables in any assessment of the possible implications for Australia.

3.4 ABARE have conducted a number of studies, using various sets of assumptions, in an attempt to model the economic impact and environmental effectiveness of the Kyoto Protocol under a variety of scenarios. These studies include:

- The Kyoto Protocol and Developing Countries (June 2000)
- Outlook 2000: Kyoto Protocol (February 2000)
- Economic Impacts of the Kyoto Protocol – Accounting for the Three Major Greenhouse Gases (May 1999)
- Emissions Trading in Australia (March 1998).

Further analytical work will need to be done once the final practical nature of the Protocol is known, in order to reassess the economic and environmental impacts of the Protocol on Australia.

3.5 Before the Government takes a decision on ratification there will be full consideration of all relevant issues as part of the usual treaty process. At least 15

sitting days before the act of ratification is taken (which would bind Australia under international law), the Protocol will be tabled in both Houses of Parliament, together with a National Interest Analysis (NIA). The NIA will set out the reasons why Australia should become a party to the Protocol. Where relevant, the NIA will include a discussion of:

- the foreseeable economic, environmental, social and cultural effects of the Protocol;
- the obligations imposed by the Protocol;
- the direct financial costs of the Protocol to Australia;
- how the Protocol will be implemented domestically;
- what consultation has occurred in relation to the ratification of the Protocol; and
- whether the Protocol provides for withdrawal or denunciation.

Given the complexity of the legislation that would be required to implement the Protocol, and the need for extensive consultation with the States, industry and the wider community, there could be a considerable time lag between a decision by Ministers to proceed to ratification and the act of ratification.

#### **4. Conclusion**

A number of issues need to be resolved **before** Australia could consider ratification, including the rules for the flexibility mechanisms, the treatment of carbon sinks and developing country commitments.

Negotiations on these outstanding issues are continuing. Decisions on sinks and the flexibility mechanisms are due to be taken at COP6 in The Hague in November 2000. The Parties have not agreed a timetable for dealing with the question of developing country commitments.

Australia is committed to designing a global framework within which the emission targets set out in the Protocol may be achieved at least cost to the global economy and at least cost domestically. The adoption of an economically implementable framework will maximise the likelihood of parties being able to meet their respective targets under the Protocol, thereby maximising the potential for the environmental objectives of the Protocol to be achieved.

**Attachment 1****Indicative list of Obligations**

If Australia ratified the Protocol and it entered force, Australia would be subject to obligations at international law requiring it to:

- in order to achieve reduction commitments and to provide sustainable development - implement and elaborate policies relating to its national circumstances (Article 2(1)(a));
- in order to achieve reduction commitments and to provide sustainable development - cooperate with other Annex I Parties to enhance the effectiveness of their policies and measures (including by taking steps to share experience and exchange information) (Article 2(1)(b));
- pursue (through ICAO and the IMO) limitation of emissions of certain greenhouse gases controlled by the *Montreal Protocol on Substances that Deplete the Ozone Layer* (ATS (1989) 18) (Article 2(2));
- strive to implement policies and measures in a way that minimises adverse effects (Article 2(3));
- ensure that Australia's aggregate anthropogenic "carbon equivalent" emissions of the six greenhouse gases listed in Annex A do not exceed 8 per cent above their 1990 levels during the first commitment period of 2008 to 2012 (Article 3(1));
- make demonstrable progress in achieving its commitments by 2005 (Article 3(2));
- provide data relating to its level of carbon stocks in 1990, for consideration by the Subsidiary Body for Scientific and Technological Advice (Article 3(4));
- strive to implement its commitments in a way that minimises adverse impacts on developing country Parties (Article 3(14));
- within one year before the start of the first commitment period - have in place a national system for the estimation of anthropogenic emissions and removals (Article 5(1));
- incorporate in its annual inventory of anthropogenic emissions and sources supplementary information as required by Article 3 (Article 7(1)), with that inventory to be submitted annually once the Protocol has entered into force for Australia (Article 7(3));
- incorporate in its national communication under Article 12 the supplementary information necessary to demonstrate compliance with its commitments (Article 7(2)), to be submitted as frequently as determined by the Conference of the Parties (Article 7(3), (4));

- formulate cost-effective national and regional programs to improve the quality of emissions factors and data - where relevant and to the extent possible (Article 10(a));
- formulate, implement, publish and regularly update national and regional programmes containing measures to mitigate, and facilitate adequate adaption to, climate change (Article 10(b));
- promote and facilitate the development of climate change technologies, and their transfer to developing countries (Article 10(c));
- develop and cooperate with other Parties in scientific and technical research (Article 10(d));
- develop, cooperate at the international level, and implement education and training programmes relating to climate change (Article 10(e));
- together with other developed country Parties, in implementing their obligations under Article 4(1) and of the Convention (relating to the financial mechanism):
  - provide new, additional funding to meet the full costs of developing country Parties in implementing existing commitments (Article 11(2)(a)); and
  - provide the financial resources needed by developing country Parties to meet the cost of advancing the implementation of existing commitments (Article 11(2)(b)).