

CHAPTER 10

CONVENTION ON CLIMATE CHANGE (IMPLEMENTATION) BILL 1999

Introduction

10.1 This chapter addresses the Convention on Climate Change (Implementation) Bill 1999, a Bill for an Act to implement the United Nations Framework Convention on Climate Change (UNFCCC), and for related purposes.

Should Australia Introduce Legislation?

10.2 The need to introduce a legislative framework to implement greenhouse gas reduction initiatives has support from various stakeholders in Australia. Ms Esther Abram, Director of Environment Victoria, argued that:

There needs to be a legislative framework put in place in order to enshrine actions throughout Australia. We have seen to date that it has been left very much to voluntary measures. Voluntary measures have a place but they do not actually replace having a regulatory framework. That needs to come at a Commonwealth level and be replicated, and hopefully improved upon, by the states.¹

10.3 However, while there is growing support for early ratification of the Kyoto Protocol, the introduction of legislation requires agreement about the nature of such legislation.

10.4 Although comprehensive legislation will undoubtedly be required when the full implications of commitment to the Kyoto Protocol are negotiated, the Committee has considered two legislative options for greenhouse response. The first of these is the introduction of a greenhouse trigger in existing Federal legislation, which was discussed more fully in chapter 5 of this Report. The second option considered is the Convention on Climate Change (Implementation) Bill 1999, which has the potential to address Australia's obligations to reduce greenhouse gas emissions.

Convention on Climate Change (Implementation) Bill 1999

10.5 On 22 September 1999 the Senate referred the Convention on Climate Change (Implementation) Bill 1999, introduced as a private senator's bill by Senator Bob Brown, to the Environment, Communications, Information Technology and the Arts References Committee, to be considered in conjunction with the Committee's inquiry into Australia's Response to Global Warming.

1 *Proof Committee Hansard*, Melbourne, 20 March 2000, p 167.

10.6 The Bill seeks to give effect to Australia's obligations under the UNFCCC, and provides for the establishment of regulatory arrangements for Australia's greenhouse policy, including binding emissions targets, and a legislated emissions cap.²

10.7 If passed, the Bill would make the Australian Government's targets for reducing greenhouse gas emissions legally binding targets for each separate Source Category. The targets would be reviewed every five years after a public inquiry by the Australian Greenhouse Office.³ The initial target set by the regulations would be no more than 108 per cent of 1990 levels in the commitment period (section 8(3)).

10.8 If enacted, a Greenhouse Office would be established as a statutory authority to publish annual gas inventories, monitor compliance with the Convention, advise on approvals for greenhouse gas emissions, undertake public inquiries, raise public awareness, undertake research and development, provide policy advice to the Minister, and oversee trade in greenhouse gas emissions.⁴

10.9 Section 9 of the proposed Bill provides the Minister with the responsibility for ensuring that Australia meets its obligations under Article 3 of the Kyoto Protocol and Article 12 of the Protocol in relation to the Clean Development Mechanism (CDM). The Bill stipulates that evaluation of achievements under the CDM must exclude nuclear and fossil fuel technologies.

10.10 The Bill provides mechanisms:

- for assessing individual proposals, and providing approvals from the Minister, for actions which will, or are likely, to result in greenhouse gas emissions in excess of 50,000 tonnes within a 12 month period.⁵ Liability will rest with executive officers and directors of corporations;⁶
- for the provision of Greenhouse Impact Assessments with applications for approval of such an action. The Greenhouse Office will obtain evaluation of Greenhouse Impact Statements from independent environmental auditors;⁷ and
- for the establishment of a greenhouse task force in relation to each Source Category, noted in Annex A of the Kyoto Protocol, within six months of the

2 Explanatory Memorandum, Convention on Climate Change (Implementation) Bill 1999, Bill number 99178, Senate, 2 September 1999, p 1.

3 Explanatory Memorandum, Convention on Climate Change (Implementation) Bill 1999, Bill number 99178, Senate, 2 September 1999, p 2.

4 Explanatory Memorandum, Convention on Climate Change (Implementation) Bill 1999, Bill number 99178, Senate, 2 September 1999, p 2.

5 Convention on Climate Change (Implementation) Bill 1999, sections 25-30.

6 Convention on Climate Change (Implementation) Bill 1999, section 28.

7 Convention on Climate Change (Implementation) Bill 1999, sections 31-35.

commencement of the Act.⁸ Each industry task force will take the opportunity to work out their own plans and recommendations for the achievement of targets, and other functions set out in the regulations. If a plan is not prepared within two years this will become the responsibility of the Greenhouse Office. The plans are to be public and must be reviewed at least once every two years.⁹

10.11 The Committee received a small number of submissions addressing the Bill. In support of the proposed legislation, Greenpeace Australia remarked:

The current arrangements [to address greenhouse gas emission targets] are failing to provide a clear strategic framework or policy regime... [the introduction of] national greenhouse legislation, which is well within the Commonwealth's constitutional powers, can provide certainty whilst delivering significant environmental outcomes.¹⁰

10.12 Stanwell Corporation, also in support of the introduction of the Bill, commented:

The Bill will send a clear message that sustainability and environmentally responsible activities are no longer abstract concepts but represent a fundamental paradigm shift, which can serve as a driver for innovation and change.¹¹

10.13 Pacific Power noted that any Bill drawn up to address greenhouse gas reduction should be sufficiently flexible to allow the use of a range of policy options.¹² The organisation pointed out that, at the present time, the options for abatement are still being discussed and developed at national and international levels and suggested that:

A Bill of this intent should be developed closer to the time of its actual requirements as it is only at that time that sufficient information will be available to ensure that it is applicable to its purpose.¹³

10.14 A number of submissions questioned the content of the proposed Bill or whether the legislation was required at all. The Australian Greenhouse Office (AGO) argued that new legislation was not required.¹⁴ It noted that the Commonwealth Government had already established a body similar to that proposed in the Bill in the form of the AGO:

8 Convention on Climate Change (Implementation) Bill 1999, sections 36-39.

9 Convention on Climate Change (Implementation) Bill 1999, section 37.

10 Greenpeace Australia, Submission 183b, p 2431.

11 Stanwell Corporation Limited, Submission 91a, p 2338.

12 Pacific Power, Submission 98a, p 2342.

13 Pacific Power, Submission 98a, p 2343.

14 Australian Greenhouse Office, Submission 169a, pp 2374 ff.

Although not embodied in legislation, the AGO effectively has the status and reporting and accountability requirements of other Commonwealth agencies including the submission of an annual report to Parliament. Its [the AGO] governance arrangements with the Ministerial Council on Greenhouse means that it is subjected to much greater Ministerial oversight than most other Commonwealth agencies.¹⁵

10.15 The AGO also pointed out that, in relation to the preparation, evaluation and consideration of greenhouse impact assessments, as outlined in the Bill, the Commonwealth Government had already indicated, following the adoption of the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act), that it would consult with states and territories and stakeholders on the issue of applying a Commonwealth greenhouse trigger to proposals under that legislation.¹⁶

10.16 The AGO pointed out that the threshold in the EPBC Act is to be preferred as it would capture a narrower range of potential projects than those captured if a trigger of 50,000 tonnes was to be introduced under the proposed Bill:

Under the proposed model, the trigger would apply to actions or developments that are likely to result in greenhouse gas emissions over 0.5 millions tonnes of carbon dioxide equivalent in any 12 month period. This emissions threshold is equivalent to approximately 10 per cent of the average annual increase in Australia's total greenhouse emissions, and can therefore be considered to be of national environmental significance.¹⁷

10.17 In contrast, Woodside Energy Ltd concluded that the trigger point in the Bill was too high:

The Bill focuses on large emitters (>50,000 tonnes per annum), primarily industrial emitters. Use of a trigger threshold in this way negates a comprehensive approach to greenhouse emission abatement and is selective in its application... . Woodside strongly supports the response to greenhouse abatement being comprehensive over all sectors, sources and gases.¹⁸

10.18 Similarly, Pacific Power argued that the Bill focused on emissions at their source whereas, due to the nature of fuel usage, it is frequently multiple small users that create large emissions.¹⁹

10.19 Epic Energy drew the Committee's attention to the fact that the Bill appeared to give no recognition of early action taken, in terms of greenhouse gas abatement

15 Australian Greenhouse Office, Submission 169a, p 2376.

16 Australian Greenhouse Office, Submission 169a, p 2376.

17 Australian Greenhouse Office, Submission 169a, p 2376.

18 Woodside Energy Limited, Submission 129a, p 2371.

19 Pacific Power, Submission 98a, p 2343.

measures, prior to the commencement of the Bill.²⁰ The Committee supports the recognition of early action that is verifiable and transparent. The Committee's views on this issue are discussed further in chapter 9 of this report.

10.20 In relation to the provision of Industry Greenhouse Plans in the Bill, the AGO emphasised that it is currently adopting a range of policies and measures aimed at reducing greenhouse gas emissions for all sectors, including industry, which have the potential to achieve a similar result.²¹

10.21 In support of these initiatives, Woodside Energy Ltd noted:

We also believe that this Bill takes a simplistic approach to greenhouse regulation, being based on a command and control philosophy, rather than supporting and building on the partnerships already in place through the Greenhouse Challenge, and the comprehensive framework established by the 1998 National Greenhouse Strategy.²²

10.22 In spite of urging the Committee to recommend the passage of the Bill through Parliament, Greenpeace Australia commented on the limited number of measures employed in the proposed legislation:

Greenpeace recommends that the Committee investigate other measures to complement those already contained in the Bill, with specific reference to the UNFCCC and the Kyoto Protocol and greenhouse plans and programs introduced by governments overseas.²³

10.23 Woodside Energy Ltd also highlighted the domestic focus of emissions reductions in the proposed Bill.²⁴ It pointed out that the new legislation made no reference to measures such as the CDM, Joint Implementation and international emissions trading for emissions abatement. The Chamber of Minerals and Energy of Western Australia also argued that the Bill failed to 'recognise the flexibility mechanisms enshrined under the Kyoto Protocol'.²⁵

10.24 Pacific Power expressed concern over the timing and lack of flexibility in the Bill, which needed to allow for future development and use of a range of policy options, as a result of post Kyoto negotiations.²⁶ The company explained that:

20 Epic Energy, Submission 93a, p 2340.

21 Australian Greenhouse Office, Submission 169a, p 2377.

22 Woodside Energy Limited, Submission 129a, p 2369. See also Epic Energy, Submission 93a, p 2340.

23 Greenpeace Australia, Submission 183b, p 2432.

24 Woodside Energy Limited, Submission 129a, pp 2370-71.

25 Chamber of Minerals and Energy of WA Inc, Submission 74a, p 2275.

26 Pacific Power, Submission 98a, p 2343.

[The] Bill... fixes targets in total and in source categories that may not allow for such flexibility in the implementation of an emissions trading scheme.²⁷

10.25 The Committee acknowledges these concerns, and notes that the wording of section 8(3) of the Bill, which sets out national emissions limits, is somewhat vague. The initial targets are required to be not more than 108 per cent of the 1990 emissions levels in the first commitment period, and the section fails to specify whether this amount should be derived from the 1990 baseline calculation allowed under the Kyoto Protocol. It also fails to allow for domestic emitters to purchase permits on the international market. The Committee notes that, in the case of a domestic emissions trading system, the domestic allocation of permits would need to be capped at 108 per cent of the 1990 baseline during the first commitment period (2008 to 2012), which would allow for the purchase of permits offshore once that supply was exhausted.

10.26 The Chamber of Minerals and Energy of Western Australia also expressed concern that the legislation failed to provide a 'least cost, practical and effective means of responding to greenhouse issues in Australia'.²⁸ In support of this argument, Pacific Power maintained that 'the Bill may cause the Australian community to pay much more than necessary to achieve the desired outcome'.²⁹

10.27 Addressing the content of the proposed legislation, Greenpeace Australia recommended targets and a timetable for the Bill which:

... should include a clause committing Australia to adjust its greenhouse gas emission reduction targets downward over time and establishing a timetable of reductions.³⁰

10.28 Greenpeace added that, if enacted, there should be an annual review because of the urgent need to tackle climate change emissions issues.³¹

10.29 Ministerial approval of actions was also the subject of concern. Greenpeace recommended that, under clause 30 of the proposed Bill, the Minister should be required to give reasons for the grant or denial of an application for approval, and that this decision should be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.³²

10.30 Woodside Energy Ltd suggested that:

27 Pacific Power, Submission 98a, p 2342.

28 Chamber of Minerals and Energy of WA Inc, Submission 74a, p 2275.

29 Pacific Power, Submission 98a, p 2342.

30 Greenpeace Australia, Submission 183b, p 2433.

31 Greenpeace Australia, Submission 183b, p 2433.

32 Greenpeace Australia, Submission 183b, p 2434. See also Woodside Energy Limited, Submission 129a, p 2371.

The Bill places all greenhouse regulation in the hands of the Minister for Environment as the Minister in-charge of the proposed Greenhouse Office.³³

10.31 However, the organisation did point out that, where there was a need for Australia to address obligations under the Kyoto Protocol, which raise concerns about international trade, competitiveness and the maintenance of national interest and wealth, a ‘whole-of-government’ approach to greenhouse gas abatement was desirable.³⁴

10.32 The evidence presented to the Committee provides mixed signals about the efficacy of the Bill. The Bill is variously seen as being too broad and too narrow in scope, as well as duplicating existing national institutional arrangements while not acknowledging proposed international flexibility mechanisms.

Provisions of the Bill

10.33 In regard to the proposal for Greenhouse Impact Assessments, the Committee believes that a better mechanism to achieve the same outcome is the Government’s proposed addition of greenhouse emissions in the EPBC Act as a ‘matter of national environmental significance’. This would trigger the environmental impact assessment of new projects, which could cause significant new emissions.

10.34 The EPBC Act is an established legislative mechanism for triggering state and Commonwealth environmental impact assessment, provides for due process and administrative and judicial review, and was the subject of extensive consultation with stakeholders and the Parliament prior to its introduction. It also enables greenhouse impacts to be assessed in tandem with related environmental impacts and thus provide for more effective and cohesive assessments.³⁵

10.35 The Committee supports abatement action in the form of efficiency improvements in fossil fuel use in developing countries being included in the CDM and thus demurs from this provision in the Bill. However, the Committee supports the exclusion of nuclear technology from the CDM due to its negative environmental impact. A discussion on this issue is included in chapter 3.

10.36 The Committee does not support the imposition of sectoral caps on emissions as envisaged in section 8(2)(a). An effective national emissions trading system should be sufficient to ensure simultaneous economy-wide abatement without the use of sectoral caps, and would thus ensure that least-cost opportunities for abatement are taken up first. Design issues of a domestic emissions trading scheme are discussed in chapter 9 of the report.

33 Woodside Energy Limited, Submission 129a, p 2371.

34 Woodside Energy Limited, Submission 129a, p 2371.

35 See this Committee’s report, Environment Protection and Biodiversity Conservation Bill 1998 and Environmental Reform (Consequential Provisions) Bill 1998, April 1999.

10.37 In relation to the Bill's proposal for Industry Greenhouse Plans, the Committee believes that they would be an administratively onerous approach to abatement that would also be difficult to design and enforce for all sectors. Although some industry specific greenhouse emission reduction strategies may be warranted, the Committee believes that it would be expensive and difficult to obtain industry co-operation and coverage across all sectors. This does not exclude an assessment by industry sector of emission abatement opportunities and the establishment of sectoral benchmarks for best practice as discussed in chapter 9.

10.38 The Committee views the introduction of an emissions trading system, as discussed in chapter 9 of this report, as a more effective mechanism for encouraging least cost abatement across a wide range of emissions sectors. In contrast to the Bill's proposal for industry plans, it would have the advantage of encouraging (and rewarding) more environmentally responsible investment decisions. Emissions trading would also create flexibility, lower the cost of abatement to the Australian economy, and provide revenues to Government that could be used to promote the uptake of clean technology, public transport, or the amelioration of negative social impacts. A mandatory emissions trading system would need to be enacted in separate legislation.

10.39 The Committee also believes that the provision under section 26(b), under which the Minister can prohibit an action 'that is likely to inhibit the achievement of targets for reducing greenhouse gas emissions', is difficult to interpret, creates too much ministerial discretion, and could generate significant uncertainty and policy inconsistency. It is also arguably inconsistent with a need for procedural fairness. A common view put to the Committee during this inquiry has been a need for clearly articulated principles and greater investment and policy certainty.

Conclusion

10.40 The Committee supports in principle the overall intent of the Bill to establish Australia's commitments under the Kyoto Protocol in legislation. It would demonstrate, through legislation, that Australia is committed to meeting those commitments and contributing to international efforts to arrest harmful human induced climate change. For these reasons the Committee welcomes the Bill as a contribution to ongoing debate over the best policy and community approaches to the problem.

10.41 However, the Committee does not support the passage of the Bill in its current form at this time in view of the following issues:

- there are a number of uncertainties relating to the Kyoto Protocol which remain to be resolved, including Australia's national target and 1990 baseline, and rules for the flexibility mechanisms; and
- some of the Bill's provisions are flawed and better mechanisms may be available to implement some of its proposed measures.

10.42 It is the Committee's view that that improved legislation could be designed once some of the uncertainties have been resolved at the next Conference of the Parties. However, the Committee does support the timely introduction of legislation.

Recommendation 105

The Committee does not support the passage of the Convention on Climate Change (Implementation) Bill 1999 in its current form.

The Committee recommends that comprehensive greenhouse legislation be developed as soon as possible and when greater certainty is established in relation to domestic and international greenhouse gas abatement targets and measures.

Recommendation 106

The Committee supports the immediate addition of greenhouse emissions to the *Environmental Protection and Biodiversity Conservation Act 1999* to act as a trigger for environmental impact assessment of new projects which could cause the production of significant new greenhouse gas emissions.

