

4-1-2005

## Australia: Greenhouse emissions and the Kyoto Protocol

Angela Papalia  
*Bond University*

Follow this and additional works at: <http://epublications.bond.edu.au/nle>

---

### Recommended Citation

Papalia, Angela (2005) "Australia: Greenhouse emissions and the Kyoto Protocol," *The National Legal Eagle*: Vol. 11: Iss. 1, Article 6.  
Available at: <http://epublications.bond.edu.au/nle/vol11/iss1/6>

This Journal Article is brought to you by the Faculty of Law at [epublications@bond](mailto:epublications@bond). It has been accepted for inclusion in The National Legal Eagle by an authorized administrator of [epublications@bond](mailto:epublications@bond). For more information, please contact [Bond University's Repository Coordinator](#).

# **Australia: Greenhouse emissions and the Kyoto Protocol**

**Angela Papalia  
Student at Law  
Bond University  
Faculty of Law**

## **Introduction**

The concentration levels of greenhouse gases found in the Earth's atmosphere have been rising at an alarming rate over recent decades. Scientists predict that a continued accretion will lead to an increase in the Earth's average temperature. If this occurs, the changes that are taking place in all aspects of our environment will affect the global climate with numerous indirect consequences, injury to our health and our ecosystem. The Kyoto Protocol is a United Nations sponsored document that attempts to obtain international agreement on how to deal with this issue. This article discusses some of the background to Australia's decision not to endorse this Protocol and other initiatives taken by Australia to deal with greenhouse emissions.

## **The Natural Balance**

Energy from the sun heats the Earth's surface and is then radiated back into space, while certain atmospheric gases trap some of the outgoing energy to retain heat. The ozone layer exists in the stratosphere to ensure that approximately 95% of ultra violet rays from the sun do not enter the atmosphere. The industrialized world has been producing high levels of greenhouse gases which are causing holes in the ozone. Increased fossil-fuel combustion that produces greenhouse gases has been accompanied by large scale deforestation. Plant life is one of the largest absorbents of excess chemicals. One calculated result of this upset has been an increase in global temperatures of almost one degree in the last century.

## **A Step in the Right Direction**

Scientists are concerned about the potential state that our environment may reach if steps are not taken. The United Nations has devised the Kyoto Protocol, a code of behaviour aimed at reducing greenhouse gas emissions. Countries that choose to sign this document will be legally bound to meet its requirements or face a penalty. Its target is a reduction in the overall production of greenhouse gases by up to 8% by 2012. The six gases that have been targeted are carbon dioxide, methane, nitrous oxide, hydrofluorocarbons (HFC), perfluorocarbons (PFC's) and sulphur hexafluoride. Carbon dioxide, 80% of which results from burning fossil fuels, is

the main contributor. Complying countries have been given a base year (approximately 1990) as the target for their reduced emissions.

At the present time non-industrialised countries are exempt from signing the protocol. Only four eligible countries have chosen not to sign. The two with the most significant levels of emissions are the United States (36.1%) and Australia (2.1%).<sup>1</sup> Both Australia and the USA have expressed a concern that they will be unable to remain competitive with countries such as China if they are forced to meet the increasing costs that will accompany implementing the Protocol.

Australia originally supported the principles expressed in the Protocol when they signed a preliminary document in 1997 that was a preparatory non binding document to the protocol.

Had Australia chosen to ratify the Protocol, their emissions target would have been set out in the Protocol while the methods taken to achieve compliance would be largely at the discretion of the Australian governments. Recommended focal areas suggested by the Protocol are enhancing energy efficiency in industrial sectors, protecting natural sinks that absorb gases, promoting sustainable measures and limiting methane use in waste management.<sup>2</sup>

If a country fails to comply, they must meet their target during the subsequent period in addition to compensating for their short fall and a possible 30% penalty. They must develop a compliance achievement plan, containing details of their proposed actions within three months.<sup>3</sup> In addition,

they will also be banned from selling under emissions trading. The government places limits on the amount of each pollutant that can be released by a particular industry. This system permits groups to buy 'emissions credits' from other groups so they do not exceed their limits.

If the country continues to fall short of their target they may be ineligible to remain a party to the protocol. To prevent this occurrence the United Nations has devised a facilitation committee to assist in the implementation of new practices in all countries.

## The USA Position

It appears that the USA is not moving to abide by the terms of the protocol rather they are taking steps that may worsen their greenhouse gas output. On March 16 2005, the United States Senate voted to lift the protection order placed on Alaska's Arctic National Wildlife Refuge in 1960 by President Eisenhower, to allow for oil drilling. Strongly endorsed by President Bush, this new energy source is hoped to decrease their reliance on resources from the Middle East.

Optimistically, a USA government source indicated recently that they see a strong hydrogen based fuel system being implemented in the next decade in an attempt to reduce the overall level of pollutants because 'it is absolutely necessary for our future'. Australia has signed *The Climate Action Partnership* with the US stating that they will combine efforts on nineteen 'projects' over an unspecified time period that will focus on using hydrogen as an energy source.



## Reasons for Opposing Kyoto

Although Australia has decided not to ratify the Kyoto Protocol, government officials have stated that they will implement practices focusing on reducing emissions. They have set a goal of '108% of 1990 levels between 2008 and 2012'.<sup>4</sup> Curiously, this goal is likely an approximation of what their obligation would have been under the protocol. Had they chosen to ratify they would have been entitled to tax incentives and other benefits given to member countries.

In addition to being concerned that Kyoto is not economically viable, officials have indicated that they don't feel the protocol provides a substantial long term solution to decreasing greenhouse gas emission without support from the USA and developing countries. In many developing countries, priority must be given to alleviating poverty and disease, and developing a viable infrastructure to strengthen their economy.

What steps is Australia going to take to decrease greenhouse gases?

## Applicable Legislation

The Commonwealth and the states have enacted various environmental protection acts to regulate the environmental impact of activity in Australia. One statute is *The Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth). This was implemented 6 years prior to the Rio Convention, of which the Kyoto Protocol is a continuance. It is an invaluable set of guidelines for Australia if this country is going to meet its objective.

Section 39 '[prohibits] manufacture, import, export, distribution or use of particular kinds of products' proven to deplete the ozone layer.' One of these products, HFC's, is mainly caused by the production of refrigeration, air-conditioner and other coolant units. In 1996 Australia was releasing 50 ODP tonnes (slightly more than 50 metric tonnes) of HFC's per year. This Act targets a level of 10 ODP tonnes by 2012 and aspires to eliminate them completely by 2030. This will be an especially difficult target for countries with tropical climates and virtually impossible unless new and cost efficient technology is developed.

The Minister for the Environment & Heritage and the Minister for Foreign Affairs has suggested four main strategies to control climate change.<sup>5</sup>

First, 'Australia will strive for a more comprehensive global response to climate change.' This objective indicates Australia's concern to involve developing countries in this process. In entering into the Liquefied Natural Gas (LNG) agreement with China, Australia has undertaken to sell 3.3 billion<sup>6</sup> tonnes of natural gas to China annually. This will cause China to lower their coal emissions by 7 million tonnes, causing Australia to emit around 1.5 million extra tonnes of carbon dioxide annually to produce the LNG.<sup>7</sup>

Secondly, Australia will position itself to maintain a strong and internationally competitive economy with a lower greenhouse signature. The sub-focus in this issue is the energy sources used by industry. Pollution from these industries, mainly CO<sub>2</sub>, is emitted directly into our air & water and indirectly into flora and fauna.

Third, domestic policy settings will balance flexibility with sufficient certainty to allow key decisions on investment and technology development, and also emphasise cost effectiveness. This mandate provides the relevant decision

maker with a wide amount of discretion when deciding what level of adherence they will comply with. A focus will be placed on the development of new technologies to assist in the implementation of environmentally responsible energy sources.

Fourth, Australia will implement policies and programs to assist with adaptation to the consequences of the climate change. This may be the most important focus. Educating all people about the disaster that will occur if we continue at our current rate and indicating what needs to be done in order to decrease emissions is essential.

These four strategies are merely guideline for the Ministers, legislators and numerous other officials who make and enforce relevant laws. In order for a sufficient improvement to occur we must all consistently adopt environmentally conscious decisions.

It is of concern that the amount of damage that will be done before the government, industry and the general public agree to implement many of these necessary measures. We must all realize that the word 'cost' is not restricted to monetary expenses but may apply even more so to things that cannot be replaced once they are lost.

### Debate:

*Should Australia sign the Kyoto Protocol? If so why? What about the potential economic costs of compliance?*

## References

- 1 [www.CNN.com](http://www.CNN.com) 09-03-05
- 2 Kyoto Protocol to the United Nations Framework Convention on Climate Change s.1(a).
- 3 UNFCCC Compliance Under the Kyoto Protocol, [unfccc.int/essential\\_background/kyoto\\_protocol/compliance/items/2772.php](http://unfccc.int/essential_background/kyoto_protocol/compliance/items/2772.php)" [unfccc.int/essential\\_background/kyoto\\_protocol/compliance/items/2772.php](http://unfccc.int/essential_background/kyoto_protocol/compliance/items/2772.php) 24-03-25.
- 4 Australian Government, Department of the Environment and Heritage [www.greenhouse.gov.au/international/kyoto/](http://www.greenhouse.gov.au/international/kyoto/) 01-03-05
- 5 Minister for the Environment and Heritage [www.deh.gov.au/minister/env/2002/mr15aug202.html](http://www.deh.gov.au/minister/env/2002/mr15aug202.html) 02-03-05
- 6 Government of Canada [strategis.ic.gc.ca/epic/internet/nimr-ri.nsf/en/gr108597e.html](http://strategis.ic.gc.ca/epic/internet/nimr-ri.nsf/en/gr108597e.html) 29-03-05.
- 7 Minister for the Environment and Heritage [www.deh.gov.au/minister/env/2002/mr15aug202.html](http://www.deh.gov.au/minister/env/2002/mr15aug202.html) 05-03-05

# The National Legal Eagle

## Index of Topics

### November 2000

- The Rule of Law
- The Development of Consumerism and the Regulation of Unfair and Restrictive Trade Practices
- Is Distributed File-Swapping Software Legal In Australia
- Two Children of the Stolen Generation

### May 2001

- DNA Testing
- The State The Individual and Rights
- Napster Update
- Effectiveness of Legal System for Consumers
- Concepts of Property

### November 2001

- Tampa Case
- Civil Liberties and Sex Offenders
- Protection at School
- Australia – A Federal Story
- The English Courts and the Rise of Equity

### April 2002

- Lawyering
- Governor-General
- Native Title
- Feathering Their Own Nest
- Criminal Profiling

### September 2002

- The Insurance Crisis
- Four Myths of Family Law
- Alternative Dispute Resolution
- The International Criminal Court
- Murder and the Separation of Conjoined Twins

### April 2003

- Finders Keepers Losers Weepers
- Aiding Suicide
- The Next Chapter in the Story of Native Title
- Law in Society
- Access to Justice
- Top 5 Websites for Legal Research

### October 2003

- Legal Presumption that Children Spend Equal Time with Separated Parents in Australia
- No Sex Offenders, please – we're Queenslanders
- Statutory Amendments to Civil Liability of Professionals Including Medical Doctors
- Should the Double Jeopardy Rule be in Jeopardy
- Law Studies are Popular
- Keep Up To Date with Legal Developments!

### April 2004

- The Perils of Pauline
- Bailing Out Hanson and Ettridge
- Judging Juries
- Zero Tolerance Policing Threatens Personal Freedoms
- Australian Miscarriages of Justice

### October 2004

- Marriage and Cohabitation
- A Very Expensive Box
- Jurisdiction over Dependents
- Achieving Justice through The Courts
- Law Forum Updates

The contents of this publication are intended as general legal information only and should not form the basis for legal advice of any kind. © The Law Society of New South Wales 1998.  
Published by The Law Society of New South Wales, 170 Phillip St. Sydney NSW 2000. Telephone: 9926 0333. Co-Editor Robyn Cross, Email: rnc@lawsoensw.asa.au Written by Bond University. April 2005.  
*National Legal Eagle* is produced by Insight Print Services 120B Old Canterbury Road, Lewisham NSW 2049 Phone 9564 0555 Fax 9564 0516