

National Interest Analysis [2016] ATNIA 10

with attachment on consultation

Paris Agreement

(Paris, 12 December 2015)

[2016] ATNIF 31

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Paris Agreement

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Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of the Paris Agreement (the Agreement), a legal instrument adopted by the Conference of the Parties to the *United Nations Framework Convention on Climate Change* (UNFCCC).
2. Australia signed the Agreement on 22 April 2016 in New York on the day it was opened for signature. The proposed treaty action would be taken as soon as practicable following consideration by the Joint Standing Committee on Treaties (JSCOT), consistent with Australia's commitment to seek to ratify the Agreement in 2016.
3. The 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 emissions, have deposited their instruments of ratification, acceptance, approval or accession (Article 21.1). If Australia ratifies after entry into force generally, the Agreement will enter into force for Australia thirty days after the date on which Australia deposits its instrument of ratification.

Overview and national interest summary

4. 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;
 - 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.

5. Consistent with our 2030 emissions reduction target, Australia has a clear national interest in ratifying the Agreement. The Agreement commits all Parties to take climate action; maintains Australia's right to decide domestic policies and emissions reductions targets; creates accountability for Parties' targets; and takes account of changing national circumstances, in particular those of major developing countries. Australia by itself cannot address climate change and it is in our national interest to support global action.
6. The scale of the climate change challenge is many times greater than Australia's annual emissions and any one country's capacity to act. The Agreement sets a common, multilateral platform for global action. For the first time all countries, including the major economies, have concluded an agreement in which they commit to limit or reduce their national emissions in a meaningful global effort.
7. The Agreement embodies a global approach that retains domestic flexibility. It commits all Parties to take on emissions reduction commitments from 2020 with Parties deciding both the level of emissions reductions and domestic policies. The Agreement also requires developed country Parties to provide support to developing countries, without prescribing country-specific contributions. It encourages other Parties to provide such support voluntarily.
8. The global approach embodied in the Agreement commits all major economies and our key trading partner Parties to take action. Strong accountability and transparency provisions encourage Parties to achieve their NDCs by giving them visibility of other countries' progress, and assuring Australia that it is acting in concert with others.

Reasons for Australia to take the proposed treaty action

9. Ratification will confirm our commitment to fulfil our 2030 emissions reduction target to reduce emissions by 26 to 28 per cent below 2005 levels by 2030. Over 175 negotiating parties signed the Agreement in New York in April this year. Current indications are that the Agreement will be close to achieving or may achieve ratification by the 55 countries covering 55 per cent of global emissions required for entry into force in 2016.
10. Collective global climate action under the Agreement is the most effective means of protecting Australia against the threats of climate change. Without effective global climate action, Australia will face risks to the health and resilience of our coasts and beaches including iconic natural systems such as the Great Barrier Reef, cities and the built environment, agriculture, forestry and fisheries, water resources and natural ecosystems, and the health and wellbeing of Australians, with consequent economic costs. Climate change will have implications for disaster risk management and could affect the resilience and security of the Asia-Pacific region.

11. Australia will contribute to 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 to mitigate the impacts of climate change.
12. The Agreement signals a transition to a lower carbon global economy, which creates economic opportunities for Australia. Australian capabilities and technology in renewable energy, sustainable cities, sustainable agriculture and climate resilient infrastructure could be attractive to other countries. Australia's action on climate change and the associated transition to cleaner forms of energy will create opportunities for further foreign investment (for example, Australia's Renewable Energy Target has already attracted foreign investment to Australia).
13. Climate impacts in our region, and the risk of climate-induced migration and displacement, could also have consequences for Australia. Ratification underscores our commitment to international action and working with others, particularly in the Pacific, where the immediate threats posed by climate change are a priority.
14. Ratification is consistent with Australia's existing domestic and international commitments and obligations to climate change action. Australia was a founding member of the UNFCCC in 1992 and has set emissions reduction targets under the Kyoto Protocol from 2008 to 2012 and 2013 to 2020.
15. The Agreement broadens the coverage of international climate action. For the first time, 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 a limited group of (developed country) Parties.
16. The Agreement lets Parties determine their own national emissions reduction pledges subject to no-backsliding and improvement over time. This overcomes the UNFCCC's previous binary approach under which only developed country Parties were required to reduce emissions.
17. Ratification by Australia in time for the entry into force of the Agreement will ensure Australia's influence in continued negotiations of rules and guidance. The outcome of these negotiations could influence how commitments and potential obligations under the Agreement are calculated and implemented. For example, the Agreement provides that the Conference of Parties will adopt rules and provide guidance on aspects of the Agreement including in relation to elements of accounting for emissions, use of international market mechanisms and what constitutes climate finance.
18. More than 190 countries have committed to climate change NDCs in accordance with the Agreement, signalling the global transition to a low emissions economy. The collective direction is clear. Long term, Australia is moving to cleaner forms of energy and low emissions growth, with

technology and innovation driving climate change efforts across the energy mix.

Obligations under the Agreement

19. Upon its entry into force, the 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).
20. The adopting decision for the Agreement (The Paris Decision) also sets out principles, expectations and guidance.¹ The Paris Decision does not establish any legal obligations, however countries will be expected to comply with and/or meet these decisions.

Mitigation and Nationally Determined Contributions

21. The Agreement requires each Party to prepare, communicate and maintain successive NDCs that it intends to achieve (Article 4.2), and to communicate NDCs every five years (Article 4.9), which build on the ambition in the respective Party's previous target, and reflect its highest possible ambition (Article 4.3). Parties are also 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, completeness, comparability and consistency and avoids double accounting (Article 4.13).
22. 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 (Article 2.1). It 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 4.1).
23. The Agreement requires each Party to communicate up-front its intended actions to address climate change in the form of a NDC and to pursue domestic measures with the aim of achieving its NDCs (Article 4.2). Parties retain the right to determine their own emissions reduction policies.
24. The Agreement provides for each Party to develop nationally appropriate targets and policies for inclusion in their NDCs. It 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 4.4).
25. The Agreement 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 4.8). If

¹ http://unfccc.int/documentation/documents/advanced_search/items/6911.php?preref=600008865

Parties choose to use internationally transferred mitigation outcomes such as emission reduction units, towards their NDCs, the Agreement requires those Parties to promote sustainable development, ensure environmental integrity and transparency and to apply robust accounting to ensure avoidance of double counting (Article 6.2 and 6.5).

26. The Agreement encourages Parties to formulate and communicate long-term low greenhouse gas emission development strategies (Article 4.19).

Provision of Support

27. The Agreement reaffirms existing UNFCCC obligations that require developed countries to provide support in the form of financial resources to assist developing country Parties' efforts to implement the Agreement as a continuation of their UNFCCC obligations (Article 9.1), in line with the global goal to make finance flows consistent with low emissions and climate-resilient development (Article 2.1). The Paris Decision reiterates expectations based on existing commitments under the UNFCCC that developed country Parties will collectively provide and mobilize 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. It acknowledges the diversity of financial sources available, encouraging support from a range of public and private sources to contribute to this goal.
28. Although developed country Parties are required to provide financial resources, the Agreement sets no specific finance obligations for individual countries. Developed country Parties are each to communicate information biennially, indicating the public financial support they have provided and - as available - will provide to developing country Parties, and, as applicable, information in relation the mobilisation of climate finance (Article 9.5). Other Parties are encouraged to provide support and communicate relevant information voluntarily (Article 9.2 and 9.5).
29. The Agreement requires that other forms of international support be provided to developing country Parties including for 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 (Article 10.2).
30. 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 (Paragraph 52).

Reporting, review and compliance

31. The Agreement strengthens existing reporting requirements for UNFCCC Parties in relation to mitigation, adaptation and support. The “transparency framework for action and support” is established to ensure a clear understanding of global action (Article 13.5).
32. The Agreement requires each Party to report on their emissions and progress towards their NDCs (Article 13.7); and, as appropriate, climate change impacts and adaptation plans and actions (Article 13.8). The Agreement requires all Parties enhancing the capacity of developing country Parties to regularly communicate such actions or measures (Article 11.4), requires each developed country Party to report on financial, technology transfer and capacity building support provided, and encourages other Parties that provide support 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).
33. Information reported by Parties under the transparency framework will be subject to expert technical review. Each Party is required to participate in a facilitative, multilateral consideration of progress in finance provided and in implementing and achieving its NDC (Article 13.11).
34. The Agreement 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). Parties are required 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 14.3).
35. The Agreement 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 (Article 15).

Other obligations

36. The Agreement aims to strengthen the global response to climate change by increasing the ability of Parties to adapt to the adverse impacts of climate change and foster climate resilience (Article 2.1). The Agreement requires each Party, as appropriate, to engage in domestic adaptation planning and implementation (Article 7.9) and encourages Parties to communicate such action (Article 7.10).
37. The Agreement 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 12). Parties are also required to consider the concerns of Parties whose economies are likely

to be impacted as a result of actions taken to address climate change (Article 4.15).

Australia's implementation of the Agreement

Mitigation and Australia's Nationally Determined Contribution (NDC)

38. Australia submitted its intended NDC in August 2015. The NDC includes an emissions reduction target of 26-28 per cent below 2005 levels by 2030. The target will halve Australia's per capita emissions compared with 2005 levels and reduce the emissions intensity of our economy by two-thirds. The target compares well to other developed countries against a range of metrics. Australia's NDC builds on previous action and is consistent with strong economic growth and jobs (Australian Government UNFCCC Taskforce (2015), Final Report, 'Setting Australia's Post-2020 Target for Reducing Greenhouse Gas Emissions').²
39. 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.
40. Australia's policies and measures will evolve over time as circumstances change and progress is made towards the 2030 target. In 2017, the Government will take stock of progress on Australia's emissions reductions policies.

Australia's provision of support, including finance

41. Australia can determine the priorities of its climate finance, technology transfer and development and capacity building programs (Articles 9, 10, 11). The requirement to include in reporting, where available, forward looking plans on climate finance (Article 9.5) is consistent with reporting under Australia's foreign aid program.
42. 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. 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.

Reporting and review

43. 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

² <https://www.dpmc.gov.au/resource-centre/domestic-policy/setting-australia%E2%80%99s-post-2020-target-reducing-greenhouse-gas-emissions>

inventory to the UNFCCC annually. Further arrangements for reporting and review consistent with the obligations contained in this Agreement will be negotiated in advance of 2020. They are not expected to be significantly different from existing requirements.

Other

44. 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.

Regulatory Impact

45. The Office of Best Practice Regulation (OBPR) confirms that a Regulation Impact Statement is not required for the ratification of the Agreement.

Costs

46. Ratification of the Agreement would not trigger specific policy action and/or associated costs beyond those associated with efforts to achieve Australia's NDC, and take appropriate adaptation action, under the existing policy framework.
47. 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 Australian Government will 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.
48. Australia's contribution to collective climate finance commitments in the Agreement will be considered as part of the Budget process.
49. There are no prescribed penalties associated with failing to achieve obligations set out in the Agreement or NDCs submitted by Australia. Reputational costs would be a serious consideration.
50. Other than those listed above, there are no additional costs to Australian business or industry, or to State and Territory governments, associated with ratifying the Paris Agreement.

Future treaty action

51. Any amendments to the Agreement can take place according to the provisions of Article 15 of the UNFCCC, applied *mutatis mutandis* (Article 22). In accordance with this Article, any Party can submit a proposed amendment which is required to be communicated to the Parties at least six

months in advance of the Conference of the Parties to the Agreement at which it is proposed for adoption. The Parties shall make all effort to reach agreement on any proposed amendment by consensus or, failing that, an amendment can be adopted by a three-fourths majority vote of Parties present and voting. Amendments will only enter into force for a Party that has accepted it, once three-fourths of Parties have deposited instruments of acceptance.

52. Inclusion of, and amendment to, any future annexes, can take place according to Article 16 of the UNFCCC, applied *mutatis mutandis* (Article 23). The inclusion of, or amendment to, any future annexes is subject to the rules for submitting and adopting amendments outlined in paragraph 54 above. Any future annex will enter into force for all Parties six months after being notified of its adoption, except for those Parties that have notified the Depository of non-acceptance.
53. No reservations may be made to the Agreement (Article 27). Article 24 of the Agreement applies Article 14 of the UNFCCC concerning settlement of disputes *mutatis mutandis*, which, amongst other things, provides for declarations accepting submission of a dispute to the International Court of Justice and /or arbitration. Australia has not made such a declaration under the UNFCCC and it is not proposed that Australia make such a declaration under the Agreement. Disputes between the Parties on the interpretation and application of the Agreement are otherwise subject to negotiation and compulsory conciliation.
54. Any future treaty action, including an amendment to the Agreement, would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

55. Any Party can withdraw from the Agreement by giving written notification to the Depository (the United Nations Secretary General) at any time after three years from the date the Agreement enters into force for that Party (Article 28).
56. A Party to the Agreement may also withdraw from the Agreement by withdrawing from the UNFCCC pursuant to Article 25 of the UNFCCC (Article 28.3).
57. Any withdrawals or denunciations would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Contact details

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ATTACHMENT ON CONSULTATION

Paris Agreement

(Paris, 12 December 2015)

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CONSULTATION

58. The Agreement was negotiated over a period of four years under the UNFCCC.
59. The Australian Government undertook extensive consultation with stakeholders throughout the UNFCCC negotiations.
60. In 2015 a Department of Prime Minister and Cabinet UNFCCC Taskforce was established to provide advice to Government on Australia's NDC. The Taskforce conducted extensive consultation with the public, businesses, non-government organisations, the academic community, other federal government agencies and State, Territory and local governments. No State and Territory government representatives were directly engaged in negotiating the Agreement.
61. State and Territory governments were informed of the progress of negotiations, through the Commonwealth-State-Territory Standing Committee on Treaties (SCOT).

