

CLIMATE CHANGE AUTHORITY

Special review: Australia's climate policy options February 2016

Submissions
Climate Change Authority
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Joint submission on Australia's climate policy options

We thank the Authority for the opportunity to make a submission on its Special Review: Australia's Climate Policy Options Draft Report (Draft Report).

We comment and make submissions with respect to following topics:

1. The implications of the Paris Agreement for Australia's climate policy
2. Introducing long-term thinking into Australia's climate policy
3. Overcoming path dependency in Australia's energy sector
4. A policy toolkit approach to climate policy
 - a. Policy options for 'heavy lifting' emissions reductions
 - b. Complementary measures
 - c. Fossil fuel subsidy reform
5. Promoting the mitigation role of the land sector
6. International trade and investment law issues
7. Policy settings for change in the financial sector

This is a joint submission of CREEL members based on their respective areas of research and expertise.

Professors Lee Godden and **Jacqueline Peel** (Melbourne Law School) are experts in the fields of climate change and environmental law at the national and international levels. They make submissions on the implications of the Paris Agreement, the policy toolbox approach to climate policy and land sector mitigation options. **Associate Professor Margaret Young** (Melbourne Law School) researches in the field of public international law, international law, climate change law and law of the sea. **James Munro** (Melbourne Law School) is completing his doctoral thesis entitled *Emission Trading Schemes under International Economic Law*. Together they comment on fossil fuel subsidy reform and international trade and investment law considerations for Australia's climate policy. **Dr. Anne Kallies** (RMIT) researches energy and environmental law, with a special focus on renewable energy and electricity market regulation. Her research draws on her study and work experience in Australia and Germany. She comments on the need for long-term thinking in Australia's climate policy and on the need for climate policy to overcome carbon-intensive path dependency in the energy sector. **Sam Johnston** (Melbourne Law School and United Nations University) works in the field of international environmental law, international law, and law of the sea. He leads the International Savanna Fire Management Initiative, which forms the basis of the section on promoting the role of the land sector in mitigation. **Lisa Caripis** is a CREEL research assistant with several years' research experience in climate change law. She assisted in the drafting of this submission.

Summary of submissions

Submission 1: A key plank of Australia's climate policy must be sufficient funding of climate science research, including analysis of potential climate change impacts on Australia of different emissions trajectories and research directed to innovative structural reforms.

Submission 2: The Authority should:

- assess policy options and legal measures in terms of the likelihood that Australia will be required to adopt stronger emissions reduction targets to meet new international obligations; and
- recommend policy options capable of delivering deep and substantive cuts to meet the Paris Agreement long-term temperature goals.

Submission 3: Australia should voluntarily cancel 'carried over' Kyoto carbon credits.

Submission 4: Australia should adopt robust long-term (2050) emissions reduction targets to drive structural reforms and transition its economy to meet future energy scenarios.

Submission 5: The criteria used by the Authority to assess the different policy options should include their long-term scaling up potential.

Submission 6: Beyond the policy options in its Report, the Authority should consider the regulatory interventions necessary to overcome ingrained patterns of carbon dependent energy production and consumption.

Submission 7: The ERF model is not an adequate policy vehicle for achieving Australia's emissions reductions. Clearly targeted, outcome-driven models are required.

Submission 8: We support the Authority's 'policy toolbox' approach. We submit that the Authority consider an ETS or emissions performance standards for the electricity and direct combustion sector, complemented by targeted policies with clear purposes, such as the promotion of energy efficiency gains and renewable energy technologies.

Submission 9: There is a role for policy measures specially tailored to promoting renewable energy. The RET, ARENA and CEFC should continue to form part of Australia's climate policy.

Submission 10: The Authority should consider fossil fuel subsidies and investigate the broad economic conditions that currently favour the production and consumption of fossil fuels in Australia as part of its policy reform. Australia should join the efforts of other countries in endorsing fossil fuel subsidy reform and should take the lead in providing enhanced transparency and national and international action in this area.

Submission 11: Australia should develop a strategic framework for achieving coordinated policy and legal measures to move toward the status of a carbon 'sink'. The framework should address biodiversity protection, energy transitions and the achievement of economic and cultural sustainability for Aboriginal and Torres Strait Islander peoples.

Submission 12: The Authority should ensure that any recommendations about Australia's climate policy and the design of a potential ETS support savanna burning methods and the international transfer of this technology through allow the use of international credits under the ETS.

Submission 13: With sufficient attention to Australia's trade and investment obligations, the Authority's recommendations about Australia's climate policy and the design of a potential ETS can be made in a way that minimises the likelihood of future trade disputes or investor litigation in this area.

Comment on the mitigation and adaptation nexus

We note that the Authority's report is limited to Australia's climate change mitigation rather than adaptation policy. Australia is vulnerable to a range of climate change impacts that result in economic, social and cultural losses to our community. We wish to comment at the outset that Australia's vulnerability to the impacts of climate change is affected by the degree to which it contributes to global efforts to reduce greenhouse gas (GHG) emissions – in other words, our adaptation and mitigation policies are interlinked. Further, there are significant synergies that can be achieved in linking strategies for mitigation and adaptation: for example urban planning measures to reduce embedded emissions in buildings may give rise to opportunities for adaptation.

Secondly, scientific research and modelling on the likely consequences for Australia of different emissions trajectories not only informs our policy on adaptation measures, but also provides an independent basis for decision-making on Australia's emissions reduction targets.

Research is also required to underpin strategic planning for structural adjustments in the energy sector to ensure an effective transition to a low carbon economy that supports innovation, entrepreneurial activity and community involvement (see Section 4 below on complementary renewable energy policy measures). The 'roll back' of funding for research to support transitions must be reversed, especially as Australia's expenditure on R&D is comparatively low by global standards.

Submission 1: A key plank of Australia's climate policy must be sufficient funding of climate science research, including analysis of potential climate change impacts on Australia of different emissions trajectories and research directed to innovative structural reforms.

1. Implications of the Paris Agreement for Australia's climate policy

Examination of climate policy options must take place in the context of Australia's obligations under international law.

The Paris Agreement, concluded by parties to the United Nations Framework Convention on Climate Change (UNFCCC) in December 2015, makes clear that from 2020 most of the 'heavy lifting' on climate change mitigation will lie with national governments.

Meeting the requirements of the Paris Agreement mean that Australia must ramp up its national emissions reduction targets significantly over time and put in place implementation measures that can achieve these targets effectively.

Policy and legal measures must deliver progressively greater emissions cuts

Once in force, the Paris Agreement will require Australia to pursue domestic mitigation measures with the aim of achieving the objectives set out in its successive Nationally Determined Contributions (NDC) from 2020.¹ Australia's present economy-wide emissions reduction target of 26-28% below 2005 levels by 2030 has been criticised as one of the weakest of any developed country.² The Paris Agreement also requires parties to update their

¹ Paris Agreement, art. 4(2).

² 'Fact check: Do Australia, US 'Compare Favourably' on Emissions Targets?' *ABC News* (18 December 2014), <http://www.abc.net.au/news/2014-12-18/greg-hunt-cherrypicking-emissions-reduction-targets/5896148>; Thorpe D, 'Australia's Climate Pledge Leaves Other Countries to Pick up the Slack' *The Drum* (18 August 2015), <http://www.thefifthstate.com.au/habitat/climate-change-news/australias-climate-pledge-leaves-other-countries-to-pick-up-the-slack/76661>; Climate Change Authority, *Comparing Countries' Emissions Targets: A Practical Guide* (March 2015).

NDC every five years with each successive NDC to represent ‘a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition’. Simply maintaining the status quo or weakening the NDC will not be acceptable.

Moreover, while the reduction target and policy measures put in place to achieve nominated NDCs is at the discretion of nation states, parties commit under the Paris Agreement to the collective aim of holding the global average temperature increase to ‘well below 2° C above pre-industrial levels’ and ‘to pursue efforts to limit the temperature increase to 1.5° C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change.’³

Pursuing a global long-term temperature goal of a maximum 1.5° C increase will require significantly deeper emissions cuts than currently pledged by countries.⁴ In order to achieve the long-term temperature goal of the Paris Agreement, parties also aim to reach global peaking of GHG emissions ‘as soon as possible’ and to undertake rapid reductions thereafter, so as to achieve net zero carbon (‘a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases’) in the second half of this century.⁵ As leading climate law expert, Professor Michael Gerrard (Columbia) has highlighted, meeting this objective will require the phase out of fossil fuels globally, with a rapid transition to low and zero carbon energy sources.⁶

Together, these provisions provide an important substantive standard for assessing the adequacy of NDCs over time. Given the need for concerted progressive strengthening of global targets, it is likely that the Australian government will come under pressure to strengthen its target prior to 2020.

We note the Climate Change Authority’s 2015 report found that a 2025 target of a 30% reduction below 2000 levels and further reductions by 2030 of 40-60% below 2000 levels would be consistent with climate science and comparable with the efforts of other countries.

Submission 2: The Authority should:

- ***assess policy options and legal measures in terms of the likelihood that Australia will be required to adopt stronger emissions reduction targets to meet new international obligations; and***
- ***recommend policy options capable of delivering deep and substantive cuts to meet the Paris Agreement long-term temperature goals.***

³ Conference of the Parties, United Nations Framework Convention on Climate Change, *Adoption of the Paris Agreement*, 21st sess, UN Doc FCCC/CP/2015/L.9 (12 December 2015) Annex (Paris Agreement), Art. 2.1a.

⁴ COP decision adopting Paris Agreement, para 17.

⁵ Article 4(1).

⁶ M.B. Gerrard, ‘What the Paris Agreement Means Legally for Fossil Fuels’, *Columbia Centre on Global Energy Policy*, Dec 18, 2015.

Strengthening pre-2020 action

Australia intends to use carbon credits issued under the first Kyoto period (e.g. certified emissions reductions under the Clean Development Mechanism) to help meet its 2020 emissions reduction target of 5% below 2000 levels. Under the decision of the conference of adopting the Paris Agreement, parties are encouraged to voluntarily cancel their holdings of these units.⁷ A number of countries such as Britain, Germany, Denmark, the Netherlands and Sweden have already pledged to cancel 634.6m tonnes' worth of credits.⁸ Australia has the opportunity to enhance its domestic emissions reductions in the pre-2020 period and demonstrate its commitment to the multilateral Paris Agreement, by joining these countries in cancelling its Kyoto credits.

Submission 3: Australia should voluntarily cancel 'carried over' Kyoto carbon credits

2. Introducing long-term strategic thinking into Australia's climate policy

Long-term targets

Introducing long-term thinking into the policy process and implementing legal measures will be crucial to set Australia on a lasting and forward-thinking path to emissions reductions beyond short and medium targets.

Australia has not yet publically committed to a long-term 2050 emissions reduction target to the international community. As part of its Paris commitment, Australia should consider binding short, medium *and* long-term targets. Research by Professor A. McHarg in regard to emissions targets in the UK has demonstrated that, binding targets can be beneficial on several levels.⁹ Firstly, they have 'high symbolic value...providing clarity about the future direction of policy, as well as relative priorities between potentially conflicting objectives.'¹⁰ Secondly, binding targets provide for an accountability standard. Transparency and accountability are necessary to ensure that the performance of any measures adopted can be monitored and evaluated. They focus public attention and can galvanise political action.¹¹ Indeed, targets can be an important incentive to develop strategic policy directions to achieve them. Thirdly, binding targets provide for policy certainty and therefore investment stability.¹² Policy stability has been identified as an important aspect of risk management for investors in chapter 5 of the Draft Report. The history of the changing targets of the RET shows the devastating impact that constant policy change and short-term thinking can have on the capacity of industry to introduce and sustain technological change and economically viable energy alternatives.¹³

Setting domestic targets can limit investment uncertainty as well as supporting the international process. The EU commitment to stringent emissions targets in the short, medium and long term¹⁴ placed them in a strong negotiating position in the Paris process as climate policy leaders. In turn, the EU climate policy now has a supporting industrial basis in

⁷ COP decision adopting Paris Agreement, para. 107.

⁸ Lenore Taylor, 'Australia isolated as developed nations cancel carryover credits from Kyoto', 5 December 2015, *The Guardian* (online) <http://www.theguardian.com/australia-news/2015/dec/05/australia-climate-talks-developed-nations-cancel-carryover-emissions-reduction-credits-kyoto>.

⁹ Aileen McHarg, 'Regulating for Sustainable Electricity Market Outcomes in Britain: Asking the Law Question' (2013) 30 *Environmental and Planning Law Journal* 289, from 297.

¹⁰ *Ibid* 297/298.

¹¹ *Ibid* 298.

¹² *Ibid*.

¹³ <http://www.smh.com.au/environment/climate-change/confidence-in-renewable-energy-sector-evaporated-after-abbott-cut-bloomberg-20160114-gm5qbo.html>

¹⁴ which include binding emissions reduction targets of at least 40% by 2030 and an targets of at least 80% emissions reductions by 2050

innovative energy technologies.¹⁵ Strong national targets could be Australia's opportunity to transform from a 'laggard' to a 'leader'¹⁶ in international climate policy and to simultaneously reinvigorate its industrial basis and knowledge economy. Australia's strong record on research and technological innovation often fails at the point of implementation. Building domestic demand and international profile in developing innovative mitigation approaches can assist in lifting this record.

Submission 4: Australia should adopt robust long-term (2050) emissions reduction targets to drive structural reforms and transition its economy to meet future energy scenarios.

Principles for assessing policy options

The Draft Report invites comment on the potential policy options available to Australia to fulfill its Paris commitments to reduce emissions by 26 to 28 per cent below 2005 levels by 2030. As expressly acknowledged in the Report in chapter 1, the Paris process is ongoing and requires regular review. The potential for 'scaling up' Australia's policies is therefore critical.

The three key principles of cost effectiveness, environmental effectiveness and equity to assess different policy options exclude 'scaling up potential'. This is a shortcoming as some measures, while cost effective in the short term, may well prevent long-term thinking. For example, the introduction of a general carbon price has supported gas-powered plants over what at the time was more expensive renewable energy. [International parity gas pricing now has altered the degree of cost effectiveness.] This scenario was forecast by the influential Garnaut report in 2008.¹⁷ While switching from coal to gas may lower emissions in the short term, it also results in sunk costs in carbon-based generation and network infrastructure, a path dependency not diverted as future energy transformations occur. The Authority should therefore consider introducing criteria capable of assessing the future effectiveness of different policy options, to achieve a long-term transformation of Australia to a low or even zero-carbon economy.

Submission 5: The criteria used by the Authority to assess the different policy options should include their long-term scaling up potential.

3. Overcoming path-dependency in Australia's energy sector

An important issue to be addressed is whether policy options have the potential to address the necessary long-term changes to our carbon dependent society. The way we produce and use energy, build houses and transport goods and people are all deeply dependent on carbon intensive processes. The stationary electricity sector especially, which is the single most important contributor to Australia's greenhouse gas emissions, is based on a particular pattern of interconnected generation and electricity network infrastructure.¹⁸ Similarly, our patterns of car use are supported by road and petrol station infrastructure. These patterns are not easily interrupted; they are path dependent and have co-developed with society's needs and expectations. Overcoming these deeply ingrained patterns will be necessary for deep cuts to our carbon emissions.

¹⁵ European Commission, 'Historic climate deal in Paris: EU leads global efforts' 12 December 2015 http://ec.europa.eu/clima/news/articles/news_2015121201_en.htm

¹⁶ Peter Christoff and Robyn Eckersley, 'Comparing State Responses' in John S Dryzek, Richard B Norgaard and David Schlosberg (eds), *The Oxford Handbook of Climate Change and Society* (Oxford University Press, 2011) 431

¹⁷ Garnaut, *Garnaut Climate Change Review* (Cambridge University Press, 2008) ch 20.

¹⁸ Lee Godden and Anne Kallies, 'Electricity Market Developments: New Challenges for Australia' in Martha M Roggenkamp et al (eds), *Energy Networks and the Law* (Oxford University Press, 2012) 292; Anne Kallies, 'The Impact of Electricity Market Design on Access to the Grid and Transmission Planning for Renewable Energy in Australia: Can Overseas Examples Provide Guidance?' (2011) 2 *Renewable Energy Law and Policy* 147

Policy choices should therefore not narrowly focus on cost efficient ways of achieving a medium 26-28 per cent emissions reduction targets, but rather, whether they have the potential to disrupt these patterns and set Australia's economy on a new, low carbon pathway. It should be queried whether instruments such as emissions trading alone can provide for these changes in a timely manner, or whether more intrusive measures will have to be taken. Examples from other jurisdictions, such as Germany, include regulatory changes to electricity market frameworks¹⁹ and planning law frameworks²⁰ to address and overcome ingrained patterns of carbon dependent energy production. It should therefore be queried whether the catalogue of measures considered in the Draft Report sufficiently covers the changes necessary to truly commit Australia to a low carbon economy.

Submission 6: Beyond the policy options in its Draft Report, the Authority should consider the regulatory interventions necessary to overcome ingrained patterns of carbon dependent energy production and consumption.

4. A policy toolkit approach

Climate change mitigation poses a complex, multi-scalar, multi-sectoral challenge for regulation and governance.²¹ We share the view of the Authority that it is unlikely that 'any single policy' would be effective for all purposes or across all sectors of the economy.²² To address this challenge, Australia's national policy should comprise a coordinated suite of policy instruments directed to achieving distinct, although inter-linked outcomes to drive energy transitions and associated structural change.

Involving all levels of government, and public, private and community sectors

The Australian government should provide policy leadership to coordinate efforts with other levels of government to ensure complementarity between local, state and territory and national climate policies, legislative measures and institutional support. The contribution of bottom up approaches is instructive here, for example, the contribution of major cities across the globe as points of diffusion for energy transition ideas and technologies. Comprehensive engagement with the private sector and civil society as sources of innovation, funding (including hybrid and crowd funding models) and growing models of 'energy autonomy', is also vital.

An adaptive, 'learning by doing' approach

In designing the climate policy toolbox or package, we suggest the development of a framework for assessing the institutional and regulatory 'risks' associated first with the interaction of individual policy measures, and secondly in terms of their interaction with existing legal and regulatory frameworks that may undermine longer term transitions to a low carbon future. Mechanisms for evaluating the performance and monitoring outcomes of the measures that comprise Australia's climate policy are required to ensure an adaptive and responsive policy framework. The 'learning by doing' strategy adopted by some of the world's leading economies, which also comprise 'climate leaders', offers an instructive model. These countries adopt learning by doing models in combination with clear and strong emissions reductions targets and decisive regulatory controls. Thus any policy approach must be capable of integration to support coordinated moves toward clear, robust targets.

¹⁹ Anne Kallies, 'The Impact of Electricity Market Design on Access to the Grid and Transmission Planning for Renewable Energy in Australia: Can Overseas Examples Provide Guidance?' (2011) 2 *Renewable Energy Law and Policy* 147

²⁰ Lisa Caripis and Anne Kallies, "'Planning Away' Victoria's Renewable Energy Future? Resolving the Tension between the Local and Global in Windfarm Developments' (2012) 29 *Environmental and Planning Law Journal* 415

²¹ J. Peel, L. Godden and R. Keenan, 'Climate Change Law in an Era of Multi-Level Governance' (2012) 1(2) *Transnational Environmental Law*, 245-280.

²² Draft Report, p. 14.

The need for strategic direction in Australia's climate policy

Australia's current climate policy relies on participation in the voluntary Emissions Reductions Fund (ERF) to achieve the bulk of the country's emissions reductions. While useful within circumscribed fields, this model is highly disaggregated and lacks overarching strategic direction. We note, moreover, that it is unclear whether this policy will even be adequate to deliver on the weak 2030 target. With projected emissions growth of 30% above 2005 levels by 2030, cutting emissions by 26-28% with the ERF at the centrepiece of Australia's climate policy will be, as the Authority recognises, 'a substantial task'.²³ Many commentators have expressed concern that the ERF lacks medium term sustainability and will not 'scale up' effectively to deliver on post-2020 emissions reduction commitments.²⁴

Submission 7: The ERF model is not an adequate policy vehicle for achieving Australia's emissions reductions. Clearly targeted, outcome-driven models are required.

Policy options for 'heavy lifting' emissions reductions

While we advocate adopting a range of carefully-directed legal, regulatory, economic and financial measures that are 'fit for purpose', we emphasise that the centrepiece of Australia's climate policy should be directed at the major sources of emissions. These are fossil fuel emissions from the electricity sector and direct combustion.²⁵ As discussed, the highly disaggregated approach of the Emissions Reductions Fund (ERF) is unlikely to achieve deep cuts in this sector. Reducing emissions in these sectors could be done either through direct regulation via emissions performance standards or a carbon price, such as an emissions trading scheme (ETS). This approach should be supported by complementary policies with targeted purposes, such as the promotion of energy efficiency gains and renewable energy technologies.

Carbon pricing

Previous assessments have found that 'putting a price' on emissions would achieve the bulk of Australia's emissions reductions.²⁶ Indeed, it certainly seems to be the expectation of businesses that Australia will need to return to some form of a price on carbon.²⁷ Should it be in the form of an ETS, there is now a wealth of experience and lessons to draw on from other jurisdictions including the European Union, New Zealand and California.

We suggest that the Authority consider the value of a carefully targeted ETS. Such a scheme would not seek to institute an economy-wide carbon price but would be directed at specific industries, emissions or sectors according to identified objectives for low carbon transitions. International and comparative experience with cap-and-trade ETS reveals a number of criteria that are critical to the effectiveness of such schemes: ready replacement and/or available alternative technology, relatively limited 'players in the market', industry engagement and capacity for transition *and* progressively more robust standard setting for emissions

²³ Draft Report, p. 8.

²⁴ See, e.g., F. Jotzo, Australia's 2030 Climate Target Puts Us in the Race, But At the Back', *The Conversation*, Aug. 11, 2015, at <https://theconversation.com/australias-2030-climate-target-puts-us-in-the-race-but-at-the-back-45931>.; Peter Christoff, 'On These Numbers, Australia's Emissions Auction Won't Get the Job Done', *The Conversation*, Apr. 26, 2015; Paul Burke and Frank Jotzo, 'Wrong Way, Go Back', *ANU Crawford School of Public Policy*, Mar. 17, 2014; Peter Hannam and Johnathan Swan, Ross Garnaut Slams Abbott Government's Direct Action Policy as Like a 'Martian Beauty Contest', *The Sydney Morning Herald*, Mar. 7, 2014, at <http://www.smh.com.au/federal-politics/political-news/ross-garnaut-slams-abbott-governments-direct-action-policy-as-like-a-martian-beauty-contest-20140306-34atj.html>.

²⁵ Draft Report, p. 31.

²⁶ R. Garnaut, *Garnaut Review 2011: Australia in the Global Response to Climate Change*, Chapter 5 Correcting the Great failure and Chapter 6 Better climate, better tax.

²⁷ F. Jotzo, The CCEP Australia Carbon Pricing Survey 2012: Policy Uncertainty Reigns but Carbon Pricing Likely to Stay (2012).

reductions over time. The Montreal Protocol for Ozone Depleting Substances and the Hunter River Salinity Trading Scheme provide models for comparison here. The coverage and scope of any selective ETS scheme would need to be considered in conjunction with the feasibility of continuing the ERF, and the various ETS design models that are available such as a baseline and credit model.

Converting the ERF to a baseline-and-credit ETS

There is potential for the ERF to evolve into an ETS over time. For instance, the ‘safeguard mechanism’ for the scheme encompasses flexible compliance options including allowing entities whose emissions exceed their baselines to purchase ACCU credits. This is similar to a baseline-and-credit ETS like that that operated under the former NSW GGAS.²⁸ At the moment, the baselines that will be applied under the safeguard mechanism are very generous and unlikely to be exceeded by covered entities creating little demand for credits.

If the regulations governing baseline setting were to be tightened subsequently, perhaps coupled with measures allowing the purchase of international carbon credits in addition to ACCUs, the safeguard mechanism could operate as a form of market control on emissions levels. The review of the ERF and safeguard mechanism scheduled for 2017 could provide an opportunity for these reforms.

Direct regulation via emissions performance standards

Another option for consideration would be direct regulation of point source emissions through emissions performance standards, such as the regulations developed by the EPA in the United States for existing and new power plants,²⁹ or those that apply to new power stations in the United Kingdom.

Performance standards could also apply to emissions from direct combustion used for example in aluminium smelting and steel manufacture and other emissions intensive, but also trade-exposed industries. These performance standards could have incentives built into the regulatory licencing arrangements that would reward those entities that go beyond minimum standards (e.g. progressive reductions in licence fees or taxation measures), cognisant of Australia’s obligations under international trade law (see Section 5 below).

Emissions performance standards for vehicles would enable Australia to tackle emissions in the transport sector, another major source of emissions. We note the Authority’s 2014 research report which found a mandatory light vehicle emissions standard to be one of the ‘least costly emissions reduction options available to Australia.’³⁰ Stringent standards are already in place in the United States and the European Union. This policy measure would bring Australia into line with best practice climate policy. Current government policy would not see any progress on this front until 2017.³¹

A review and potential progressive reduction of the fuel tax credit for Heavy Diesel Vehicles could lead to a further cut in transport emissions by removing this incentive for fossil fuel consumption. We comment below on fossil fuel subsidy reform more generally.

²⁸ A. Pears, ‘Direct Action could deliver a useful outcome: carbon trading’, *The Conversation*, Nov. 3, 2014.

²⁹ United States Environmental Protection Agency, ‘Clean Power Plan Regulatory Actions for power plants’ <http://www.epa.gov/cleanpowerplan/regulatory-actions#regulations> accessed 15 February 2016.

³⁰ Climate Change Authority, *Light vehicle emissions standard for Australia – summary*.

<http://www.climatechangeauthority.gov.au/reviews/light-vehicle-emissions-standards-australia>

³¹ Paul Fletcher, Minister for Major Projects, Territories and Local Government, Press release, ‘Turnbull Government to review approach to vehicle emissions’, 31 October 2015, http://minister.infrastructure.gov.au/pf/releases/2015/October/pf014_2015.aspx

Complementary measures

While the idea of carbon pricing as a sole measure for climate change mitigation had substantial currency in Australia following the recommendations of the 2008 *Garnaut Review*,³² ‘best practice’ from climate leader jurisdictions such as California and the EU suggests a diversified portfolio of measures is preferable. We share the view of the Authority that it is necessary to adopt a ‘toolbox’ approach with a range of tailored measures.³³ We highlight below areas that require policy measures that are different, but complementary to an ETS or direct regulation.

Submission 8: We support the Authority’s ‘policy toolbox’ approach. We submit that the Authority consider an ETS or emissions performance standards for the electricity and direct combustion sector, complemented by targeted policies with clear purposes, such as the promotion of energy efficiency gains and renewable energy technologies.

Renewable energy

There is merit to the tri-partite approach of promoting electricity generation from renewable energy sources under the Renewable Energy Target; research and development of renewable energy technology by the Australian Renewable Energy Association (ARENA); and commercialisation and deployment of renewable energy, energy efficiency and low-emissions technologies via the Clean Energy Finance Corporation (CEFC). These are three distinct but important policy objectives. This arrangement should be maintained in Australia’s climate policy. We are concerned about the uncertainty regarding the future of the CEFC³⁴ and ARENA³⁵. Both institutions perform important functions that are not served by other policies.

We note that in its review of the RET, the Authority endorsed the RET’s continuing utility alongside the carbon pricing scheme.³⁶ We support this position. We further support the Authority’s position that ‘in considering alternative carbon pricing options, it is important to take into account implications for existing and prospective investors in Australia’s RET.’³⁷ As the Authority notes, emissions reduction policy and renewables policy have traditionally been kept separate by all governments, and so any change to this policy setting should proceed with caution so as not to undermine investor certainty and gains already made in this area.

Submission 9: There is a role for policy measures specially tailored to promoting renewable energy. The RET, ARENA and CEFC should continue to form part of Australia’s climate policy.

³² R. Garnaut, *Garnaut Climate Change Review* (Cambridge University Press, 2008); R. Garnaut, *Update Paper 6: Carbon Pricing and Reducing Australia’s Emissions*, Garnaut Climate Change Review – Update 2011 (2011). Since the Reviews, however, Professor Garnaut’s views appear to have changed with his recent op eds endorsing carbon pricing in conjunction with other measures like the RET. See R. Garnaut, ‘Climate Change: the Challenge for Australia’, *Sydney Morning Herald*, June 15, 2015, at <http://www.smh.com.au/environment/un-climate-conference/climate-change-prime-minister-tony-abbott-warming-to-bigger-greenhouse-cuts-20150622-ghubqk.html>.

³³ Draft Report, p. 14.

³⁴ Michael Slezak, ‘Renewables agency stripped of members and run by bureaucrat’, 1 February 2016, *The Guardian* (online) <http://www.theguardian.com/australia-news/2015/dec/13/malcolm-turnbull-lifts-abbott-ban-on-government-finance-for-wind-power>

³⁵ Gabriel Chan, ‘Malcolm Turnbull lifts Abbott ban on government finance for wind farms’, 13 December 2015, *The Guardian* (online) <http://www.theguardian.com/australia-news/2016/feb/02/australian-renewables-energy-agency-arena-board-terms-expire-bureaucrat>

³⁶ Climate Change Authority, *2012 Renewable Energy Target Review*, Final Report (2012).

³⁷ Draft Report, p. 25.

Energy Efficiency

Enhancing energy efficiency remains one of the most cost effective and equitable means of reducing Australia's emissions. Further use of these measures particularly in urban settings as population density increases is vital. In addition, Australia should be investing in R&D that is associated with energy efficiencies and the information technologies that will drive efficiencies in critical areas such as electricity markets and distribution.

Fossil fuel subsidy reform

The Draft Report considers a range of policy options in its Chapter 3, but we consider that these are overly limited. For example, we would also invite consideration of fossil fuel subsidy reform as part of a policy framework. This would entail changes to domestic economic incentives that currently favour the production and consumption of fossil fuels (for example, the fuel tax credit for Heavy Diesel vehicles, noted above). We consider that Australia should consider joining the efforts of other countries that are endorsing fossil fuel subsidy reform as part of climate mitigation and adaptation.³⁸ Australia should also provide greater transparency in its estimates of fossil fuel subsidies (including through the modelling that it uses in making such estimates), and in notifying its subsidies to international organisations.³⁹ Such a policy would make renewable energy more competitive and indeed indirectly support the policy to enhance innovation in renewable energy research and development.

Submission 10: The Authority should consider fossil fuel subsidies and investigate the broad economic conditions that currently favour the production and consumption of fossil fuels in Australia as part of its policy reform. Australia should join the efforts of other countries in endorsing fossil fuel subsidy reform and should take the lead in providing enhanced transparency and national and international action in this area.

5. Promoting the mitigation role of the land sector

Australia occupies a unique situation as a developed country with a strong dependence on rural areas and primary industries combined with rapidly declining biodiversity and at risk areas such as World Heritage places. These interests must be carefully considered when assessing and recommending climate policy options. The Authority mentions on page 31 that "it might be possible for the (land) sector to change from being a source of emissions to a net sink over time". The land sector can make a strong contribution as part of Australia's climate policy but it must also achieve biodiversity protection outcomes and contribute in concert with other sectors of the Australian community.

If Australia is to gain the status of a net GHG sink over time this will require coordinated efforts. Australia has been a leader in developing statutory frameworks for bio-sequestration that provided clear strategic direction for achieving specified emissions reductions targets. Current policies that favour project-by-project implementation risk diffusion of focus and effort. Conditions on approvals for development projects under the *EPBC Act 1999* (Cth) could provide for 'twined' biodiversity and emissions reduction outcomes. The use of 'offsets' to replace these substantive requirements for biodiversity and emissions reduction

³⁸ For a list of supporters of the relevant communique launched at the Paris Agreement (which Australia did not sign), see <http://fffsr.org/communique/supporters/>.

³⁹ For estimates of subsidies and other forms of support for fossil fuels, see work of the OECD and the IEA at <http://www.oecd.org/site/tadffss/>.

outcomes should only be used sparingly given that offsets have not been shown to increase or maintain overall levels of biodiversity. More broadly, although the entrenched difficulties of natural resource management and biodiversity protection are widely acknowledged, these must be addressed and governing bodies adequately empowered and resourced, if the goals of a net sink from the land sector are to be feasible.

If Australia wishes to show global leadership on biodiversity protection then it has the opportunity to provide domestic governance frameworks and ‘learning by doing’ projects that are world’s best practice. This will require on-going Commonwealth support working in conjunction with other governments and the growing presence of the NGO sector, including large-scale conservation organisations. Carefully directed incentives for this sector to engage in ‘co-benefit’ schemes which deliver climate mitigation and biodiversity outcomes together with social and cultural objectives could be explored further.

Engaging with Aboriginal and Torres Strait Islander peoples

If Australia is to pursue a policy of Northern Development, then the potential to adopt an alternative approach to development that utilises the land sector in a sustainable manner and is carbon neutral or a bio-sequestration ‘sink’ should be explored. An opportunity exists in this manner to address the historic exclusion of Aboriginal peoples from economic activity in the region.

These approaches may also be the basis of substantive equity outcomes where they provide sustainable and long-term opportunities for Aboriginal and Torres Strait Islander peoples to engage in the hybrid economy. It is estimated that approximately 30% of the Australian continent is now subject to Aboriginal land rights, native title or some other form of indigenous tenure. The opportunities for indigenous lands, waters and co-managed lands to contribute to land sector-based emissions reduction through bio-sequestration and innovative models such as use of traditional knowledge in savanna burning practices are significant. It is important that Aboriginal and Torres Strait Islander peoples are fully and effectively supported to engage in land sector abatement and emissions reductions which can build upon existing connection to country.⁴⁰ The viability of these models is exemplified below.

Submission 11: Australia should develop a strategic framework for achieving coordinated policy and legal measures to move toward the status of a carbon ‘sink’. The framework should address biodiversity protection, energy transitions and the achievement of economic and cultural sustainability for Aboriginal and Torres Strait Islander peoples.

Savanna burning

The savanna burning methods under the ERF have played an important role in developing the mitigation potential of the land sector. Under the ERF there are now 55 savanna burning projects registered. As a result of the two auctions held to date there are now a total of 36 contracts for savanna burning projects for a total of 7,070,000 tonnes of ACCUs. 12 of these projects are Indigenous-led, for a total 3,513,000 tonnes of ACCUs. There is significant further potential for these methods.

We would like to bring to the attention of the Authority the findings of the International Savanna Fire Management Initiative and its global assessment of the international transferability of savanna burning methods approved under the Emissions Reduction Fund (the Assessment). This Assessment was started in 2013 and the final report and launched at

⁴⁰ See, ALRC, *Connection to Country: Review of the Native Title Act 1993 (Cth) (ALRC Report 126)* (2015).

COP 21 by the Minister of the Environment. A copy of the report and the work of the Initiative is available at <http://tfm.unu.edu>.

The Assessment shows that savanna burning methods are globally applicable and relevant, potentially a significant global mitigation option and global adaptation mechanism for predicted increases in wildfires. There has been widespread international interest in these methods. These methods provide a potentially important example of an international carbon credit, or offset, that is credible, reliable, transparent, meets Australian standards, is complementary to many policy options, including an ETS coupled with a targeted voluntary carbon crediting scheme, and avoids many of the pitfalls that other land use credits or offsets, such as REDD+ raise, like, permanence, land tenure, governance issues and monitoring, reporting and verification issues.

Allowing the use of, or access to credible international credits would help Australia achieve its post 2020 target in a number of important ways. It would help minimise the costs of meeting any target by allowing access to cheaper mitigation options available in other countries. Allowing access to more options would also deepen and stabilise carbon markets and prices in Australia. Promoting the use of these methods internationally by allowing the credits or offsets they generate to be used in Australia would help the Australian Government achieve many related international commitments, such as, helping other countries develop meaningful mitigation commitments and adaptation options, promote climate change technology transfer, provide financial support for mitigation and adaptation costs and promote employment in poor, vulnerable and remote communities. Supporting the export of these methods could therefore provide an important contribution to the UNFCCC and demonstrate in a practical way Australian leadership in addressing climate change around the world.

The Assessment also shows the Paris Agreement provides for a number of obligations that savanna burning and traditional fire management can make an important contribution to achieving. For example, Article 5 provides “Parties should take action to conserve and enhance, as appropriate, sinks and reservoirs of greenhouse gases...including forests”. It also encourages Parties to build on the existing framework developed by the COP. Savanna burning and traditional fire management address an important driver of forest degradation, and could provide an example of “action to conserve and enhance” forests ability to mitigate greenhouse gases. Under Article 7 each Party “shall, as appropriate, engage in adaptation planning processes”. Savanna burning and traditional fire management, as an important adaptation mechanism for managing wildfire, could make an important contribution to national adaptation plans. Any support provided by developed countries in this respect could provide an important contribution to the support provided for adaptation and the overall progress towards the global goal.

Finally, the Authority fails to clearly mention the important role that policy and ETS’s can play in developing, promoting and applying new technologies generally. Savanna burning is but one of the many climate change technologies that should be supported in any future climate change policy and a properly structured ETS.

Submission 12: The Authority should ensure that any recommendations about Australia’s climate policy and the design of a potential ETS support savanna burning methods and the international transfer of this technology through allow the use of international credits under the ETS.

6. International trade and investment law issues

We note the design and implementation of climate policies in Australia need to take into account Australia's trade and investment commitments. Like many international regimes, these existing and impending commitments have important links to climate change mitigation and adaptation.⁴¹ One major example is the Trans-Pacific Partnership (TPP), which was concluded in December 2015 and which will enter into force with the requisite number of ratifications over the next few years. Under the TPP, Australia will be legally bound to four of its top six trading partners to "not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment between the Parties."

This means that a future rescission or wind-back of climate measures (e.g. the wholesale rescission of an emissions trading scheme, or the weakening of that scheme by e.g. increasing free allocations, exempting certain sectors, or removing price floors) due to competitiveness concerns could give rise to a violation of that agreement, with the potential consequence of trade sanctions. This should be borne in mind when deciding policy settings and/or designing an emissions trading scheme - particularly insofar as the scheme might embed in-built flexibilities from the outset which would obviate the need for future "derogations" (e.g. statutory amendments).

Considerations for the design of a carbon pricing scheme

The Authority's Draft Report poses the question about how mandatory carbon pricing performs against the principles of cost effectiveness, environmental effectiveness and equity (Question 3, p. 21). We note that the legal status of carbon units as objects of trade and investment is currently unsettled, and that the Melbourne Law School is undertaking research in this area.⁴² It may be that the acceptance of offset units generated by the private sector, or of carbon units sourced from external emissions trading schemes or offset mechanisms, could convert the carbon units of an Australian scheme into international objects of trade and investment that attract the purview of Australia's international trade and investment obligations. This means that, for instance, the qualitative and quantitative limits on CDM units, under a future ETS, for example, could be presumptive violations of international economic law, unless sufficient evidence could be adduced justifying those restrictions in terms of the scheme's objective. It may be necessary to demonstrate that the restrictions are the least trade restrictive method of achieving that objective. One design implication is that schemes with multiple objectives (such as climate mitigation and non-carbon benefits) need to be clear and transparent in those objectives.

The Draft Report poses questions relating to finding the right fit between sectors and policies (Question 12, p. 33) and concerns about international competitiveness (Question 17, p. 36). We note that in the context of an ETS, the free allocation of carbon units to particular sectors or industries for the very reason that they export a certain level of goods may be proscribed under Australia's international trade and investment obligations, unless designed and implemented in ways that address Australia's commitments. These include the need to consult with trading partners, and to articulate environment-based or other objectives in ways that fall within the available justifications.

⁴¹ Margaret A. Young, 'Climate Change Law and Regime Interaction' (2011) 2 *Carbon and Climate Law Review* 147.

⁴² James Munro, 'Trade in carbon units as a financial service under international trade law: Recent developments, future challenges' (2014) 8 *Carbon and Climate Law Review* 106; James Munro, 'Pushing the boundaries of 'products' and 'goods' under GATT 1994: An analysis of the coverage of new and unorthodox articles of commerce' (2013) 47 *Journal of World Trade* 1323.

Submission 13: With sufficient attention to Australia's trade and investment obligations, the Authority's recommendations about Australia's climate policy and the design of a potential ETS can be made in a way that minimises the likelihood of future trade disputes or investor litigation in this area.

7. Policy settings for change in the financial sector

It is important for Australia to put in place appropriate regulatory settings that encourage energy transition and innovation in the private sector, discourage emissions-intensive practices, and support other climate mitigation activities of non-state actors. At an international level the 'equator principles' have provided a platform for financial institutions such as the World Bank to adopt sustainability principles in decision-making on project funding.

Appropriate regulation and incentives to encourage the financial sector to consider emissions reduction targets in lending practices and divestment of fossil fuel investment portfolios are some policy options for consideration. Further examination of policy options in this field could harness the considerable potential of the financial and corporate sector to make a contribution to meeting a progressively robust target for Australia's emissions reduction policies.