

## Submission to the Joint Standing Committee on Treaties:

### The 2015 Paris Climate Agreement

*Dr Luke Kemp<sup>1</sup>*

#### Introduction

The 2015 Paris Climate Agreement (PCA) represents the pinnacle of international efforts to address anthropogenic climate change. The PCA is a legal treaty<sup>2</sup> under the United Nations Framework Convention on Climate Change (UNFCCC). It is a 'pledge and review' agreement whereby member Parties submit nationally determined contributions (NDCs) on climate action every five years. The collective effort of the NDCs will then be reviewed as part of a global stocktake every five years. An outline of the agreement architecture and process is provided below in Figure 1.

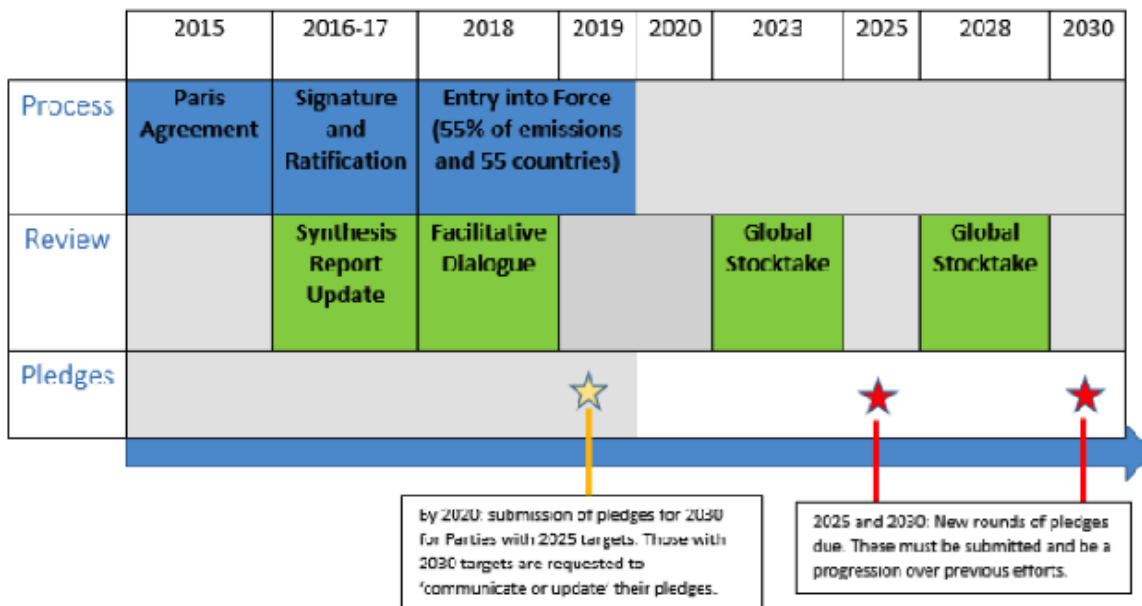


Figure 1: The Pledge and Review Process of the PCA

The agreement will enter into force once 55 countries accounting for 55% of global emissions have ratified the treaty. Any country that does not ratify the agreement will likely face significant costs, including but not limited to:

- A loss of reputation and increased international and diplomatic pressure;
- An inability to use market-mechanisms created under the agreement;
- Undermining international efforts to address anthropogenic climate change, the impacts of which Australia is vulnerable to.

#### Legal Obligations

The PCA creates few substantive legal obligations for Annex I (developed countries) ratifying countries. The key legal obligations created by the PCA are detailed below in Table 1 alongside an analysis of their relevance to Australia.

<sup>1</sup> Lecturer, Fenner School of Environment and Society, and the Crawford School of Public Policy (The Australian National University).

<sup>2</sup> That is, given its provisions for ratification and the imposed obligations, it would be considered binding under international law and the 1969 Vienna Convention on the Law of the Treaties.

Article(s)	Legal Obligation	Relevance to Australia
<i>Article 4.2.</i>	To “ <b>prepare, communicate and maintain successive</b> ” an NDC that it intends to achieve. This is accompanied by an obligation to “ <b>pursue domestic mitigation measures</b> , with the aim of achieving the objectives of such contributions.”	Australia has already communicated an intended NDC (INDC). <b>The obligation to maintain, prepare and communicate a pledge is not an onerous one.</b> While Australia’s domestic policies may be inadequate in achieving domestic mitigation objectives, they are nonetheless instruments in pursuit of domestic objectives.
<i>Article 4.3.</i>	Each <b>successive NDC shall represent a progression beyond existing efforts</b> and reflect the highest possible ambition.	Given that Australia’s existing INDC is on the lower end of possible ambition and significantly lower than suggested by bodies such as the Climate Change Authority and IPCC, <b>creating progressively stronger domestic targets should be well within national abilities.</b>
<i>Articles 4.8 and 4.9.</i>	To <b>communicate an NDC every five years</b> and provide necessary clarifying information.	This is purely a communicative and reporting obligation. It will impose few additional costs, particularly given that Australia <b>already submits regular national reports</b> to the UNFCCC.
<i>Article 4.13</i>	NDCs will be <b>supported by appropriate accounting measures.</b>	Australia already maintains relatively thorough domestic greenhouse gas inventories and accounting structures. These will <b>likely be sufficient for accounting for the NDC and fulfilling this obligation.</b>
<i>Article 9.5 and 9.7.</i>	<b>Provide biennial reports and ‘public interventions’</b> for the provision of <b>climate finance.</b>	The Australian government already provides climate finance to developing countries due to obligations under the UNFCCC. Additionally, is already provides publicly available information on its financing. <b>This further obligation will likely entail little additional effort.</b>
<i>Article 13.7</i>	To <b>maintain a national greenhouse gas inventory</b> , as well as information that is necessary to track domestic efforts to achieve the NDC.	Australia already possesses a well-developed national inventory which adheres to best practice IPCC methodologies. <b>Existing accounting mechanisms would likely be sufficient to provide the information necessary to track the progress of our NDC.</b>

As can be seen Table 2.2, the legal obligations imposed by the PCA are largely communicative and administrative by nature. Australia either already meets, or could meet with little additional effort, the substantive legal obligations of the PCA.

It should be noted that if Australia was unable to meet its communicated NDC the consequences, while unclear, would likely be primarily reputational. The compliance mechanism established under Article 15 still requires further negotiation to develop specific details and provisions. However, it is designed to be an expert committee that is “facilitative in nature”, as well as “non-adversarial and non-punitive”. A failure to meet an NDC under the PCA will likely result in suggestions for improvement rather than penalties.

## Conclusion and Recommendations

The legal obligations created by ratifying the PCA are minor and could be met by Australia with little additional effort. A failure to ratify the agreement could make Australia into a climate pariah and inhibit international efforts to address climate change. Given these potential costs and benefits, in my expert opinion Australia should ratify the PCA. Supporting international efforts to address climate change is clearly in the Australian national interest. A failure to ratify it in a timely manner would not be in our national interest, nor the wider global interest.