

Climate Protection Bill

The Parliament of Australia enacts:

Part 1 - Preliminary

1 Name of Act

This Act may be cited as the *Climate Protection Act 2007*.

2 Commencement

This Act commences on the date it receives royal assent.

3 External Territories

This Act extends to the external Territories.

4 Interpretation

In this Act, unless the contrary intention appears:

Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

Climate system means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.

Commitment period means the period during which the average greenhouse gas emissions must not exceed the relevant target.

Conference of Parties means the Conference of Parties to the Convention

Convention means the United Nations Framework Convention on Climate Change adopted at New York on 9 May 1992.

Eligible renewable energy source has the same meaning as in section 17 of the *Renewable Energy (Electricity) Act 2000*

Greenhouse gases means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and reemit infrared radiation, and include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydro fluorocarbons (HFCs), perfluorocarbons (PFC's) and sulphur hexafluoride (SF₆). For the purposes of this Act, the definition of greenhouse gases does not include water vapour.

Greenhouse gas emissions means emissions of greenhouse gases measured in tonnes of carbon dioxide equivalents.

Kyoto Protocol means the Kyoto Protocol to the United Nations Framework Convention on Climate Change, as amended by any amendment to the Protocol that Australia accepts.

Minister means the Minister for the Environment and Water Resources.

Montreal Protocol means the Montreal Protocol on Substances that Deplete the Ozone Layer, adopted in Montreal on 16 September 1997 and subsequently adjusted and amended.

National Greenpower Accreditation Program means the collaborative program overseen by the National Greenpower Steering Group which provides independent accreditation of products offered by greenpower providers.

Public transport means trains, ferries, buses, light rail and taxis available for public use.

Renewable energy means energy derived from an eligible renewable energy source

Sectors include agriculture, mining, power, industry, and transport including air transport.

Sink means any process, activity or mechanism which removes a greenhouse gas, or a precursor of a greenhouse gas, from the atmosphere.

Source means any process or activity which releases a greenhouse gas, or a precursor of a greenhouse gas into the atmosphere.

5 Objects of Act

- (1) The Parliament, by passing this Act, acknowledges:
 - a. That climate change represents a severe and immediate threat to the environment in Australia and globally;
 - b. That human activities in Australia and globally have been substantially increasing the atmospheric concentrations of greenhouse gases;
 - c. That these human derived greenhouse gases will increase the natural greenhouse effect;
 - d. That this has resulted in and will continue to result in additional warming of the Earth's surface;
 - e. That this has and will continue to adversely effect ecosystems and humankind;
 - f. That, as at the date of assent to this Act, Australia has among the highest per capita emissions of human derived greenhouse gases in the developed world;
 - g. That immediate and effective action is required, both in Australia and globally, to substantially reduce greenhouse gas emissions.

- (2) The objects of this Act are to:
- a. Ensure that Australia meets its obligations under the Convention and the Kyoto Protocol;
 - b. To substantially reduce human derived greenhouse gas emissions from Australia;
 - c. To set a mandatory target for reducing human derived greenhouse gas emissions from Australia by 30% below 1990 levels by 2020 and 80% below 1990 levels by 2050, and to ensure Australia meets this target;
 - d. To substantially increase the percentage of Australia's energy being sourced from renewable energy sources;
 - e. To assist with global efforts to stabilise and reduce human derived greenhouse gas concentrations in the atmosphere;
 - f. To assist developing countries to adjust to a carbon constrained world and mitigate the impacts of climate change;
 - g. To implement **ecologically sustainable development**. The principles of ecologically sustainable development are:
 - i. the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation,
 - ii. inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
 - iii. conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration, and
 - iv. improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
 - polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement, and
 - the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste.

Part 2 Ratification of the Kyoto Protocol

6 Ratification of Kyoto Protocol

The Government of the Commonwealth of Australia must deposit its instrument of ratification of the Kyoto Protocol with the United Nations within 30 days of the commencement of this Act.

7 Kyoto target

The Prime Minister must ensure that Australia's aggregate human induced carbon dioxide equivalent emissions of greenhouse gases listed on Annex A of the Kyoto Protocol in the first commitment period, from 2008 to 2012, do not exceed the assigned amount of 108% of 1990 levels set out in Annex B of the Kyoto Protocol.

8 Annual greenhouse gas inventory

- (1) The Prime Minister must, within 3 months of the commencement of this Act establish a national system for the estimation of human induced greenhouse gas emissions by sources, and removal by sinks, all greenhouse gases not controlled by the Montreal Protocol. This national system must be established strictly in accordance with Article 5 of the Kyoto Protocol.
- (2) The Prime Minister must publish Australia's annual inventory of greenhouse gas emissions in accordance with Article 7 of the Kyoto Protocol, and submit it for review by expert review teams in accordance with Article 8 of the Kyoto Protocol.
- (3) The Prime Minister must cause a copy of Australia's annual inventory of greenhouse gas emissions, and the outcomes of a review conducted in accordance with subsection (2) to be tabled in each House of Parliament, and advertised in a newspaper circulating nationally.
- (4) The Prime Minister must also submit a national communication under Article 12 of the Convention, in accordance with Article 7 of the Kyoto Protocol.

Part 3 Mandatory target for reducing greenhouse gas emissions

9 National Target for reducing greenhouse gas emissions

- (1) It is the duty of the Prime Minister to ensure that emissions of greenhouse gases from all sectors from Australia by the year 2020 do not exceed a level which is 30% below the 1990 emission levels.
- (2) It is the duty of the Prime Minister to ensure that emissions of greenhouse gases from all sectors from Australia by the year 2050 do not exceed a level which is 80% below the 1990 emissions levels .

10 National Strategy for Reductions in Greenhouse Gas Emissions

- (1) The Prime Minister must, within 6 months of the commencement of this Act, lay before Parliament a National Strategy to achieve the reductions in greenhouse gas emissions from Australia required to meet the National Target for 2020 and 2050 set out in section 9.
- (2) The National Strategy must include:
 - a. Policies and actions intended to reduce Australia's greenhouse gas emissions;
 - b. An analysis of the effectiveness of policies and actions previously implemented with the intention of reducing Australia's greenhouse gas emissions.
 - c. An inquiry into the impact of Government taxation and subsidies on Australian greenhouse gas emissions, including tax deductions and subsidies for fossil fuel production and consumption, car use, the aviation industry, fuel excise arrangements, the Energy Grants Credit Scheme, and fringe benefits tax allowances for motor vehicles.
 - d. A scheme to phase out direct and indirect subsidies that support fossil fuel production and consumption with appropriate measures to prevent negative social impacts from subsidy removal, including measures to support public transport.
 - e. A scheme to use public funds freed by subsidy removal to support the development of renewable energies and fuels, energy efficiency and demand side management.
 - f. A scheme to substantially increase funding for research and development for demand side management, energy efficiency and renewable energy;
 - g. A scheme to provide for the connection of distributed generation to Australia's electricity grid in accordance with the National Code of Practice for Embedded Generation released in draft form by the Ministerial Council on Energy in February 2006.
 - h. A scheme to assist developing countries adjust to a carbon constrained world and mitigate the impacts of climate change.
 - i. an assessment of any other steps that could be taken to reduce Australia's greenhouse gas emissions in accordance with the principle that the person responsible for generating greenhouse gas emissions should make a financial contribution to the cost of measures to reduce such emissions (the **polluter pays principle**);
 - j. an allocation of substantial government funds to implement the strategy; and
 - k. A clear timeline for when the elements within the National Strategy will be implemented.
- (3) The schemes outlined in sections 11(2)(d), (e), (f) and (g) must be fully implemented within 2 years of the date of assent of this Act.

11 Public consultation on the National Strategy

- (1) Before the National Strategy is laid before Parliament, the Prime Minister must publish a notice:
 - a. stating how copies of the draft National Strategy may be obtained, and
 - b. inviting submissions to the Prime Minister on the draft National Strategy, within 30 days.
- (2) The notice must:
 - a. be published in the Gazette, and
 - b. also be published, on at least 2 occasions, in a newspaper circulating nationally.
- (3) Submissions received must be appropriately considered.

12 Carbon Accounting

- (1) The Prime Minister must, within 12 months of the commencement of this Act, implement a scheme for either or both of:
 - a) taxation of greenhouse gas emissions (a carbon tax);
 - b) trading of greenhouse gas emissions (an emissions trading scheme).
- (2) The details of a draft scheme referred to in subsection (1) must be made available for public comment (for a minimum 30 day period) prior to any such scheme being implemented, and any submissions received must be appropriately considered.
- (3) Prior to implementation, any scheme referred to in subsection (1) must be certified by an independent panel consisting of 6 members, with at least 2 representatives from environmental non-government organisations, and at least 2 members with expertise in economic instruments or market based trading.
- (4) Any scheme referred to in subsection (1) must be reviewed by an independent panel consisting of 6 members, with at least 2 representatives from environmental non-government organisations, and at least 2 members with expertise in economic instruments or market based trading five years after implementation.
- (4) The regulations may make provision for the schemes set out in (1) above and for the panel referred to in (3) and (4) above.

13 Just Transitions Committee

- (1) The Prime Minister must, within 3 months of the commencement of this Act, establish a Just Transitions Committee (including representatives from state governments, coal communities, farmers, industry, unions and non-governmental organisations).
- (2) The role of the Just Transitions Committee will be to consider and make recommendations in relation to a plan for an equitable and fair transition for employees and communities affected by Australia's commitment to a comprehensive greenhouse reduction program.

- (3) The regulations may make provision for the just transitions committee.

14 Reporting

- (1) The Prime Minister must, by 31 March each year table in each House of Parliament, and advertise in a national newspaper, a report of Australia's greenhouse gas emissions over the previous year.
- (2) The report referred to in (1) must also quantify greenhouse gas emissions resulting from or likely to result from the use of fossil fuels which have been exported from Australia over the previous year.
- (3) The Prime Minister must, by 31 March each year, lay before Parliament, and advertise in a national newspaper, a report on the progress in implementing the National Strategy, and any changes to the National Strategy that the Prime Minister proposes to make.

15 Duty of Members of the House of Representatives to publish annual reports relating to climate change

- (1) Every member of the House of Representatives must, within 1 month of the first anniversary of their election to the House of Representatives, and annually thereafter, publish an annual report specifying, for the period covered by the report:
 - a. How they voted in divisions in the House of Representatives relating to climate change; and
 - b. Any action they have taken to help reduce greenhouse gas emissions from within Australia.

Part 4 Energy Efficiency

16 Nationally co-ordinated approach to energy efficiency

- (1) The Prime Minister must, within 6 months of the commencement of this Act, implement a scheme for a nationally co-ordinated approach to energy efficiency, including mandatory energy efficiency standards for new homes, substantial renovations of existing homes, commercial buildings, appliances, industrial machinery and equipment.
- (2) The regulations may make provision for the scheme for a nationally co-ordinated approach to energy efficiency.

17 Energy efficiency plans

- (1) Every **designated energy user** must prepare an energy efficiency plan and submit it to the Minister for approval within 3 months of the commencement of this section, or within 3 months of becoming a designated energy user (if the user becomes designated after the commencement of this section).

Maximum penalty: 500 penalty units.

- (2) If an energy efficiency plan expires or is revoked, the designated energy user must prepare a new energy efficiency plan for approval within 3 months of the expiry or revocation.

Maximum penalty: 500 penalty units.

- (3) A draft energy efficiency plan must include the following:
- (a) a description of the designated energy user's current energy usage,
 - (b) a list of individual energy savings measures prioritised in terms of energy saved, cost effectiveness and potential benefits,
 - (c) a statement concerning the energy savings measures included on that list that the designated energy user proposes to implement in the 4-year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation),
 - (d) any other matter prescribed by the regulations.
- (4) A draft energy efficiency plan must be prepared in accordance with such guidelines concerning issued by the Minister from time to time and published in the Gazette.
- (5) The Minister may approve a draft energy efficiency plan, amend and approve a draft energy efficiency plan, refer an energy efficiency plan back to the designated energy user, and revoke an energy efficiency plan.
- (6) A designated energy user must provide the Minister with an annual report on progress on implementing the energy efficiency plan.

Maximum penalty: 500 penalty units.

- (7) The Minister must ensure that energy efficiency plans and annual reports are available to the public on the Department website, and on request.
- (6) An energy efficiency plan approved by the Minister expires 3 years after the approval was given.
- (7) For the purpose of this section, a **designated energy user** means:
- a. businesses more than 10 gigawatt hours per year at a site
 - b. all Commonwealth Government agencies which use more than 10 gigawatt hours per year at a site.
 - c. Any other user prescribed by the regulations.

Part 5 Green Power

18 Government agencies to purchase accredited renewable energy

- (1) All Agencies must purchase electricity with 100% renewable energy accredited under the National Green Power Accreditation Program.

- (2) For the purpose of this Act, ‘Agency’ has the same meaning as in *Financial Management and Accountability Act 1997*.

19 Review of National Green Power Accreditation Program

- (1) The Minister must, within 3 months of the commencement of this Act, establish an independent panel to review the National Greenpower Accreditation Program.
- (2) The Panel must consist of 10 members, with at least 2 representatives from environmental non-government organisations, at least 2 members nominated by the Office of the Renewable Energy Regulator, at least 2 members nominated by the Australian Business Council for Sustainable Energy, and 2 academics with expertise in renewable energy.

Part 6 Greenhouse impact statements

20 Greenhouse Impact Statements

- (1) Before any Act, regulation or statutory instrument is made, the responsible Minister must ensure that a greenhouse impact statement is prepared in connection with the substantive matters to be dealt with by the Act, regulation or statutory instrument.
- (2) The greenhouse impact statement must contain an assessment of the impact of the proposed Act, regulation or statutory instrument on greenhouse gas emissions from Australia and globally.
- (3) Before an Act, regulation or statutory instrument is made, the responsible Minister must ensure that:
- a. as far as is reasonably practicable, a notice is published in the Gazette advising where a copy of the greenhouse impact statement may be obtained or inspected, and inviting comments and submissions within a specified time, but not less than 21 days from publication of the notice;
 - b. as far as is reasonably practicable, a copy of the greenhouse impact statement is made available on the relevant Department website inviting comments and submissions within a specified time, but not less than 21 days from publication of the greenhouse impact statement on the Department website; and
 - c. All comments received are appropriately considered.
- (4) The Minister must, by 31 March each year prepare annual Greenhouse Report which summarises the impact of Acts, regulations and statutory instruments made in the previous year had on greenhouse gas emissions from Australia and globally.

Schedule 1 – Amendment of the Environment Protection and Biodiversity Conservation Act 1999

1 Section 3 Objects of Act

Insert after section 3(1)(e)

(ea) reduce greenhouse gas emissions from Australia and to assist with global efforts to stabilise and reduce human derived greenhouse gas concentrations in the atmosphere.

Insert after section 3(2)(e)(i)

(ia) includes provisions to ensure that projects having an adverse impact on the climate system are assessed and approved by the Commonwealth.

2 Section 3A Principles of ecologically sustainable development

Insert after section 3A(a)

(aa) Decision making processes should consider and where possible minimise the adverse impact of climate change on the environment.

3 After section 22 in Subdivision Subdivision F of Division 1 of Part 3

22A Offences relating to nuclear power reactors

- (1) A person is guilty of an offence if the person constructs or expands a nuclear power reactor .
- (2) An offence against subsection (1) is punishable on conviction by imprisonment for a term not more than 30 years, a fine not more than 20,000 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

4 After Subdivision F of Division 1 of Part 3

Insert:

Subdivision EA – Protection of the environment from greenhouse gas emissions

22C Requirement of approval for certain greenhouse gas emissions

- (1) A person must not take an action which:
 - a. Regulations provide is a prescribed development for the purpose of this clause, or
 - b. Is the construction of a new coal fired power station;

- c. Is the construction of a new coal mine ; or
- d. Is an expansion of an existing coal mine; or
- e. Is otherwise, directly or indirectly, including by change in land use or land clearing, likely to result in the emission of more than 100,000 tonnes of carbon dioxide equivalent into the atmosphere in any 12 month period.

Civil Penalty

- a. for an individual—5,000 penalty units;
 - b. for a body corporate—50,000 penalty units.
- (2) Subsections (1)(a) (d) and (e) do not apply to an action if:
- a. an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - b. Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
 - c. there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
 - d. the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

22D Offences relating to greenhouse gas emissions

- (1) A person is guilty of an offence if the person intentionally or recklessly
- a. Carries out development prescribed by the regulations for the purpose of this clause, or
 - b. Constructs a new coal mine or
 - c. Carries out the expansion of an existing coal mine; or
 - d. Takes an action which directly or indirectly, including by change in land use or land clearing, is likely to result in the emission of more than 100,000 tonnes of carbon dioxide equivalent into the atmosphere in any 12 month period.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) An offence against subsection (1) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offence against this section may also be guilty of an offence against section 495.

- (3) Subsections (1) (a), (c) and (d) do not apply to an action if:
- a. an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
 - b. Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or

- c. there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- d. the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

22E Prohibition of logging in old growth forests

- (1) A person is guilty of an offence if the person conducts logging activities in any forest that is ecologically mature and / or where the upper stratum or overstorey is in the late mature growth phase.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) An offence against subsection (1) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note : Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

5 Part 23 Division 2 section 528 Definitions

Insert in alphabetical order

Adverse effects of climate change means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

Climate system means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.

Greenhouse gases means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and reemit infrared radiation, and include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydro fluorocarbons (HFCs), perfluorocarbons (PFC's) and sulphur hexafluoride (SF₆). For the purposes of this Act, the definition of greenhouse gases does not include water vapour.

Greenhouse gas emissions means emissions of greenhouse gases measured in tonnes of carbon dioxide equivalents

Schedule 2 – Amendment of the Renewable Energy (Electricity) Act 2000

1 Section 4 Years to which this Act applies

Omit “However, no certificates can be created, and no liability arises, in respect of electricity generated on or after 1 January 2021.”

2 Section 17(1) What is an *eligible renewable energy source*?

Omit:
“(j) woodwaste”

At the end of subsection 17(2)

Add:
(c) waste derived from forestry activities

3 Section 37 Amount of charge

Add:
(2) The regulations must provide for the adjustment of the amount of charge in accordance with movements in the consumer price index.

4 Section 39 Renewable power percentage

Repeal section, substitute:

Section 39 Renewable power percentage

The *renewable power percentage* for a year is the percentage set out in the following table.

Year	Percentage
2008	6.0
2009	8.0
2010	10.0
2011	11.0
2012	12.0
2013	13.0
2014	14.0
2015	16.0
2016	17.0
2017	18.0
2018	20.0
2019	23.0
2020	25.0

Section 39A Review of renewable power percentage

- (1) The Minister shall cause a review of the renewable power percentage to be conducted in 2010 and in 2015.
- (2) The review must be conducted by a panel consisting of 8 members, with at least 2 representatives from environmental non-government organisations, at least 2 members nominated by the Office of the Renewable Energy Regulator; and 2 academics with expertise in renewable energy.
- (3) The renewable power percentage may only be amended if the amendment will result in an increase in the renewable power percentage.

5 Section 40 Required GWh of renewable source electricity

Repeal the section.

Substitute

Section 40 Renewable power percentage from 2020 to 2050

- (1) Regulations must specify a renewable power percentage from 2020 to 2050.
- (2) The renewable power percentage must be set so that, by 2050, 80% of all electricity consumed in Australia is sourced from eligible renewable sources.

6 After section 43

Add:

Section 43A

It is the wish of the Parliament that any renewable energy shortfall charge payable to the Crown under this Part be used for the encouragement and funding of renewable energy projects.

**Schedule 3 – Amendment of the Renewable Energy (Electricity)
(Charge) Act 2000**

Section 6 Rates of charge

Omit \$40.

Insert \$100