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**National Interest Analysis [2008] ATNIA 21  
with attachment on consultation**

**Kyoto Protocol to the United Nations Framework Convention on Climate Change  
(Kyoto, 11 December 1997, [2008] ATS 2)**



## **NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

### **SUMMARY PAGE**

#### **Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 11 December 1997, [2008] ATS 2)**

##### **Nature and timing of proposed treaty action**

1. The treaty action for analysis is the ratification by Australia of the Kyoto Protocol (the Protocol). The Protocol was signed by Australia on 29 April 1998 and ratified on 12 December 2007. The Protocol entered into force for Australia on 11 March 2008, 90 days after the instrument of ratification was deposited at the United Nations. The Protocol was adopted in 1997 and, in accordance with Article 25 of the Protocol, entered into force generally on 16 February 2005.
2. Australia's instrument of ratification included a declaration affirming Australia's eligibility to include emissions relating to land clearance in its base year calculations, as provided in the Protocol.
3. The Kyoto Protocol is an instrument under the United Nations Framework Convention on Climate Change (UNFCCC), which was signed and ratified by Australia in 1992. The Convention came into force in 1994. Ratification of the Protocol does not alter Australia's status as a Party to the UNFCCC.
4. There are currently 182 parties to the Protocol. Two signatories have not ratified the Protocol (the United States of America and Kazakhstan).

##### **Overview and national interest summary**

5. The key objective of the Protocol is to enforce binding international action to reduce greenhouse gas emissions. The Protocol sets binding greenhouse gas emission reduction targets against 1990 levels for Annex I Parties (of which Australia is one) under the UNFCCC for the commitment period 2008-2012. The Protocol strengthens the commitments made in the UNFCCC.
6. It was Government policy that Australia ratify the Kyoto Protocol. Ratification of the Protocol was a key commitment at the last election, along with a domestic emission reduction target of 60% by 2050, and the establishment of an emissions trading scheme by 2010.
7. Australia's ratification directly supports the three pillars of the Government's long-term response to climate change:
  - reducing Australia's greenhouse gases;
  - adapting to climate change that we cannot avoid; and
  - helping to shape a global solution.



## **Reasons for Australia to take the proposed treaty action**

8. Australia is particularly vulnerable to the impacts of climate change. A comprehensive international response tackling climate change is strongly in Australia's interests.

9. Australia is committed to playing its full part in the global effort to address climate change. Ratification of the Protocol means that Australia can also assume an emissions target that is internationally agreed.

10. Following ratification, Australia is actively engaged in the discussions on future climate change action, including in negotiations for a second commitment period for the Protocol.

## **Obligations**

### Emission reduction targets for Annex B Parties

11. The Protocol establishes binding commitments for greenhouse gas emissions targets for countries listed in Annex B of the Protocol - including Australia, most of the OECD and several Central and Eastern European States. These countries agree to limit their annual average emissions of greenhouse gases in the period 2008-2012 to the percentage of their 1990 emission levels specified in that Annex. The emission targets of countries range from -8 per cent (EU countries) to +10 per cent (Iceland). Australia's target is +8 per cent. The Protocol envisages a second commitment period beyond 2012.

12. In ratifying the Protocol Australia submitted a declaration affirming Australia's eligibility to include emissions relating to land clearance in its base year calculations, as provided in the Protocol. The declaration clarifies the methodologies that Australia will use in calculating emissions relating to land clearance. The declaration further indicated Australia's acceptance of the decision by the Parties to the Protocol in 2006 to add an emissions target for Belarus of -8 per cent below 1990 levels. Australia's acceptance of the decision at the time of ratification makes it clear that we accept the treaty as revised.

13. In accordance with Article 26 of the Protocol, Australia has made no reservations under the Protocol.

### Reporting obligations

14. The Protocol requires that Annex B Parties each establish a national inventory system for estimating emissions and removals of greenhouse gases, in addition to a register for tracking emissions certificates and trading. Annex B Parties must annually report an inventory of emissions and provide information to demonstrate compliance with commitments under the Protocol. During the first commitment period (2008-2012), this information will be assessed by the Compliance Committee of the Protocol, which has the ability to impose non-compliance measures including the suspension of emissions trading rights and a penalty on a Party's assigned emission target in the second commitment period (i.e. post 2012). Other (non-Annex B) Parties must regularly report on national climate change programmes and will benefit from joint projects and the transfer of environmentally sound technologies.

15. It is anticipated that these reporting requirements will not be significantly more onerous than the existing reporting requirements for the Convention.

### Flexibility mechanisms

16. The Protocol establishes three key mechanisms to assist Annex B Parties to meet their emissions targets – international emissions trading (Article 17), joint projects with other Annex B Parties (Joint Implementation, Article 6) and non-Annex B Parties (Clean Development Mechanism, Article 12). The use of these mechanisms is not obligatory, but these mechanisms should be employed to avoid non-compliance with targets (see below).

### Compliance mechanisms

17. The Protocol outlines a number of consequences that Annex B Parties face if they fail to comply with their emissions targets. The Protocol compliance mechanism is designed to support the carbon market's credibility and ensure transparency of accounting by Parties. Its objective is to facilitate and promote compliance with the commitments under the Protocol.

18. The Protocol's Compliance Committee can apply a range of penalties if an Annex B Party is not in compliance with certain Protocol commitments such as meeting greenhouse gas emissions targets, requirements for the submission of national greenhouse gas inventories, or appropriate implementation of Protocol mechanisms such as the Clean Development Mechanism.

19. If a Party has exceeded its greenhouse gas emissions target, it:

- must make up the difference between its actual emissions and the target for 2008-2012, plus an additional 30 per cent, during a second Protocol commitment period;
- must develop a compliance action plan to remedy deficient performance; and
- is suspended from international emissions trading under the Protocol.

20. Given the Kyoto compliance obligations were established by a series of decisions of the Conference of Parties (COP), rather than through an amendment to the Protocol, the provisions are not legally binding in an international tribunal. Nonetheless, the Compliance Committee still has considerable power, including the power to suspend Parties from emissions trading. Despite the non-legally binding nature of the Kyoto compliance system, Australia is consistent in upholding the obligations it undertakes in international fora, regardless of whether they are actionable in international litigation.

### **Implementation**

21. Ratification of the Kyoto Protocol in itself does not necessitate any change in Australian law.

22. The *National Carbon Accounting System* (NCAS) is a world-leading system to account for greenhouse gas emissions from land based sectors. It was established in 1998 to provide a complete accounting and forecasting system for human-induced sources and sinks of greenhouse gas emissions from Australian land based activities.

23. While not directly an implementation measure of Australia's ratification of the Protocol, NCAS is designed to meet national and international reporting requirements for the UNFCCC National Greenhouse Gas Inventories and Kyoto Protocol baselines, as well as for tracking of greenhouse gas emissions and removals from the land sector, and projections of future emission trends.

24. Australia has already implemented a number of the reporting obligations.

- . Australia submitted its Fourth National Communication in November 2005 and this was reviewed in April 2008. The final report of the review team is due in September 2008.
  - Australia submitted its Initial Report in February 2008.
- . Australia already submits annual greenhouse gas inventories under the Framework Convention on Climate Change. Australia's first inventory submission under the Kyoto Protocol will be in April 2009.

25. No changes in legislation are required to meet the reporting obligations for the annual greenhouse gas inventory.

26. Nonetheless, the *National Greenhouse and Energy Reporting Act 2007* has been put in place to cover the collection of key data for the inventory, and this has been enhanced by amendments to the *Census and Statistics Act 1905*. The *National Greenhouse and Energy Reporting Act 2007* establishes a single, national system for reporting greenhouse gas emissions, abatement actions, and energy consumption and production by corporations from 1 July 2008.

## **Costs**

27. Australia must provide a financial contribution to the Kyoto Protocol's Trust Fund as a ratified Party, which is in addition to Australia's contribution to the UNFCCC as a Convention Party.

28. The scale of the Protocol contribution for each country is based on the United Nations Scale of Assessment as determined by the United Nations General Assembly, with some adjustments outlined in COP decisions. The COP reviews the UNFCCC budget each biennium including the proportions to be contributed by the Convention and by the Protocol. Australia's contribution was calculated by the UN as USD 164,689 for the period of 2008 for which Australia is a ratified Party to the Protocol. Australia's normal annual contribution is likely to be closer to USD 210,000.

29. There is no additional cost to produce an annual greenhouse gas inventory under the Kyoto Protocol as production of the inventory is already required under the Framework Convention on Climate Change.

## **Regulation Impact Statement**

30. The Office of Best Practice Regulation, Productivity Commission has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

31. The text of the Protocol itself anticipates that amendments will be needed in the future to make further progress towards the objective of stabilising greenhouse gas concentrations. Article 3, paragraph 9, of the Protocol states that Parties shall establish commitments for the second commitment period (and later commitment periods), and will do so by amending Annex B of the Protocol.

32. Negotiations on the future commitments commenced at the end of 2005. Australia is currently engaged in multilateral negotiations to determine the arrangements for the next commitment period under the Protocol.

33. Any future treaty would be subject to Australia's domestic treaty process as appropriate.

## **Withdrawal or denunciation**

34. Article 27 states that a Party may withdraw from the Protocol three years from the date on which the Protocol has entered into force for a Party, but that the withdrawal will take effect upon expiry of one year from the date of receipt by the Depository of the notification of withdrawal. In the case for Australia, this would mean at any time after 11 March 2011, Australia may withdraw and it would come into effect one year after the date of depositing, which would be around the time of the completion of the Protocol commitment period (2012). A Party may also withdraw from the Protocol by withdrawing from the UNFCCC. Article 25 of the UNFCCC similarly requires a one year period prior to the withdrawal being effective.

## **Contact details**

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ATTACHMENT ON CONSULTATION

Kyoto Protocol to the United Nations Framework Convention on Climate Change  
(Kyoto, 11 December 1997, ATS or ATNIF number) (Kyoto Protocol)

**CONSULTATION**

35. Ratification of the Protocol was a key election commitment of the newly elected Government and also a key issue of public debate during the election campaign.

## **Annex A**

### **Greenhouse gases**

Carbon dioxide (CO<sub>2</sub>)

Methane (CH<sub>4</sub>)

Nitrous oxide (N<sub>2</sub>O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur hexafluoride (SF<sub>6</sub>)

### **Sectors/source categories**

Energy

Fuel combustion

Energy industries

Manufacturing industries and construction

Transport

Other sectors

Other

Fugitive emissions from fuels

Solid fuels

Oil and natural gas

Other

Industrial processes

Mineral products

Chemical industry

Metal production

Other production

Production of halocarbons and sulphur hexafluoride

Consumption of halocarbons and sulphur hexafluoride

Other

Solvent and other product use

Agriculture

Enteric fermentation

Manure management

Rice cultivation

Agricultural soils

Prescribed burning of savannas

Field burning of agricultural residues

Other

Waste

Solid waste disposal on land

Wastewater handling

Waste incineration

Other

## **Annex B**

### **Parties with quantified emission limitation or reduction commitment**

(percentage of base year or period)

Australia 108  
Austria 92  
Belgium 92  
Bulgaria\* 92  
Canada 94  
Croatia\* 95  
Czech Republic\* 92  
Denmark 92  
Estonia\* 92  
European Community 92  
Finland 92  
France 92  
Germany 92  
Greece 92  
Hungary\* 94  
Iceland 110  
Ireland 92  
Italy 92  
Japan 94  
Latvia\* 92  
Liechtenstein 92  
Lithuania\* 92  
Luxembourg 92  
Monaco 92  
Netherlands 92  
New Zealand 100  
Norway 101  
Poland\* 94  
Portugal 92  
Romania\* 92  
Russian Federation\* 100  
Slovakia\* 92  
Slovenia\* 92  
Spain 92  
Sweden 92  
Switzerland 92  
Ukraine\* 100  
United Kingdom of Great Britain and Northern Ireland 92  
United States of America 93

\* Countries that are undergoing the process of transition to a market economy.

Parties to the Kyoto Protocol

At 13 May 2008, there are 182 Parties. United States and Kazakhstan are not Parties to the Protocol, but are Parties to the UNFCCC.

\* indicates an Annex B Party to the Kyoto Protocol.

ALBANIA	CYPRUS
ALGERIA	CZECH REPUBLIC*
ANGOLA	DEMOCRATIC PEOPLE'S REPUBLIC
ANTIGUA AND BARBUDA	OF KOREA
ARGENTINA	DEMOCRATIC REPUBLIC OF CONGO
ARMENIA	DENMARK*
AUSTRALIA*	DJIBOUTI
AUSTRIA*	DOMINICA
AZERBAIJAN	DOMINICAN REPUBLIC
BAHAMAS	ECUADOR
BAHRAIN	EGYPT
BANGLADESH	EL SALVADOR
BARBADOS	EQUATORIAL GUINEA
BELARUS	ERITREA
BELGIUM*	ESTONIA*
BELIZE	ETHIOPIA
BENIN	EUROPEAN COMMUNITY*
BHUTAN	FIJI
BOLIVIA	FINLAND*
BOSNIA AND HERZEGOVINA	FRANCE*
BOTSWANA	GABON
BRAZIL	GAMBIA
BULGARIA*	GEORGIA
BURKINA FASO	GERMANY*
BURUNDI	GHANA
CAMBODIA	GREECE*
CAMEROON	GRENADA
CANADA*	GUATEMALA
CAPE VERDE	GUINEA
CENTRAL AFRICAN REPUBLIC	GUINEA-BISSAU
CHILE	GUYANA
CHINA	HAITI
COLOMBIA	HONDURAS
COMOROS	HUNGARY*
CONGO	ICELAND*
COOK ISLANDS	INDIA
COSTA RICA	INDONESIA
COTE D'IVOIRE	IRAN (ISLAMIC REPUBLIC OF)
CROATIA*	IRELAND*
CUBA	ISRAEL

ITALY\*  
JAMAICA  
JAPAN\*  
JORDAN  
KENYA  
KIRIBATI  
KUWAIT  
KYRGYZSTAN  
LAO DEMOCRATIC PEOPLE'S REPUBLIC  
LATVIA\*  
LEBANON  
LESOTHO  
LIBERIA  
LIBYAN ARAB JAMAHIRIYA  
LIECHTENSTEIN\*  
LITHUANIA\*  
LUXEMBOURG\*  
MADAGASCAR  
MALAWI  
MALAYSIA  
MALDIVES  
MALI  
MALTA  
MARSHALL ISLANDS  
MAURITANIA  
MAURITIUS  
MEXICO  
MICRONESIA (FEDERATED STATES OF)  
MONACO\*  
MONGOLIA  
MONTENEGRO  
MOROCCO  
MOZAMBIQUE  
MYANMAR  
NAMIBIA  
NAURU  
NEPAL  
NETHERLANDS\*  
NEW ZEALAND\*  
NICARAGUA  
NIGER  
NIGERIA  
NIUE  
NORWAY\*  
OMAN  
PAKISTAN  
PALAU  
PANAMA

PAPUA NEW GUINEA  
PARAGUAY  
PERU  
PHILIPPINES  
POLAND\*  
PORTUGAL\*  
QATAR  
REPUBLIC OF KOREA  
REPUBLIC OF MOLDOVA  
ROMANIA\*  
RUSSIAN FEDERATION\*  
RWANDA  
SAINT KITTS AND NEVIS  
SAINT LUCIA  
SAINT VINCENT AND THE  
GRENADINES  
SAMOA  
SAO TOMÉ AND PRINCIPE  
SAUDI ARABIA  
SENEGAL  
SERBIA  
SEYCHELLES  
SIERRA LEONE  
SINGAPORE  
SLOVAKIA\*  
SLOVENIA\*  
SOLOMON ISLANDS  
SOUTH AFRICA  
SPAIN\*  
SRI LANKA  
SUDAN  
SURINAME  
SWAZILAND  
SWEDEN\*  
SWITZERLAND\*  
SYRIAN ARAB REPUBLIC  
THAILAND  
THE FORMER YUGOSLAV REPUBLIC  
OF MACEDONIA  
TOGO  
TONGA  
TRINIDAD AND TOBAGO  
TUNISIA  
TURKMENISTAN  
TUVALU  
UGANDA  
UKRAINE\*  
UNITED ARAB EMIRATES

UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND\*  
UNITED REPUBLIC OF TANZANIA  
URUGUAY  
UZBEKISTAN

VANUATU  
VENEZUELA  
VIET NAM  
YEMEN  
ZAMBIA