



## **AUSTRALIA**

### **Legal matters arising from the mandate of the AWG-KP**

#### **Submission to the AWG-KP**

**April 2009**

This submission responds to the invitation to Parties to submit further views and proposals on legal matters arising from the mandate of the AWG-KP. It presents Australia's views on some legal aspects of a second commitment period in the context of the Kyoto Protocol.

This submission process under the AWG-KP is an important step in the Parties' development of the post-2012 outcome. A comprehensive and effective post-2012 outcome will represent the combined output of both AWGs. To this end, this submission should be read in conjunction with Australia's submission to the AWG-LCA on schedules in a post-2012 treaty.

In accordance with the AWG-KP's invitation to Parties, Australia's submission is framed in the context of possible amendments to the Kyoto Protocol and related decision text. This does not necessarily reflect Australia's final preference with regard to the legal form of the post-2012 outcome.<sup>1</sup>

As illustrated by Australia's earlier legal submission, a single new protocol that unifies action under the Convention and builds on the relevant provisions of the Kyoto Protocol has practical advantages in terms of operational efficiency, legal certainty and simplicity. Australia therefore intends to revisit this, and other possible legal forms, as a means of providing the most effective legal structure for the post-2012 outcome.

Consideration of amendments to the Kyoto Protocol and its Annexes pursuant to Article 3, paragraph 9 and the issues outlined under

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<sup>1</sup> Recalling Australia's submission on two possible legal options for a post-2012 outcome in FCCC/AWGLCA/2008/Misc.5/Add.2 (Part I) / FCCC/KP/AWG/2009/MISC.6.Add.2

document FCCC/KP/AWG/2008/8, paragraph 49 are not divisible and must be considered as a package. As such, this submission presents Australia's views across the two elements.

The text of the AWG-KP Chair, based on the submissions of Australia and other Parties, will be an important input into the AWG-KP's work, noting that any amendment for a second commitment period must accord with Articles 20 and 21 of the Kyoto Protocol.

In addition, there are a number of other areas where Australia may seek amendment to the Protocol. These include, but are not limited to:

- amendments to reflect the outcome of the shared vision negotiations under the AWG-LCA track;
- provisions to address the possible provisional application of elements of the amendments prior to their entry into force; and
- means for ensuring that commitments of individual Parties that have agreed to fulfil their commitments jointly under Article 3 are adequately captured in the revised Annex B.

Australia will make further submissions and proposals on these issues, and others during the course of the negotiations.

### **Views on possible elements for amendments to the Kyoto Protocol pursuant to its Article 3, paragraph 9**

#### Annex B

Encapsulating commitments for a second commitment period within the current Annex B, is preferable to establishing a new Annex. Retaining those QELROs applicable to the first commitment period will be important both for compliance purposes, and for enabling an easy comparison of effort across commitment periods. We note the difficulties associated with establishing a new Annex, given the Article 21(1) limitations relating to the nature of Annexes that can be adopted.

The new column or columns, as required, in Annex B could express commitments in absolute terms, as well as in the established percentage of a base year form. For transparency, and to assist comparability, there is value in reflecting commitments in the form of percentage reductions against a series of base years. We do not yet have a position on the particular base years that could be captured in the Annex. There may also be value in adding a column comparing

second commitment period QELROs with those under the first commitment period.

There should not be additional columns defining commitments for multiple future commitment periods. While the negotiation of a second commitment period can be enhanced by consideration of mid-term and long-term emissions pathways and goals, it is not appropriate to specify these pathways and goals in the form of legally-binding commitments. Future commitments will need to be informed, inter alia, by scientific developments and broader evolution of the UNFCCC system. Seeking agreement to multiple commitment periods now would weaken the flexibility required to address these issues.

The possibility for both emissions “limitations” and “reductions” under the second commitment period should be retained. While most Parties, including Australia, will undertake commitments that amount to reductions rather than growth targets, there may be the need to consider positive growth targets for new Parties that elect to take on commitments.

#### Article 3, paragraph 1

Given the linkages to discussions in the AWG-LCA, the possible scope of the aggregate emissions reduction target should not, at this point, be limited. In addition, discussions relating to the length of the commitment period will depend on outcomes in the AWG-LCA. We would therefore support an Article 3(1) bis which included the following text:

“The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in the [appropriate column] of the table included in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least [X] per cent below [Y] levels in the commitment period 2013 to [V]”.

There should not be criteria for establishing commitments in the context of Article 3(1). While the use of various indicators provides guidance in relation to the negotiation of individual QELROs, and is useful to assess and promote comparability of effort between Parties, it would not be possible to capture the full scope of potential indicators in the legal text. In addition, it would not reflect the suitability of their application according to differing national circumstances. As is currently the case,

substantive legal obligations should attach only to the commitments (i.e. the numbers themselves), not the variety of indicators that inform negotiations on these targets.

The proposed new Article 3(1) ter of the Kyoto Protocol is welcome, given the need to limit the entry into force of individual QELROs until certain conditions have been met. In addition to the proposed consideration of a trigger relating to a percentage of carbon emissions covered, additional triggers may also need to be considered, including ratification by a minimum number of Annex I Parties and linkages with the AWG-LCA outcome. As outlined in our “treaty outline” submission<sup>2</sup>, the outcomes of the AWG-KP and AWG-LCA must be considered as a package.

We therefore suggest inclusion of the following language:

“The quantified emission limitation or reduction commitments and [...] for the period [...] inscribed in [...] shall only apply once [*specified conditions have been met, e.g. a percentage of certain CO<sub>2</sub> emissions are covered, a minimum number of Annex I Parties have accepted the amendment, and links to the entry into force of the LCA outcome have been satisfied*].”

#### *Treatment of the land sector*

To more fully realise the mitigation potential of the land sector, changes to the existing treatment of the sector under the Kyoto Protocol are necessary.

As the Convention pursues its objective of mitigating climate change by addressing all anthropogenic emissions by sources and removals by sinks, the first element of the revised treatment of the land sector would focus accounting exclusively on anthropogenic emissions and removals of greenhouse gases. This would involve CMP decisions implementing solutions to the issues of natural disturbance and inter-annual variability. Australia’s March 2009 LULUCF submission to the AWG-KP and AWG-LCA provides possible decision text on these issues, using decision 16/CMP.1 as a basis<sup>3</sup>.

The second element of the revised treatment of the land sector would be to remove unnecessary disparity in approaches to accounting for land sector activities. Irrespective of whether activities are accounted

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<sup>2</sup> FCCC/AWGLCA/2008/Misc.5/Add.2 (Part I) / FCCC/KP/AWG/2009/MISC.6.Add.2

<sup>3</sup> <http://unfccc.int/resource/docs/2009/awg7/eng/misc05.pdf>

on a voluntary or mandatory basis, a consistent approach should be taken to how emissions and removals from these activities are incorporated into Parties' QELROs.

This element of the revised treatment could be captured in an Article 3(4) bis that consolidated all activities currently contained in Articles 3(3) and 3(4), and/or through revisions to Annex A. Article 3(3) and 3(4) would need to be retained in their existing form for the purposes of assessing compliance in the first commitment period, with the exception of the amendment proposed to Article 3(4) below. The text contained in decision 16/CMP/1 concerning the approach to accounting for emissions and removals from Article 3(4) elected activities would also need to be revised for the purposes of the second commitment period.

The third element of the revised treatment would be to agree on the categories for land sector reporting post-2012. Australia's preference is that Parties would transition from the existing Article 3(3) and 3(4) activity-triggered approach to an approach based on the Convention's land-use categories. An approach based on the Convention's land-use categories would significantly improve the Parties' ability to effectively address the land sector, providing a comprehensive framework and enhanced capacity for comparing the land use accounts of all Parties that undertake mitigation commitments.

Without prejudice to discussions on the length of the second commitment period, the transition to accounting on the basis of the Convention's land-use categories should be achieved as soon as possible, ideally in time for the commencement of the third commitment period. A CMP decision would be required to determine the modalities and procedures for Parties' transition to that approach.

The revised treatment of the land sector should also include further CMP decisions to consider new elements such as an improved treatment for harvested wood products.

As mentioned above, Article 3(4) will require amendment for the purposes of the second commitment period. Specifically, for the second commitment period, the third sentence of Article 3(4) will need to be amended to provide a clear basis for the application of the CMP decisions proposed in this section. The amendment would make provision for the preservation of the decision on modalities, rules and guidelines referred to in that paragraph, to the extent agreed by the Parties. It would also make provision for the adoption of an additional decision or set of decisions to guide treatment of the land sector in the second commitment period.

As indicated in the section below under “Estimation methodologies”, the methodologies applicable to the second commitment period must support the policy framework agreed by the Parties for the reporting of emissions and removals in that commitment period. Consequently, the 2006 IPCC Guidelines will need to be reviewed in light of the post-2012 accounting framework agreed by the Parties for the land sector. In particular, Parties will need to review and update the construct of 'managed lands' in LULUCF accounting to ensure consistency with the treatment of non-anthropogenic emissions and removals. Revision of the 2003 IPCC Good Practice Guidance for LULUCF would also be required to address that document's reference to the construct.

### Article 3, paragraph 7

There may be practical barriers to using an absolute target (expressed in Gg CO<sub>2</sub> equivalent) as their legally-binding obligation. While there is benefit in including this for comparative purposes, there may be difficulties calculating an absolute target at the time of conclusion of the post-2012 outcome. For example new gases might be added for which verified baseline data may not yet be available.

Similarly, Parties that have not previously had commitments under Annex B might not be in a position to have baselines verified at the time commitments are inscribed. For this reason, it will be important to retain the current framework for calculating assigned amounts on the basis of percentage reductions from a base year.

The second sentence in Article 3(7), pertaining to the treatment of deforestation, should be retained.

### Article 3, paragraph 8 bis

As indicated in the next section under the heading “The coverage of greenhouse gases, sector and source categories”, Australia proposes broadening the Protocol's coverage of greenhouse gases to include nitrogen trifluoride (NF<sub>3</sub>) and each of the hydrofluorocarbons (HFCs) and perfluorocarbons (PFCs) contained in table 2.14 of the errata of the IPCC Fourth Assessment Report of Working Group I<sup>4</sup>. Article 3 will therefore need to specify the base year for those gases that Parties may use to calculate their mitigation commitment. The text could either

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<sup>4</sup> <http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-errata.pdf>

be added to the existing text of Article 3(8), or form a new Article 3(8) bis.

#### Article 3, paragraph 9

Given that the commitments of Annex I Parties are inextricably linked to the outcomes under the AWG-LCA, amendments to Article 3(9) will need to avoid prejudging the form of subsequent commitment periods. Nonetheless there is benefit in retaining a trigger time point for consideration of further commitments. We therefore propose the following language to replace the whole of Article 3(9):

“The Conference of the Parties serving as the Meeting of the Parties to this Protocol shall initiate the consideration of a subsequent commitment period at least [x] years before the end of the current commitment period”.

#### Article 3, paragraph 10 and 11

Discussions on mitigation commitments and actions for developing countries and non-Kyoto Parties are occurring in the AWG-LCA. Without prejudice to the outcome of these discussions, any units assigned to Parties under the AWG-LCA should be available to Annex I Parties to meet their commitments. Amendments to Article 3 paragraphs 10 and 11 may be necessary to enable the addition or subtraction of such units to the assigned amount of an acquiring or transferring Annex I Party.

#### Article 3, paragraph 12 bis

The emerging policy discussion in the AWG-LCA on a new REDD market mechanism is welcome. Further proposals from Parties on this issue are also welcome. Without prejudice to these discussions, should the AWG-LCA outcome include establishment of such a mechanism, whereby credits from that mechanism could be acquired by Parties to fulfil their mitigation commitments under the Kyoto Protocol, the following additional paragraph 12 bis may be required in Article 3:

“Any [name of REDD market mechanism credit] which a Party acquires from another Party in accordance with the provisions of Article 17 shall be added to the assigned amount for the acquiring Party.”

In the following section of this submission (“Sectoral crediting of emission reductions below a previously established no-lose target”), Australia proposes the establishment of a sectoral crediting mechanism. Parties could acquire credits generated by this mechanism to fulfil their mitigation commitments under Article 3. To operationalise this facility, the following additional paragraph 12 ter may be required in Article 3:

“Any [name of credits generated under Article XX] which a Party acquires from another Party in accordance with the provisions of Article [XX] shall be added to the assigned amount for the acquiring Party.”

#### Article 7, paragraph 4 and 4 bis

Should the AWG-KP and AWG-LCA outcomes establish new mechanisms that generate credits that could be acquired by Parties to fulfil their mitigation commitments under the Kyoto Protocol, guidance would be required on the accounting of these credits vis a vis Parties’ assigned amounts.

The existing CMP decision on modalities for the accounting of assigned amounts is adopted pursuant to Article 7, paragraph 4, of the Protocol<sup>5</sup>. This approach could be followed to provide for the adoption of additional modalities to accommodate the credits generated under the new mechanisms in the second commitment period.

For clarity, the last sentence of Article 7(4) should be amended to add the words “for that commitment period”, such that the paragraph would read:

“The Conference of the Parties serving as the meeting of the Parties to this Protocol shall adopt at its first session, and review periodically thereafter, guidelines for the preparation of the information required under this Article, taking into account guidelines for the preparation of national communications by Parties included in Annex I adopted by the Conference of the Parties. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall also, prior to the first commitment period, decide upon modalities for the accounting of assigned amounts for that commitment period.”

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<sup>5</sup> Decision 13/CMP.1

In addition, a paragraph 4 bis to Article 7 should be added as follows:

“The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, prior to the second commitment period, decide upon modalities for the accounting of assigned amounts for that commitment period.”

#### Article 21, paragraph [5][7bis]

As noted under the heading “Annex B” above, encapsulating the second commitment period mitigation commitments within the current Annex B, is preferable to establishing a new Annex C. There are difficulties associated with establishing a new Annex of such a substantive nature, given the Article 21(1) limitations relating to the nature of Annexes that can be adopted.

With regard to the procedure for amending Annex B, the existing procedure under Article 21(7) as it relates to inscribing commitments arising out of the Article 3(9) process should be retained. Amendment of this procedure, as it relates to situations where a Party seeks inscription of a mitigation commitment in Annex B with respect to itself during a commitment period, is discussed below under the heading “Simplification of procedures for inscribing commitments in Annex B”.

#### Entry into force

Amendments to the Kyoto Protocol and its Annexes must be made in accordance with Articles 20 and 21(7) respectively. In particular, amendments to Annex B must not be made without the written consent of the Party concerned.

#### **Views on possible elements of a text relating to issues outlined in document FCCC/KP/AWG/2008/8, paragraph 49**

As already noted, consideration of amendments to the Kyoto Protocol and its Annexes pursuant to Article 3(9) is intrinsically linked to discussions on the elements outlined in paragraph 49 of document FCCC/KP/AWG/2008/8. Several of these have been addressed in the context of the above; further views are submitted below.

## Improvements to emissions trading and the project-based mechanisms<sup>6</sup>

### *Land use, land-use change and forestry (LULUCF) activities*

Modalities and procedures for including a broader range of LULUCF activities in the Clean Development Mechanism (CDM) should be developed through CMP decisions. These decisions will affect the ability of Annex I Parties to meet their Kyoto Protocol commitments and should therefore be taken in conjunction with the adoption of amendments to the Kyoto Protocol.

### *Carbon dioxide capture and storage (CCS)*

Carbon dioxide capture and storage is not currently excluded from the CDM. It should remain the prerogative of host Parties to determine which projects/technologies are appropriate for areas within their jurisdiction. Provisions (both treaty text and CMP decisions) should therefore be technology-neutral and not prescribe or proscribe particular technologies.

Parameters for modalities and procedures to govern CCS activities in the CDM should be developed through CMP decisions. As this decision could have significant implications for the ability of Annex I Parties to meet their Kyoto Protocol obligations, it should be taken in conjunction with the adoption of amendments to the Kyoto Protocol.

### *Sectoral crediting of emission reductions below a previously established no-lose target*

The development of a sectoral crediting mechanism, which credits emission reductions below a previously established no-lose target, has the potential to increase the scope of the market to finance mitigation activities in developing countries.

Mitigation commitments and actions for developing country Parties are being discussed in the AWG-LCA. Without prejudice to these discussions, should developing country Parties choose to adopt sectoral no-lose targets as part of their suite of mitigation commitments and actions, they should be able to support such commitments and actions

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<sup>6</sup> Discussion of mitigation commitments and actions for non-Annex I Parties and non-Kyoto Parties is taking place in the AWG-LCA. Access to market mechanisms will be an important means of supporting these commitments and actions, regardless of the forum in which the mechanisms are developed. Given the inter-linkages between mitigation commitments and mechanisms, mechanisms should also be discussed in the AWG-LCA.

through access to a sectoral crediting mechanism. Provisions will be required to give eligible developing country Parties access to a sectoral crediting mechanism.

Provisions will need to be made for the governance of a sectoral crediting mechanism and decision text may be needed to specify eligibility criteria for participation in the mechanism, including specific MRV requirements.

Provisions would be required to avoid double-counting CERs generated from CDM activities and credits generated by a sectoral crediting mechanism. This should include specifying that the quantity of CERs issued on the basis of the existing CDM activities (ie. approved prior to the establishment of a sectoral no-lose target) in a sector covered by a no-lose target shall be deducted from the quantity of credits to be generated by a sectoral crediting mechanism. An amendment to Article 12 may also be required to specify that new project-by-project CDM activities are not eligible in sectors covered by a no-lose target or sectoral target (see below “Emissions trading”).

#### *Crediting on the basis of nationally appropriate mitigation actions*

In cases where the emissions reductions generated from nationally appropriate mitigation actions (NAMAs) can be accurately quantified, crediting may provide a means of financing mitigation commitments and actions by developing countries. In cases where the emissions reductions flowing from a NAMA cannot be accurately quantified, crediting risks undermining the environmental integrity of the carbon market. In such cases, other financing tools should be used in preference to crediting. Should Parties adopt crediting on the basis of NAMAs that can be accurately quantified, new provisions additional to those discussed above in relation to a sectoral crediting mechanism would be required.

#### *Emissions trading*

Mitigation commitments and actions for developing country Parties are being discussed in the AWG-LCA. Without prejudice to these discussions, developing country Parties that chose to adopt a strict sectoral target as part of their suite of mitigation commitments and actions should be granted support and flexibility in meeting these commitments through access to emissions trading.

An amendment to Article 17 would be required to enable emissions trading based on strict sectoral targets. The CMP may also need to

adopt decisions on the modalities and guidelines to support sectoral emissions trading.

The following paragraph could be added to an amended Article 17:

“The Parties not included in Annex B may participate in emissions trading for the purpose of fulfilling their sectoral obligations inscribed in [X]. Any such trading shall be supplemental to domestic actions for the purpose of meeting sectoral obligations under [X].”

As noted above, the emerging policy discussion in the AWG-LCA on a new REDD market mechanism is welcome. Further proposals from Parties on this issue are also welcome. Without prejudice to these discussions, should the AWG-LCA outcome include establishment of such a mechanism, whereby credits from the mechanism could be acquired by Parties to fulfil their mitigation commitments under the Kyoto Protocol, the CMP may need to adopt decisions on the modalities and guidelines for the trade of such credits under Article 17.

#### The coverage of greenhouse gases, sector and source categories

##### *Greenhouse gases*

As noted above, the Protocol’s coverage of greenhouse gases should be broadened to include nitrogen trifluoride and each of the HFCs and PFCs contained in table 2.14 of the errata of the IPCC Fourth Assessment Report of Working Group I<sup>7</sup>. To promote clarity, each of the gases should be listed individually, along with their common name and chemical formula.

These changes could be captured through amendment of Annex A, distinguishing the new gases applicable to the second commitment period in footnotes. The amended Annex A would read as contained in Attachment A.

Gases additional to those mentioned above could be considered, should new information warranting their inclusion be made available to Parties sufficiently prior to the conclusion of negotiations.

##### *Sectors/source categories*

The Protocol’s coverage of sectors/source categories, as contained in Annex A, may need to be changed to reflect the outcome of

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<sup>7</sup> <http://www.ipcc.ch/pdf/assessment-report/ar4/wg1/ar4-wg1-errata.pdf>

negotiations on the treatment of the land sector. As indicated above, these changes could be reflected through amendment of Annex A, indicating the commitment period to which each sector/source category is applicable in footnotes.

A decision of the CMP would also be required to request the revision of guidelines for reporting under the Convention and the Kyoto Protocol to incorporate the new greenhouse gases and, if necessary, the revised list of sector/source categories.

### Common metrics

Global Warming Potentials (GWP) should be used to calculate the carbon dioxide equivalence of anthropogenic emissions and removals of the gases covered by the Protocol in the second commitment period (listed in the amended Annex A – see above). The GWP of each gas would be that accepted by the Intergovernmental Panel on Climate Change (IPCC), based on the effects of greenhouse gases over a 100-year time horizon, and agreed by the Parties. Those GWP so agreed would be used to determine fulfilment of mitigation commitments for the second commitment period.

The GWPs applicable to mitigation commitments in the second commitment period should be those provided in table 2.14 of the errata of the IPCC Fourth Assessment Report of Working Group I based on the effects of the greenhouse gases listed in the amended Annex A over a 100-year time horizon.

Article 5(3), of the Protocol should be retained in its existing form, applying *mutatis mutandis* to the new gases. In order to apply the above mentioned GWPs to the second commitment period, Article 5(3), requires a decision of the CMP prior to the adoption of the mitigation commitments for the second commitment period. That decision could also allow Parties, for information purposes only, to use another time horizon, as provided in the Fourth Assessment Report.

A decision of the CMP would also be required to request the revision of guidelines for reporting under the Convention and the Kyoto Protocol to incorporate the new GWPs.

### Article 2, paragraph 2, of the Kyoto Protocol

Given the global and integrated nature of the international aviation and maritime sectors, Australia strongly supports a sectoral approach that is

effective, equitable and non-discriminatory to address emissions from these sectors. We do not support the proposed amendments to Article 2(2) and Annex A which would include aviation and marine bunker fuels as part of Article 3 commitments. In the context of the UNFCCC, international aviation and maritime emissions should be addressed under the AWG-LCA.

### Estimation methodologies

The methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol should be agreed by the CMP, based on the work of the IPCC and the advice of the SBSTA. The methodologies applicable to the second commitment period must support the policy framework agreed by the Parties for the reporting of emissions and removals in that commitment period. Consequently, the Parties' deliberations on the post-2012 accounting framework must be concluded before the CMP can agree the methodologies applicable to the second commitment period.

In the event that there is sufficient time to conclude guidelines appropriate to the Parties' agreement on the post-2012 accounting framework, no change to Article 5(2) of the Protocol would be required.

Given the time required to finalise appropriate guidelines in light of the post-2012 accounting framework, the Parties may wish to agree the methodologies applicable to the second commitment period after the conclusion of the post-2012 outcome. This could be accommodated through amendments to the Protocol. The amendments would specify the CMP session at which the CMP must adopt a decision on the methodologies applicable to the second commitment period, bearing in mind the time required to complete an effective review of the Guidelines.

Article 5(2), would be amended to replace the last sentence of that paragraph as follows:

“Any revision to methodologies or adjustments shall not be used for the purposes of ascertaining compliance with commitments under Article 3 in respect of the first commitment period, but may be used by Parties on a voluntary basis, for the purpose of reporting in the first commitment period.”

The following paragraph would be inserted after paragraph 2 of Article 5:

“For the second commitment period, methodologies for estimating anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol shall be those agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its [XX] session, based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice. Where such methodologies are not used, appropriate adjustments shall be applied according to methodologies agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Protocol at its [XX] session. Based on the work of, inter alia, the Intergovernmental Panel on Climate Change and advice provided by the Subsidiary Body for Scientific and Technological Advice, the Conference of the Parties serving as the meeting of the Parties to this Protocol shall regularly review and, as appropriate, revise such methodologies and adjustments, taking fully into account any relevant decisions by the Conference of the Parties. Any revision to methodologies or adjustments shall be used only for the purposes of ascertaining compliance with commitments under Article 3 in respect of any commitment period adopted subsequent to that revision.”

A CMP decision would be required to request the revision of guidelines for reporting under the Convention and the Kyoto Protocol to incorporate the new methodologies. A further CMP decision may be required to revisit the CMP’s existing approach to the adjustment of Parties’ inventory data, and the methodologies for such adjustments.

#### Simplification of procedures for inscribing commitments in Annex B

The experience of Belarus illustrates that the existing procedure under the Protocol for inscribing commitments for Parties in Annex B can result in serious delay when the procedure is applied during the course of a commitment period, rather than in relation to future commitment periods pursuant to Article 3(9). Such delay has the potential to discourage countries willing to take on mitigation commitments and thereby reduce mitigation action. A better balance between reducing the time for the entry into force of an amendment to Annex B, and accommodating Parties’ different domestic treaty action arrangements should be sought.

Such an outcome could be achieved by amending the existing procedure under Article 21(7). The amendment would establish an additional procedure for the inscription of a QELRO in Annex B. The new procedure would only apply to situations where a Party seeks

inscription of a mitigation commitment in Annex B with respect to itself in the commitment period in which the amendment is proposed for adoption. The proposal would not apply to the amendment of Annex A, or amendments relating to future commitment periods pursuant to Article 3(9).

#### Privileges and immunities for persons serving on bodies constituted under the Kyoto Protocol

The Subsidiary Body for Implementation will consider at its thirtieth session views submitted by Parties on this issue, with a view to elaborating draft treaty arrangements. Australia's preliminary views are outlined below.

Australia shares other Parties' concerns with the limited immunities accessible to persons serving on Kyoto Protocol bodies, particularly immunity from legal action. The threat of legal action can undermine the Protocol's operation by hindering qualified participation and the ability of persons on the constituted bodies to properly discharge their duties. Grounds to warrant conferral of privileges on persons serving on constituted bodies have not been identified to date.

The Protocol should be amended to accommodate provisions that would assert the objective of securing participation by the most qualified persons and the ability of such persons to discharge their official duties in a professional and conscientious manner.

The provisions should confer immunities on persons serving as members and alternates of bodies constituted under the Kyoto Protocol ("constituted bodies"). "Constituted bodies" would mean the Executive Board of the Clean Development Mechanism, the Joint Implementation Supervisory Committee, the Compliance Committee, the Adaptation Fund Board, and Expert Review Teams established under Article 8 of the Protocol. This list may need to be expanded to accommodate new bodies agreed as part of the AWG-KP outcome.

The provisions should confer on persons serving on constituted bodies immunity from suit and from other legal process in respect of acts and things done in serving on the bodies, participating in their work or performing missions for the bodies. The immunity should continue to be accorded notwithstanding that the persons are no longer members or alternate members of the constituted bodies. The provisions should also confer the immunity of the inviolability of the persons' papers and documents.

Furthermore, provisions should confer on the Executive Secretary of the Secretariat to the Protocol the right and the duty to waive the immunity of any person serving on a constituted body in any case where, in his/her opinion, the immunity would impede the course of justice and could be waived without prejudice to the interests of the Protocol.

## ANNEX A

Greenhouse gases

Common name	Chemical formula
Carbon dioxide	CO <sub>2</sub>
Methane	CH <sub>4</sub>
Nitrous Oxide	N <sub>2</sub> O
<b>Hydrofluorocarbons</b>	
HFC-23	CHF <sub>3</sub>
HFC-32	CH <sub>2</sub> F <sub>2</sub>
HFC-41	CH <sub>3</sub> F
HFC-125	CHF <sub>2</sub> CF <sub>3</sub>
HFC-134	CHF <sub>2</sub> CHF <sub>2</sub>
HFC-134a	CH <sub>2</sub> FCF <sub>3</sub>
HFC-143	CH <sub>2</sub> FCHF <sub>2</sub>
HFC-143a	CH <sub>3</sub> CF <sub>3</sub>
HFC-152 <sup>1</sup>	CH <sub>2</sub> FCH <sub>2</sub> F
HFC-152a	CH <sub>3</sub> CHF <sub>2</sub>
HFC-161 <sup>1</sup>	CH <sub>3</sub> CH <sub>2</sub> F
HFC-227ea	CF <sub>3</sub> CHF <sub>2</sub> CF <sub>3</sub>
HFC-236cb <sup>1</sup>	CH <sub>2</sub> FCF <sub>2</sub> CF <sub>3</sub>
HFC-236ea <sup>1</sup>	CHF <sub>2</sub> CHF <sub>2</sub> CF <sub>3</sub>
HFC-236fa	CF <sub>3</sub> CH <sub>2</sub> CF <sub>3</sub>
HFC-245ca	CH <sub>2</sub> FCF <sub>2</sub> CHF <sub>2</sub>
HFC-245fa <sup>1</sup>	CHF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>
HFC-365mfc <sup>1</sup>	CH <sub>3</sub> CF <sub>2</sub> CH <sub>2</sub> CF <sub>3</sub>
HFC-43-10mee	CF <sub>3</sub> CHFCH <sub>2</sub> CF <sub>2</sub> CF <sub>3</sub>
Nitrogen trifluoride <sup>1</sup>	NF <sub>3</sub>
<b>Perfluorocarbons</b>	
PFC-14	CF <sub>4</sub>
PFC-116	C <sub>2</sub> F <sub>6</sub>
PFC-218	C <sub>3</sub> F <sub>8</sub>
PFC-318	c-C <sub>4</sub> F <sub>8</sub>
PFC-3-1-10	C <sub>4</sub> F <sub>10</sub>
PFC-4-1-12	C <sub>5</sub> F <sub>12</sub>
PFC-5-1-14	C <sub>6</sub> F <sub>14</sub>
PFC-9-1-18 <sup>1</sup>	C <sub>10</sub> F <sub>18</sub>
Sulphur hexafluoride	SF <sub>6</sub>

<sup>1</sup> Footnote indicating those additional gases to be covered by the Protocol in the second commitment period.