



Australia

Legal Architecture for a Post-2012 Outcome

Submission to the AWG-LCA and AWG-KP

This submission outlines Australia's views on elements of legal architecture for a post-2012 outcome. Australia welcomes the Chair's negotiating text¹ and provides supplementary proposals to ideas outlined in this text.

This submission builds on a series of prior Australian submissions on legal architecture.² To recall, in these submissions, Australia has outlined two potential legal models for a post-2012 outcome - a single new treaty under the Convention unifying commitments of all Parties (model A) or an amended Kyoto Protocol and new treaty under the Convention (model B). Under either model, Australia proposes mitigation commitments and actions be registered in National Schedules.

This submission seeks to elaborate the operation of National Schedules in the context of a single new instrument under the Convention (model A, attached). Australia notes that National Schedules could operate with or build upon architectural elements proposed by other Parties, such as low carbon development strategies, registries and coordinating mechanisms. We note that in the Chair's negotiating text these are presented as various options. In the attached text, Australia has highlighted potential linkages between National Schedules and these proposals.

¹ FCCC/AWGLCA/2009/8

² FCCC/AWGLCA/2008/Misc.5/Add.2 (Part I) , FCCC/KP/AWG/2009/MISC.6.Add.2 , FCCC/KP/AWG/2009/MISC.8.

National schedules can provide a flexible, coherent and durable vehicle to underpin mitigation commitments and actions for all Parties. The attached framework text outlines key features and operation of National Schedules as follows:

- All Parties would establish a National Schedule. A national, long-term emissions pathway as well as mitigation commitments and actions would be registered in a National Schedule.
- National Schedules would be appended to the overarching instrument and form an integral part of that instrument. Countries would put forward draft national schedules as part of the negotiation process. This would provide an opportunity for transparent assessment of the comparability of effort and comment on the draft schedules.
- National Schedules would recognise the diverse national circumstances, responsibilities and capabilities among Parties. A wide variety of nationally appropriate mitigation commitments and actions by all Parties could be registered in National Schedules.
- National Schedules would facilitate the ambitious mitigation efforts demanded by the science now and in the future. As Parties' circumstances and capabilities change, mitigation efforts could be enhanced to reflect these developments. Parties could update schedules to enhance registered commitments or actions.
- National Schedules provide an appropriate balance between flexibility and certainty. Parties require certainty to implement a range of policies and measures and flexibility to make changes to ensure ongoing effectiveness of these policies and measures. Schedules may be periodically updated. Registered actions could be modified or replaced, but the overall outcome would be maintained or enhanced.

- National Schedules could have a close relationship with architectural elements suggested by other Parties such as low carbon development strategies, registries and coordinating mechanisms.
 - Low-Emission Development Strategies could complement and elaborate on the details of National Schedules. These Strategies could be an overarching strategic document to identify the comprehensive mix of nationally appropriate mitigation, low-carbon development and adaptation priorities, consistent with broader country-led development goals. Strategies could set out individual programs and activities designed to implement commitments and/or actions reflected in National Schedules, and could improve identification of support needs.
 - Mitigation commitments or action supported with the assistance a coordinating mechanism or other avenues could be subsequently registered in National Schedules.

This submission does not attempt to outline a comprehensive treaty text. Additional provisions would be required to outline further content, processes and modalities for a comprehensive instrument. Australia intends to submit further proposals on architectural and policy issues during the negotiation process.

TITLE OF POST-2012 AGREEMENT

[Preamble]

The Parties to this Agreement,

Being Parties to the United Nations Framework Convention on Climate Change, hereinafter referred to as “the Convention”

In pursuit of the ultimate objective of the Convention as stated in its Article 2

Being guided by the principles of the Convention as outlined in its Article 3

Recalling the provisions of the Convention, in particular the commitments of all Parties in its Articles 4 and 12

Recalling also the Kyoto Protocol and the progress made under it, as well as the changes in many Parties’ circumstances since its adoption

Noting also the need to take account of future changes in the economic and social circumstances of Parties, as well as the constant evolution of scientific knowledge relating to climate change, its causes and effects

Recognising the need to further enhance the implementation of the Convention through long-term cooperative action and that deep cuts in global emissions will be required in order to achieve its ultimate objective

Pursuant to the mandate of decision 1/CMP.1 of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol, relating to further commitments for Parties included in Annex I for the period beyond 2012, and the Bali Action Plan adopted by decision 1/CP.13 of the Conference of the Parties to the Convention at its thirteenth session

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement, the definitions contained in Article 1 of the Convention shall apply. In addition:

[Provisions to be inserted...]

Article 2

OBJECTIVE

1. The objective of this Agreement is to achieve an environmentally sound response to climate change through effective implementation of the Convention, with a view to achieving its ultimate objective as provided in its Article 2, by:

(a) stabilising atmospheric greenhouse gases at 450 parts per million carbon dioxide-equivalent or lower, through unified long-term action that sets the world on a path to peak global emissions by [X] and then reduce global greenhouse gas emissions by [X] per cent by [X] on [X] levels; and

(b) galvanising greater attention and efforts towards adaptation at all levels to minimise the adverse impacts of climate change, to assist in building climate resilient communities and to enhance sustainable development.

Article 3

PRINCIPLES

1. In addition to the principles outlined in Article 3 of the Convention, the Parties shall be guided, inter alia, by the following:

(a) developed country Parties should take the lead in combating climate change and the adverse effects thereof;

(b) all Parties should contribute to the global effort to combat climate change, in accordance with their common but differentiated responsibilities and respective capabilities – a spectrum of effort is envisaged;

(c) all Parties should aim to undertake a similar level of effort to others at a similar level of development and with similar national circumstances;

(d) those Parties whose national circumstances reflect greater responsibility or capability should make a greater contribution to the global effort;

(e) those Parties whose national circumstances reflect the least capability should be prioritised for support in their efforts to mitigate climate change;

(f) those Parties whose national circumstances reflect the least capability and the most vulnerability to the adverse effects of climate change should be prioritised for support in their efforts to adapt to the adverse effects of climate change.

Article 4

NATIONAL SCHEDULES OF MITIGATION COMMITMENTS AND ACTIONS

1. Each Party shall:
 - (a) maintain a national schedule;
 - (b) meet and/or implement the nationally appropriate mitigation commitments and/or actions registered in their national schedule; and
 - (c) measure and report on the outcomes of the nationally appropriate mitigation commitments and/or actions registered in their national schedule, in accordance with the provisions set out in Article 20 (MRV).
2. Consistent with the principles outlined in Article 3 (Principles), and with a view to achieving the objective outlined in Article 2 (Objective), national schedules shall register for each Party:
 - (a) a national emissions pathway to 2050;
 - (b) nationally appropriate mitigation commitments and/or actions for the commitment period [20XX] to [20XX].
3. Nationally appropriate mitigation commitments and actions registered in national schedules shall have outcomes that are measureable, reportable and verifiable in quantitative terms, in accordance with the provisions set out in Article 20 (MRV), and may include, inter alia:
 - (a) quantified emission limitation or reduction commitments in economy-wide or sectoral terms;
 - (b) quantified emission limitation or reduction actions on an economy-wide or sectoral basis;
 - (c) emissions intensity commitments or actions;

- (d) clean energy commitments or actions;
- (e) energy efficiency commitments or actions;
- (f) emissions thresholds aimed at protecting and enhancing sinks and reservoirs *[for example national forest emissions levels]*;
- (g) other actions aimed at achieving quantified emission limitation or reduction outcomes;
- (h) [.....].

4. The following Parties shall, as a minimum, with a view to achieving the objective of this Agreement outlined in Article 2 (Objective) and consistent with the principles of this Agreement outlined in Article 3 (Principles), register in national schedules:

- (a) for all developed country Parties, an economy-wide quantified emission limitation or reduction commitment;
- (b) for developing country Parties whose national circumstances reflect greater responsibility or capability, nationally appropriate mitigation commitments and/or actions aimed at achieving substantial deviation from baselines.

5. Parties shall set out in their national schedule, for each nationally appropriate mitigation commitment and action, the following information:

- (a) a brief description, including whether it is a commitment or an action;
- (b) whether it is to be taken on an economy-wide basis, or, if not, the sector in which the commitment or action is to be taken;
- (c) the baseline or reference case for the commitment or action, against which the commitment or action shall be measured, reported and verified, in accordance with Article 20 (MRV);

(d) an estimate of the emissions limitation or reduction outcomes expected from the commitment or action or an aggregation of commitments and/or actions;

(e) whether the commitment or action is to be taken unilaterally and/or is enabled by previously agreed financial, technology and/or capacity-building support.

6. National schedules shall be annexed (in Annex A) to this Agreement and shall form an integral part thereof.

7. LDCs are invited to establish a national schedule for the commitment period [20XX] to [20XX] at their discretion.

[NOTE: Provisions to be inserted would clarify that nationally appropriate mitigation actions registered in Parties' National Schedules would not be subject to the compliance regime referred to in Article 21 (Compliance), except for the purpose of maintaining the integrity of the international carbon market and its mechanisms.]

Article 5

ENHANCEMENT OF COMMITMENTS AND ACTIONS IN NATIONAL SCHEDULES

1. During the commitment period [20XX] to [20XX], any Party may amend its national schedule to register additional nationally appropriate mitigation commitments or actions which enhance its overall mitigation outcome.

2. A Party shall submit to the Secretariat the text of any amendment proposed pursuant to paragraph 1 above. In accordance with paragraph 2 of Article 29, the Secretariat shall communicate the text of any such amendments to the Parties and signatories to the Convention six months prior to the meeting of the [Supreme Body] at which amendments are proposed for adoption.

3. Any Party may lodge an objection in writing to an amendment proposed pursuant to paragraph 1 above, on grounds that the proposed

amendment does not enhance the overall mitigation outcome of the Party seeking to make the amendment, prior to the meeting of the [Supreme Body] at which amendments are proposed for adoption.

4. If no Party lodges with the Secretariat an objection in writing to an amendment proposed pursuant to paragraph 1 above prior to the meeting of the [Supreme Body] at which amendments are proposed for adoption, the procedures set out under paragraphs [X] and [X] of Article 29 (Amendment of Annex A during a commitment period - processes for verification of the information supporting proposed amendments) shall not apply. Such amendments shall be deemed adopted by the [Supreme Body] at the relevant meeting and shall be registered in the Party's national schedule.

4. If any Party lodges with the Secretariat in writing an objection to an amendment proposed pursuant to paragraph 1 above prior to the meeting of the [Supreme Body] at which amendments are proposed for adoption, the amendment shall be considered and adopted in accordance with Article 29 (Amendment of Annex A during a commitment period) in its entirety.

Article 6

MODIFICATION OF ACTIONS IN NATIONAL SCHEDULES

1. During the commitment period [20XX] to [20XX], a Party may amend its national schedule to modify or replace an existing action provided the overall mitigation outcome is maintained or enhanced by the modification or replacement.

2. Amendments to national schedules proposed pursuant to paragraph 1 above shall be considered and adopted in accordance with Article 29 (Amendment of Annex A during a commitment period).

[NOTE: Provisions to be inserted would limit modification, where necessary, for the purpose of maintaining the integrity of the international carbon market and its mechanisms.]

Article 7

LOW EMISSION DEVELOPMENT STRATEGY

[NOTE: A number of Parties have proposed that the concept of low carbon or low emission development strategies or plans be included in the post-2012 architecture. We envisage this concept could be included here. Provisions could be inserted to require Parties to prepare and provide such Strategies, and describe their function and relationship to the National Schedules described above, and a potential Facilitative Platform as identified below.]

Article 8

QUANTIFIED EMISSION LIMITATION OR REDUCTION COMMITMENTS

[NOTE: Provisions would be inserted to establish the parameters for calculating the assigned amount for each Party with an economy-wide or sectoral quantified emission limitation or reduction commitment registered in its National Schedule, and calculating emissions for the purpose of verification of those commitments. These provisions would establish a common form for such commitments, but could provide for Parties, in their National Schedules, to also represent their commitments against other (additional) forms, for example as absolute emissions, as a percentage against an alternative baseline, or as a reduction against multiple baselines.]

Article 9

JOINT FULFILMENT OF QUANTIFIED EMISSION LIMITATION OR REDUCTION COMMITMENTS

[NOTE: Provisions would be inserted to enable Parties with economy-wide quantified emission limitation or reduction commitments registered in their National Schedules to meet these commitments jointly, if they so chose, so as to accommodate the needs of regional economic integration organisations.]

Article 10

INTERNATIONAL AVIATION AND MARITIME TRANSPORT

[NOTE: Provisions would be inserted to address emissions from these sectors, including appropriate direction to develop separate sector-specific agreements, and to clarify the relationship of these to the National Schedules.]

Article 11

SPILOVER EFFECTS

[NOTE: If required, provisions could be inserted to establish principles on how Parties can best address spillover effects.]

Article 12

[EXISTING MARKET MECHANISMS]

[NOTE: Provisions to be inserted would incorporate the existing market mechanisms, with enhancements as appropriate, and would establish the relationship of nationally appropriate mitigation commitments registered in Parties' National Schedules to these mechanisms.]

Article 13

SECTORAL CREDITING MECHANISM

[NOTE: Provisions to be inserted would establish a sectoral crediting mechanism, in which a Party that had registered a sectoral no lose target in its National Schedule may participate. Provisions would outline additional requirements for the verification of the data and information underpinning a registered target, and approval of the target, for the purposes of access to this mechanism. Parties with economy-wide or sectoral quantified emissions limitation or reduction commitments registered in their National Schedules would be able to purchase and use the credits generated to fulfil those commitments.]

Article 14

FOREST CARBON MARKET MECHANISM

[NOTE: Provisions to be inserted would establish a forest carbon market mechanism, in which a Party that had registered a national forest emissions level in its National Schedule may participate. Provisions would outline additional requirements for the verification of the data and information underpinning a registered emissions level, and approval of the emissions level, for the purposes of access to this mechanism. Parties with economy-wide or sectoral quantified emissions limitation or reduction commitments registered in their National Schedules would be able to purchase and use the credits generated to fulfil those commitments.]

Article 15

CREDITING

[NOTE: Provisions to be inserted would provide for the issuance of credits and units under this Agreement to eligible Parties relative to the nationally appropriate mitigation commitments and actions registered in their National Schedules.]

Article 16

ADAPTATION

[NOTE: Provisions to be inserted would address adaptation, and elaborate on the relationship between adaptation and Low Emission Development Strategies, and a potential Facilitative Platform, including the potential use of Low Emission Development Strategies in identifying adaptation objectives, efforts and needs.]

Article 17

TECHNOLOGY COOPERATION

[NOTE: Provisions to be inserted would address technology cooperation, and elaborate on the relationship between technology cooperation and the National Schedules and Low Emission Development Strategies.]

Article 18

FINANCE

[NOTE: Provisions to be inserted would address financing, and elaborate on the relationship between financing and the National Schedules, Low Emission Development Strategies and a potential Facilitative Platform, including the potential use of Low Emission Development Strategies in identifying the provision of finance and financial support needs.]

Article 19

FACILITATIVE PLATFORM

[NOTE: A number of Parties have proposed that the concept of a matching, coordinating or facilitative platform be included in the post-2012 architecture. We envisage such a concept could be included here. Provisions could be inserted to describe the function of such a Platform and its relationship to the National Schedules and Low Emission Development Strategies.]

Article 20

MEASUREMENT, REPORTING AND VERIFICATION

[NOTE: Provisions to be inserted would capture the measurement, reporting and verification (MRV) requirements for the quantifiable nationally appropriate mitigation commitments and actions registered in Parties' National Schedules (and other information requirements as appropriate). The MRV system would be calibrated according to Parties' responsibilities and capabilities, and according to the types of commitments and actions registered (i.e. more stringent requirements would apply to commitments and actions enabled by support, or seeking to attract credits through the crediting mechanisms), and would be underpinned by the submission of regular national inventories.]

Article 21

COMPLIANCE

[NOTE: Provisions to be inserted would clarify that nationally appropriate mitigation actions registered in Parties' National Schedules would not be subject to the compliance regime (to be established), except for the purpose of maintaining the integrity of the international carbon market and its mechanisms.]

Article 22

REVIEW OF AGREEMENT

[NOTE: Provisions to be inserted would provide for the [Supreme Body] to initiate consideration of the adequacy and effectiveness of this Agreement, including its National Schedules, at a particular point in time.]

Article 23

MULTILATERAL CONSULTATIVE PROCESS

[NOTE: Provisions to be inserted.]

Article 24

BODIES CONSTITUTED UNDER THE AGREEMENT

[NOTE: Provision to be inserted would constitute relevant bodies under this Agreement, including those required to verify the quantitative outcomes of the nationally appropriate mitigation commitments and actions registered in Parties' National Schedules where appropriate, and provide for immunities for the members and alternates of these bodies.]

Article 25

INSTITUTIONAL ARRANGEMENTS

[NOTE: Provisions to be inserted.]

Article 26

DISPUTE SETTLEMENT PROCEDURE

[NOTE: Provisions to be inserted.]

Article 27

AMENDMENT TO AGREEMENT

[NOTE: Provisions to be inserted would establish a process for amendments to this Agreement.]

Article 28

ADOPTION AND AMENDMENT OF ANNEXES

[NOTE: Provisions to be inserted would establish a process for adoption of, and amendments to, the Annexes to this Agreement, except as outlined under Article 29.]

Article 29

AMENDMENT OF ANNEX A (NATIONAL SCHEDULES) DURING A COMMITMENT PERIOD

1. Annex A (National Schedules) may only be amended once every two years from the commencement of the commitment period.
2. A Party shall submit to the Secretariat the text of any amendment to Annex A proposed pursuant to Article 5 (Enhancement of commitments or actions in National Schedules) or Article 6 (Modification of actions in National

Schedules). The Secretariat shall communicate a compilation of proposed amendments to the Parties and signatories to the Convention six months prior to the meeting of the [Supreme Body] at which amendments are proposed for adoption, indicating for each proposed amendment whether it is proposed pursuant to Article 5 or Article 6.

[NOTE: Provisions to be inserted would outline processes for verification of the information supporting proposed amendments and their registration in National Schedules.]

3. An amendment to Annex A that has been adopted in accordance with this Article, shall enter into force for all Parties to this Agreement six months after the date of the communication by the Depositary to such Parties of the adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the amendment to the annex. The amendment to the annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

Article 30

TRANSITIONAL ARRANGEMENTS

[NOTE: Provisions to be inserted.]

Article 31

RIGHT TO VOTE

[NOTE: Provisions to be inserted.]

Article 32

DEPOSITARY

[NOTE: Provisions to be inserted.]

Article 33

SIGNATURE AND RATIFICATION, ACCEPTANCE OR APPROVAL

[NOTE: Provisions to be inserted.]

Article 34

ENTRY INTO FORCE

[NOTE: Provisions to be inserted.]

Article 35

RESERVATIONS

[NOTE: Provisions to be inserted.]

Article 36

WITHDRAWAL

[NOTE: Provisions to be inserted.]

Article 37

AUTHENTIC TEXTS

[NOTE: Provisions to be inserted.]

ANNEX A
NATIONAL SCHEDULES OF MITIGATION
COMMITMENTS AND ACTIONS

[ALPHABETICAL LIST OF NATIONAL SCHEDULES OF PARTIES]

NATIONAL SCHEDULE FOR [NAME OF PARTY]

[to be filled in as per Article 4]

National pathway

Emissions pathway to 2050	
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Economy-wide nationally appropriate mitigation commitments and actions

Name/brief description of commitment or action	Baseline/ reference case	Emissions outcomes expected	Unilateral/supported
	<i>e.g. year, period, BAU, Mt CO₂e/unit, KW/h/unit, etc</i>	<i>XXX</i>	<i>XXX</i>

Sectoral nationally appropriate mitigation commitments and actions

Name/brief description of commitment or action	Baseline/reference case	Emissions outcomes expected	Unilateral/supported
	<i>e.g. year, period, BAU, Mt CO₂e/unit, KW/h/unit, etc</i>	<i>XXX</i>	<i>XXX</i>

ANNEX B

GREENHOUSE GASES AND SECTORS/SOURCE CATEGORIES

[NOTE: Greenhouse gases and sectors/source categories to be inserted.]