

## AUSTRALIA AND KYOTO: IN OR OUT?

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### I INTRODUCTION

In the international negotiations on climate change in general and the negotiations concerning the *Kyoto Protocol to the United Nations Framework Convention on Climate Change* ('*Kyoto Protocol*') in particular, Australia has occupied the position of, at best, a reluctant partner and, at worst, a country whose engagement is little more than a naked defence of its coal and aluminium industries. The crisis over the future of the *Kyoto Protocol*, precipitated by its rejection by President George W Bush of the United States ('US'), has placed Australia's position again under an international spotlight. Of paramount importance at this juncture is whether Australia is 'in or out' of the *Kyoto Protocol*: will it play its fair role in tackling climate change as a member of the international community or will it shirk this responsibility and hide behind the skirts of the US?

This paper outlines a short history of successive Australian Governments' attitudes to the climate issue, and of Australia's international environmental reputation, before returning to the question posed above.

### II THE DIRTY DIGGERS

Since the First Conference of the Parties to the *United Nations Framework Convention on Climate Change* ('COP 1') in Berlin in 1995, Australia has been identified internationally as a member of a hard-line group of industrialised countries resistant to reducing greenhouse gas emissions.<sup>1</sup> At COP 1, the Parties agreed to the Berlin Mandate and to the establishment of the Ad Hoc Group on the Berlin Mandate ('AGBM').<sup>2</sup> The centrepiece of the Berlin Mandate was the

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1 Michael Grubb, Christiaan Vrolijk and Duncan Brack, *The Kyoto Protocol: A Guide and an Assessment* (1999) 50.

2 UNFCCC Secretariat, 'The Berlin Mandate' (Decision 1/CP.1) in *Report of the Conference of the Parties on its first Session, held at Berlin from 28 March to 7 April 1995: Addendum*, UN Doc FCCC/CP/1995/7/Add.1 (1995).

requirement to negotiate 'quantified limitation and reduction objectives'<sup>3</sup> for industrialised countries 'as a matter of urgency'<sup>4</sup> by the Third Conference of the Parties to the *United Nations Framework Convention on Climate Change* ('COP 3') in 1997. In what was to become a pattern in the negotiations, Australia was the last of the US-led industrialised countries to surrender its opposition to this commitment.

It was in the lead up to and at COP 1 that Australia, under the Keating Government, began to link its resistance to making commitments to reduce greenhouse gas emissions with the demand for similar commitments from developing countries. New developing country commitments, beyond those existing in the *United Nations Framework Convention on Climate Change* ('UNFCCC'),<sup>5</sup> were specifically excluded from the Berlin Mandate. This reflected the understanding reached in the UNFCCC that developed countries had to act first on climate change before specific binding obligations could be negotiated with developing countries. In this context, the negotiation of the *Kyoto Protocol* was seen as the necessary first step for industrialised countries.

Australia did not give up its resistance after COP 1. At the Second Conference of the Parties to the UNFCCC ('COP 2') in Geneva in 1996, midway through the work of the Berlin Mandate, Australia effectively sided with the Russian Federation and the OPEC countries, led by Saudi Arabia, in objecting to all or part of the Geneva Ministerial Declaration intended for that conference.<sup>6</sup> Australia objected in particular to the language in the Declaration relating to the negotiation of emission targets, although this was essentially drawn from the Berlin Mandate.

Australia's performance in the AGBM negotiations during 1995 and 1996 had already alarmed a number of countries. This came to a head at COP 2 where the then Conservative United Kingdom ('UK') Secretary of State for the Environment, John Gummer, felt obliged to attack 'Australia by name for its refusal to endorse the urgency of the problem. "They are prepared to put their coal exports to Japan as a greater priority than the future of the next generations"'.<sup>7</sup>

### III IN WHOSE INTERESTS?

In the lead up to COP 3, Australia engaged in a large scale diplomatic campaign using a high profile economic model, MEGABARE, prepared by the

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3 Ibid 5.

4 Ibid 6.

5 Opened for signature 4 June 1992, 31 ILM 849 (entered into force 21 March 1994).

6 UNFCCC Secretariat, *Report of the Conference of the Parties on its second session, held at Geneva from 8 to 19 July 1996, Part one: Proceedings*, Annex IV, 47, UN Doc FCCC/CP/1996/15 (1996); UNFCCC Secretariat, *Report of the Conference of the Parties on its second session, held at Geneva from 8 to 19 July 1996, Part two: Action taken by the Conference of the Parties at its second session, Addendum*, Annex: The Geneva Ministerial Declaration, 71, UN Doc FCCC/CP/1996/15/Add.1 (1996).

7 Paul Brown, 'US Endorses Cuts in Gas Emissions; Climate change "worse than war" Gummer says', *The Guardian* (London, England), 18 July 1996, <<http://www.guardian.co.uk>>.

Australian Bureau of Agricultural and Resource Economics ('ABARE'), a Federal Government research agency. The aim of this campaign was to persuade other countries of Australia's special situation as a fossil fuel dependent economy exposed to developing country competitors. The industry-funded ABARE model was used as the intellectual jackhammer to promote the Federal Government's view of Australia's interests. Few outside Australia, however, believed the model and its use became enshrouded in controversy. Word spread that MEGABARE was neither peer reviewed as the Government claimed nor independent. It became known throughout the negotiations that the sponsors of MEGABARE included Exxon (ie, Esso), Mobil, Texaco, the Australian coal and aluminium industries and others in the industrial sector.

These companies sat on the ABARE modeling project's steering committee, whose purpose was to provide a 'sounding board on policy, research and strategic issues'.<sup>8</sup> In May 1997, the Australian Conservation Foundation ('ACF') lodged a complaint with the Commonwealth Ombudsman that the steering committee was biased in favour of business interests. The Ombudsman found in favour of the ACF that the steering committee:

did not adequately conform to the characteristics of a government steering committee dealing with an important – and controversial – public policy matter. In particular that the development of the steering committee did not ensure a balance of views and technical skills.<sup>9</sup>

The Ombudsman's report also found that ABARE's claim that the modeling had been externally reviewed by Professor Dixon of the Monash University Centre of Policy Studies was erroneous.<sup>10</sup>

In many respects, the ideological leader of the Australian campaign ahead of COP 3 was Dr Brian Fisher, Director of ABARE. His approach to the scientific justification for action on climate change was summed up at the fourth session of the AGBM in 1996, which at the time was considering the implications of *IPCC Second Assessment Report: Climate Change 1995* of the Intergovernmental Panel on Climate Change ('IPCC').<sup>11</sup> Fisher declared that: 'The major lesson of the IPCC is that it is too early to come to a judgement about the implications for the level of emissions'.<sup>12</sup>

Through such statements, Australia positioned itself as an apparent sceptic of the ability of scientific knowledge to form a basis for action to reduce emissions. Australia also emerged as very insensitive to the concerns of those threatened by climate change. At the Royal Institute for International Affairs Conference in June 1996, which was attended by many negotiators, Fisher presented a paper in

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8 Commonwealth Ombudsman, *Report of the investigation into ABARE's External Funding of Climate Change Economic Modelling* (1998) 5.

9 *Ibid* 4.

10 Commonwealth Ombudsman, above n 8 and Commonwealth Ombudsman, *Report under section 35A of the Ombudsman Act 1976* (1998).

11 Intergovernmental Panel on Climate Change, *IPCC Second Assessment Report: Climate Change 1995* (1995).

12 William Hare and Keith Tarlo, 'Defending Coal: Global Equity and the Australian MEGABARE Report' (Paper presented at the Fifth Session of the Ad Hoc Group on the Berlin Mandate, Geneva, 9-13 December 1996) 1.

which he argued, in effect, that an optimal economic response for small islands subject to rising sea levels might be emigration.<sup>13</sup>

At the South Pacific Forum in September 1997, Prime Minister Howard added to this picture of a country in single-minded pursuit of a very narrow set of interests by essentially bullying the 14 other island nations into accepting his view that the Forum should not call for binding emission reductions. Speaking after signing the Forum Communiqué, the Prime Minister of Tuvalu, Mr Bikenibeu Paeniu, said that Prime Minister Howard had shown no respect for the Islands' concerns over future increases in the sea level.<sup>14</sup>

#### IV AUSTRALIA'S GOALS

Australia's aim in the negotiations was clear: to secure a deal for itself, if the COP 3 negotiations did not collapse, that would enable its emissions to increase substantially. The MEGABARE model showed that under the Australian model of 'equity' in the sharing of emission abatement efforts, the coal industry in Australia could expand whilst contracting in all other Organisation for Economic Co-operation and Development ('OECD') countries. Space does not permit detailing of this model's flaws, suffice it to say that they include rigid assumptions that generate unrealistically high abatement costs.<sup>15</sup>

The end result of this campaign was that at COP 3 Australia secured a target under the *Kyoto Protocol* that permitted an increase in industrial greenhouse gas emissions of eight per cent compared to 1990 levels for the first commitment period 2008-12. Most other industrialised countries had to stabilize or reduce their emissions. Iceland secured a 10 per cent increase and Norway a one per cent increase.

However, this increase was not the end of the story for Australia. At the last minute, Australia insisted that a provision be added under art 3.7 of the *Kyoto Protocol* that would permit it to add its 1990 land use change carbon dioxide emissions – deriving essentially from deforestation – to its allowed emissions in the first commitment period. This allowed for Australia's emissions of industrial greenhouse gases to increase to some 20-30 per cent above 1990 levels,<sup>16</sup> rather

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13 Brian Fisher, 'Equity and the Differentiation of Annex I Commitments' (Paper presented at the Conference 'Sharing the Effort: Analysing Options for Differentiating Commitments under the Framework Convention on Climate Change', London, 6-7 June 1996).

14 Geoffrey Barker, 'Howard has it his way', *The Australian Financial Review* (Sydney), 22 September 1997, <<http://www.afr.com.au>>.

15 Clive Hamilton, *Running From the Storm: The Development of Climate Change Policy in Australia* (Unpublished, 2001).

16 William Hare and Malte Meinshausen, *Cheating the Kyoto Protocol: Loopholes undermine environmental effectiveness* (2000), (also at <<http://www.greenpeace.org/~climate/climatecountdown/loopholesstopcheating.pdf>> at 5 July 2001). This analysis uses the most recent emission inventory available for Australia: UNFCCC Secretariat, *National communications from Parties included in Annex I to the Convention: greenhouse gas inventory data from 1990 to 1998 Report on national greenhouse gas inventory data from 1990 to 1998*, UN Doc FCCC/SBI/2000/11 (2000).

than the eight per cent allowed by its nominal target. As a consequence, Australia, along with Russia, has been labeled as one of the two big 'winners' under the *Kyoto Protocol*.<sup>17</sup> The so-called 'Australia Clause' was secured by what many observers consider to have been a strategy of threatening to break the international consensus unless Australia got what it demanded.

## V HIDING UNDER THE UMBRELLA

Since the conclusion of the *Kyoto Protocol*, the international community has sought to negotiate the rules for its implementation including, inter alia, rules governing: land use change and forestry (arts 3.3 and 3.4); emissions trading (art 17); Joint Implementation (art 6); the Clean Development Mechanism ('CDM')(art 12); monitoring and verification (arts 5, 7 and 8); and compliance (art 18). This work, and related work on the *UNFCCC*, was organized into a timetable in the 1998 *Buenos Aires Plan of Action* ('BAPA'), for conclusion at the Sixth Conference of the Parties to the *UNFCCC* ('COP 6') in The Hague in November 2000.<sup>18</sup>

In the three years following COP 3, Australia coordinated its international approach to the *Kyoto Protocol* and to the completion of the *BAPA* within the so-called Umbrella Group of the US, Japan, Australia, Canada, New Zealand, Russia, Ukraine, Norway and Iceland.<sup>19</sup> During this period, Australia has tended to support decisions which would result in the *Kyoto Protocol* being weaker rather than stronger in its environmental effectiveness. Australia has been a strong advocate of expanding the so-called sink provisions of the *Kyoto Protocol* including those under arts 3.3 and 3.4, and of the inclusions of a range of land use change and forestry activities under art 12 as eligible activities for the CDM. Under the terms of the *Kyoto Protocol*, each credited sink activity adds to the assigned amount of the Party concerned. Thus, every tonne of carbon sequestered under the terms of the *Kyoto Protocol* results in an additional tonne of fossil fuel related emissions. Hence, Australia and others have been keen to maximise the degree to which sink activities can be included.

In May 2000, the *IPCC Special Report: Land Use, Land Use Change and Forestry* found that if all options were included in arts 3.3 and 3.4 there would be little incentive for action to reduce industrial emissions.<sup>20</sup> Australia, the US, Canada and Russia insisted on deletion of the part of the draft Summary for Policy Makers that made this clear:

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17 Sebastian Oberthür and Hermann Ott, *The Kyoto Protocol: International Climate Policy for the 21st Century* (1999).

18 UNFCCC Secretariat, 'The Buenos Aires Plan of Action' (Decision 1/CP.4) in *Report of the Conference of the Parties on its fourth session, held at Buenos Aires from 2 to 14 November 1998: Addendum, 4*, UN Doc FCCC/CP/1998/16/Add.1 (1999).

19 Oberthür and Ott, above n 17, 294.

20 Intergovernmental Panel on Climate Change, *IPCC Special Report: Land Use, Land-Use Change and Forestry* (2000), (also at <<http://www.grida.no/climate/ipcc/spmpdf/srl-e.pdf>> at 28 June 2001).

Commitments under the *Kyoto Protocol* require Annex I Parties to reduce emissions by about 200 MtCy-1 below 1990 levels and about 750 MtCy-1 below business-as-usual projections based on the IPCC IS92a scenario. A simple comparison suggests that the potential impact of Article 3.3 and 3.4 activities in Annex I countries alone could be comparable to the projected magnitude of reductions required by Annex I Parties.<sup>21</sup>

On other key issues, Australia has adopted problematic positions. At COP 6, Australia opposed the language in the Chairman's Proposal urging Annex I Parties to 'refrain' from including nuclear power as a CDM activity.<sup>22</sup> Australia also opposed the Chairman's proposal to give some priority to renewable energy and energy efficiency projects over clean-coal technology projects in the CDM,<sup>23</sup> and opposed the proposal of a compliance system that had binding consequences.

On the issue of the 'Australia clause' in art 3.7, Australia successfully opposed efforts to subject its emissions inventories to international scrutiny prior to a final determination as to its eligibility for, and quantitative benefit from, this provision. It did so by insisting that it would not ratify the *Kyoto Protocol* if such scrutiny were demanded. Yet a scientific workshop hosted by the Australian Government in March 1997 found that up to 60 million hectares of Australia is affected by 'vegetation thickening' which stores up to 100-125 million tonnes of carbon dioxide annually. If such a sink were included in Australia's emission inventory in 1990 it may disqualify Australia from using the special provision of art 3.7.

A key question that arises is whether (and if so how) vegetation thickening should be included in land use, land use change and forestry inventory data in order to determine if Australia qualifies under art 3.7. If there were a requirement to count vegetation thickening in Australia's 1990 emission profile, 'there is the prospect of Australia becoming a net sink'.<sup>24</sup> In other words, on the basis of current scientific understanding, it appears that either Australia does not qualify for art 3.7, or if it does it would obtain a substantially reduced benefit.

In relation to additional land use change and forestry activities under art 3.4, Australia wanted the overall cap on these activities increased from 3.5 per cent to 4 per cent of its 1990 emissions.

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21 Intergovernmental Panel on Climate Change, 'IPCC Special Report: Land Use, Land-Use Change and Forestry – Draft Summary for Policy Makers' (Paper presented at the 16th Session of the IPCC, Montreal, 1-8 May 2000) 13.

22 UNFCCC Secretariat, *Implementation of the Buenos Aires Plan of Action* (Decision 1/CP.6) <<http://www.unfccc.de/resource/docs/cop6/dec1-cp6.pdf>> at 28 June 2001.

23 Ibid 6: 'the following activities should be given priority and will have expedited consideration ... renewable energy ... energy efficiency improvements'.

24 Australian Greenhouse Office, *Greenhouse Sinks and the Kyoto Protocol: An Issues Paper* (2000), (also at <http://www.greenhouse.gov.au/pubs/internationalsinks> at 5 July 2001).

## VI GONE BUSH: ALL THE WAY WITH THE USA

The collapse of COP 6 was neither inevitable nor did it spell the end of the *Kyoto Protocol*.<sup>25</sup> The election of George W Bush to the Presidency of the US has emerged as far greater threat. In a letter to senior senators he opposed the *Kyoto Protocol* 'because it exempts 80 per cent of the world, including major population centers such as China and India, from compliance, and would cause serious harm to the US economy'.<sup>26</sup> This letter and subsequent statements have signaled the United States' intent to unilaterally walk away from the *Kyoto Protocol*.

The sustained global response following this development was overwhelming. Traditional US allies such as Japan expressed dismay and great concern at this development. Australia, however, was one of the few exceptions. It failed to criticise the US and senior ministers made public statements supporting the US position. Senator Nick Minchin, Minister for Industry, Science and Resources, for example, was quoted in the following terms:

Senator Minchin echoed Foreign Minister Mr Alexander Downer's support for the reiteration by the US of its rejection of Kyoto. "I welcome the US's reiteration that without the participation of China and India the protocol's not workable," Senator Minchin said.<sup>27</sup>

On 1 April 2001 Prime Minister Howard wrote to President Bush and failed to express any concerns in relation to the United States' rejection of the *Kyoto Protocol*. Instead he supported President Bush's demand for developing countries to take on commitments:

In my view an effective global framework to address climate change needs to include commitments from all major emitters; ... This will require that we engage developing countries, and seek firm commitments from them on future annual emissions.<sup>28</sup>

Politically this letter was seen as clear support for the Bush position. Prime Minister Howard appears to be alone amongst heads of government in the industrialised countries in not raising concerns over President Bush's rejection of the *Kyoto Protocol*. Subsequently, at the Pew Center Conference on Equity and Global Climate Change, the Environment Minister, Senator Robert Hill reinforced Prime Minister Howard's position. He argued that it was not possible for the *Kyoto Protocol* to be effective without the US, and that Australia, with

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25 Michael Grubb and Farhana Yamin, 'Climatic collapse at The Hague: What happened, why, and where do we go from here?' (2001) 77 *International Affairs* 261.

26 George W Bush, *Text of a Letter from the President to Senators Hagel, Helms, Craig and Roberts*, Press Release (13 March 2001) <<http://www.whitehouse.gov/news/releases/2001/03/20010314.html>> at 3 June 2001.

27 Nick Hordern, 'Minchin slams ALP greenhouse policy', *The Australian Financial Review* (Sydney), 22 March 2001, 8.

28 John Howard, *Letter from Prime Minister John Howard to United States President George W Bush* (2001) <<http://www.lavoisier.com.au/papers/articles/Howardletter.html>> at 4 July 2001.

the US, would therefore have to explore 'other forms of international architecture'.<sup>29</sup>

Following the release of the US National Energy Policy<sup>30</sup> on 17 May 2001, with its clear implication that emissions of carbon dioxide from fossil fuel use are not to be curtailed, Senator Hill stated that the *Kyoto Protocol* could not be effective without US involvement and that an alternative should be sought.<sup>31</sup> This put Senator Hill in effective opposition to the Chairman of COP 6, Mr Jan Pronk, Minister for the Environment of the Netherlands who was working to keep the resumed negotiations on track.

By backing the US at this stage, the Australian Government is, in effect, helping the US Administration undermine the viability of the *Kyoto Protocol* at the moment of its greatest weakness. Although it can enter into force with ratification by the European Union, the Russian Federation, Japan and most of Central and East Europe,<sup>32</sup> Australia's defection would be politically damaging to international efforts to make the *Kyoto Protocol* work in the absence of the US.

## VII TIMELY WARNINGS

Australia is backing US attempts to undermine the *Kyoto Protocol* at a time when the science of climate change is demanding urgent action. In early May 2001, the Commonwealth Science and Industrial Research Organisation ('CSIRO') released new climate projections for Australia. Temperatures are projected to rise by 1-6 degrees Celcius by 2070 with a marked decrease in rainfall projected for some regions, for example up to 60 per cent in south-western Australia and up to 35 per cent in Queensland.

Reinforcing the CSIRO's report is the *IPCC Third Assessment Report: Climate Change 2001*, which was completed in February 2001.<sup>33</sup> This report found that large areas of mainland Australia will experience significant decreases in rainfall in the 21<sup>st</sup> Century which would adversely affect water supply, agriculture and the survival of key species. Drought frequency and consequent stresses on agriculture are likely to increase, and a small rise in

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29 Robert Hill, (Speech presented at the Equity and Global Climate Change Conference, Washington DC, 17 April 2001) <<http://www.pewclimate.org/events/hill.cfm>> at 3 June 2001 [19].

30 National Energy Policy Development Group, *Reliable, Affordable and Environmentally Sound Energy for America's Future* (2001).

31 'EPA claims US will not block Kyoto negotiations', *ABC News Online* (Australia), 18 April 2001, <[http://www.abc.net.au/news/2001/04/item20010418075810\\_1.htm](http://www.abc.net.au/news/2001/04/item20010418075810_1.htm)> at 17 June 2001.

32 Under art 25, the *Kyoto Protocol* will enter into force when ratified by 55 countries, including those that account for 55 per cent of the 1990 industrial carbon dioxide emissions of Annex B countries. As of 9 May 2001, 34 countries have ratified, with one from the Annex B group, Romania, accounting for about one per cent of the required threshold. Ratification by the European Union, Japan, Russia and Central and East European countries would exceed the 55 per cent carbon dioxide threshold and, with the ratification of 33 other developing countries as of 9 May, would exceed the 55-country threshold for entry into force.

33 Intergovernmental Panel on Climate Change, *IPCC Third Assessment Report: Climate Change 2001* (2001).



temperature of one degree Celcius would threaten the survival of species already near their upper temperature limit in the marginal alpine regions and in parts of south-western Australia. In addition, Australian coral reefs and freshwater wetlands are threatened by projected climate change. Ove Hoegh-Guldberg has predicted that the bleaching of coral on the Great Barrier Reef, induced by warm water, may become an annual event as early as 2030 as a consequence of climate change.<sup>34</sup>

## VIII CONCLUSION

As a result of growing alarm in the international scientific community over the US threat to the *Kyoto Protocol*, the *Science* magazine published an editorial statement from 17 academies of science including the Australian Academy of Sciences arguing that the ratification of the *Kyoto Protocol* 'represents a small but essential first step toward stabilising atmospheric concentrations of greenhouse gases'.<sup>35</sup>

The Australian public appears to be aware of the issue with 80 per cent of the population supporting the ratification of the *Kyoto Protocol* without the US if necessary.<sup>36</sup> The Howard Government, however, seems ready to run all the way with President George W Bush. The Federal Government is turning its back on the fact that that the *Kyoto Protocol* is still the best and only way to begin, internationally, to address the risk of dangerous and potentially catastrophic climate change. In so doing, it is neglecting Australia's long-term interests as a country highly vulnerable to climate change and hence ultimately reliant on the goodwill of the international community to prevent projected damage. With a federal election due by end of 2001, the big question is whether the Australian Labor Party will reject the narrow self-interest and short-sightedness of the current Government's position and back the ratification of the *Kyoto Protocol* irrespective of the stance of the US.

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34 Ove Hoegh-Guldberg, 'Climate change, coral bleaching and the future of the world coral reefs' (1999) 50 *Marine and Freshwater Research* 839.

35 Australian Academy of Sciences et al, 'The Science of Climate Change' (2001) 292(5520) *Science* 1261.

36 Newspoll Market Research, 'Greenhouse Gas' (*Kyoto Protocol* Study prepared for Greenpeace Australia Pacific, 6-8 April 2001). Of the remaining 20 per cent, 10 per cent did not know and 10 per cent answered no.