

The greenhouse trigger: Where did it go and what of its future?

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Introduction

The scope of Australia's main federal environmental legislation, the *Environment Protection and Biodiversity Conservation Act 1999* or EPBC Act, is defined by a series of specified areas of 'national environmental significance' which are subject to the Act's referral, assessment and approval process. The idea that one of these areas should be climate change – embracing developments likely to emit a significant quantity of greenhouse gases – emerged in the deliberations over the introduction of the Act in the late 1990s. Ever since, this 'greenhouse trigger' has played a prominent role in the national global warming debate. Along with the ratification of the Kyoto Protocol, the greenhouse trigger has become a marker of policy on climate change. Those who are sceptical of human-induced climate change, including the Howard Government and many of its business allies, have generally opposed the idea. Opposition parties at the federal level and major environment groups (for example, the Australian Conservation Foundation (ACF) and the World Wide Fund for Nature Australia (WWF-Australia)) who have expressed greater concern about climate change have tended to support the trigger, albeit in a range of different forms.

This chapter traces the development of the greenhouse trigger in the national greenhouse debate and analyses whether it is likely to be an effective mechanism for limiting Australia's greenhouse emissions. The second section provides a history of the greenhouse trigger in Australia's ongoing greenhouse debate. The third section analyses what a greenhouse trigger could look like and the complexities that might be encountered. The fourth section provides details of the greenhouse triggers that have been put forward. The fifth section analyses whether a greenhouse trigger would be a cost-effective means of limiting emissions and the final section draws a conclusion.

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The evidence indicates that the best means of achieving least cost abatement is via a comprehensive emissions trading scheme with an effective emissions cap that is complemented by other measures including targeted research, carbon taxes and land clearing and other agriculture controls. If there is a comprehensive emissions trading scheme and appropriate complementary measures, a greenhouse trigger is unnecessary. It would merely obstruct market forces that encourage least cost abatement and impose unnecessary costs on business and government. However, in the event that the government refuses to establish an appropriate emissions trading scheme, a greenhouse trigger may be necessary to achieve the required emission reductions and prompt the uptake of low-emission technologies.

Notes

- 1 Senate Environment, Recreation, Communications and the Arts Legislation Committee, *Official Committee Hansard: Environment Protection and Biodiversity Conservation Bill 1999*, Canberra, 4 March 1999, p 135.
- 2 John Howard, *Letter to Senator Meg Lees*, Commonwealth of Australia, Canberra, May 1999, <http://www.pm.gov.au/news/media_releases/1999/letter3105.htm>.
- 3 *Senate Hansard*, 23 June 1999, p 6112.
- 4 See, for example, A Bartlett, *Senate Hansard*, 23 June 1999, p 6107.
- 5 *Senate Hansard*, 23 June 1999, p 6110.
- 6 See cl 4.
- 7 J Pittock, '80% of what we wanted – and they call this a bad Act?', *On Line Opinion*, 15 July 1999.
- 8 See L Taylor, 'White Faces as Hill Gets Closer to his Green Trigger', *Australian Financial Review*, 14 April 2000.
- 9 Australian Industry Greenhouse Network (AIGN), Submission to the Department of the Environment and Heritage on the Possible Application of a Greenhouse Trigger under the Environment Protection and Biodiversity Conservation Act 1999, AIGN, February 2000.
- 10 See Taylor, above n 8; and L Taylor, 'Tense Cabinet Ponders Pulling Green Trigger', *Australian Financial Review*, 23 May 2000.
- 11 See Taylor, above n 10; and R Rose, 'Ministers Clash Over Green Law', *The West Australian*, 23 May 2000.
- 12 See Taylor, above n 8; Rose, above n 11; and N Bolkus, *Senate Hansard*, 29 September 1999, p 9121.
- 13 This point was made by Democrat Senator Andrew Bartlett in August 2000. See A Bartlett, *Senate Hansard*, 15 August 2000, p 16364.
- 14 Taylor, above n 10.
- 15 J Anderson, *Doubt Cast on Greenhouse Trigger in Environment Protection Act*, Media Release, Commonwealth of Australia, Canberra, 22 May 2000.
- 16 Taylor, above n 10.
- 17 L Taylor, and M Skulley, 'Cabinet Clash on Greenhouse', *Australian Financial Review*, 24 May 2000. See also L Taylor, 'Industry Adds its Weight to Oppose Greenhouse Move', *Australian Financial Review*, 25 May 2000.
- 18 G Pearce, *The Business Response to Climate Change: Case studies of Australian interest groups*, Doctoral Thesis, Australian National University, July 2005.
- 19 Taylor and Skulley above n 17.
- 20 R Brazzale, 'Kyoto Commitment Struggle', *Australian Financial Review*, 30 May 2000.

THE GREENHOUSE TRIGGER

- 21 I Henderson, 'Cabinet lock on green trigger', *The Australian*, 9 June 2000.
- 22 I Henderson, 'Greenhouse trigger a shot in the foot', *The Australian*, 8 June 2000.
- 23 Henderson, above n 21.
- 24 L Taylor, 'Companies in Fresh Look at Greenhouse', *Australian Financial Review*, 25 July 2000.
- 25 J Koutsoukis, and A Darby, 'Greenhouse Win for Minchin', *The Age*, 23 August 2000.
- 26 See US Senate Resolution 98, <<http://thomas.loc.gov/cgi-bin/bdquery/z?d105:S.Res.98>>.
- 27 See S Fletcher, *Global Climate Change Treaty: The Kyoto Protocol*, Congressional Research Service (CRS) Report, No. 98-2, Library of Congress, US Government, 6 March 2000.
- 28 *Senate Hansard*, 19 June 2000, p 15073.
- 29 *House Hansard*, 29 June 2000, p 18710.
- 30 *Senate Hansard*, 14 August 2000, p 16270.
- 31 Above, p 16277.
- 32 J Koutsoukis, 'Hill's draft attacked', *Australian Financial Review*, 20 November 2000; L Taylor and C Martin, 'Hill surprises colleagues with greenhouse trigger', *Australian Financial Review*, 17 November 2000.
- 33 Senate Environment, Communications, Information Technology and the Arts References Committee, *The Heat is On – Australia's Greenhouse Future*, Commonwealth of Australia, Canberra, Recommendations 33 and 34, p 179. See also Recommendation 106.
- 34 Above, Recommendation 96.
- 35 *Senate Hansard*, 23 August 2001, p 26541.
- 36 See, for example, *Senate Hansard*, 16 November 2004, p 61.
- 37 *Senate Hansard*, 11 August 2005, p 23.
- 38 The Heritage Bills were three pieces of legislation that amended the EPBC Act to establish a new federal heritage regime. The Bills were the Environment and Heritage Legislation Amendment Bill (No 1) 2003, Australian Heritage Council Bill 2003 and Australian Heritage Council (Consequential and Transitional Provisions) Bill 2003.
- 39 P Garrett, *Australia: After Kyoto*, Address to the Sydney Institute, 6 April 2005.
- 40 See L Alison, 'How can we make Australia more self reliant when it comes to energy?', *On Line Opinion*, 9 August 2004; and Australian Democrats, *Greenhouse and Energy – Australian Democrats Issue Sheet*, Election 2004, 2004.
- 41 N Beynon, M Kennedy and A Graham, *Grumpy Old Greenies*, Humane Society International, 2005.
- 42 *Senate Hansard*, 28 November 2006, p 29; and *Senate Hansard*, 30 November 2006, p 79.
- 43 [2004] FCAFC 190.
- 44 Environment and Heritage Legislation Amendment Bill (No 1) 2006.
- 45 Upon the commencement of the *Environment and Heritage Legislation Amendment Act (No 1) 2006* this exemption will be amended so that it will not apply where a change 'results in a substantial increase in the impact of the use on the land, sea or seabed'.
- 46 See *Senate Hansard*, 15 August 2000, pp 16360-64; and *Senate Hansard*, 'Government Response to the Senate Environment, Communications, Information Technology and the Arts References Committee Report: The Heat is On – Australia's Greenhouse Future', 23 August 2001, pp 26523-72.
- 47 *Environment Protection and Biodiversity Conservation Amendment Regulations 2000 – Draft Only*, Commonwealth of Australia, Canberra, 2000.
- 48 Above.

- 49 *Senate Hansard*, 23 June 1999, pp 6057, 6093-95, and 6110-11; *Senate Hansard*, 14 August 2000, pp 16290-91; *Senate Hansard*, 19 August 2003, p 13889; *Avoiding Dangerous Climate Change (Climate Change Trigger) Bill* 2005; *Senate Hansard*, 1 December 2006, pp 91-93; and *House Hansard*, 30 October 2006, pp 116-17.
- 50 *Senate Hansard*, 23 June 1999, pp 6093-95 and 6206; and *Convention on Climate Change (Implementation) Bill* 1999.
- 51 *Senate Hansard*, 18 August 2003, p 13846.
- 52 *Senate Hansard*, 1 December 2006, p 97; and *Climate Change Action Bill* 2006.
- 53 *Senate Hansard*, 14 August 2000, pp 16293-94.
- 54 Australian Conservation Foundation (ACF), *Climate Change Letter Writing Campaign Support*, ACF, Melbourne, 1 November 2001.
- 55 S Chapple, *Fact Sheet: Environment Protection and Biodiversity Conservation Act 1999 – Greenhouse Gas Emissions and the EPBC Act*, Version 2, WWF-Australia and HSI, Canberra, October 2001.
- 56 D Anton, *Submission on the Consultation Paper for the Possible Greenhouse Trigger under the Environment Protection and Biodiversity Conservation Act 1999*, National Environmental Defender's Office Network, 18 February 2000; Australian Network of Environmental Defender's Offices (ANEDO), *Possible new matters of National Environmental Significance under the EPBC Act 1999*, Submission to the Department of the Environment and Heritage, ANEDO, May 2005; and ANEDO, *Submission on the Environment and Heritage Legislation Amendment Bill (No 1) 2006*, Submission to the Senate Environment, Communications, Information Technology and the Arts Committee, Commonwealth of Australia, Canberra, October 2006.
- 57 For a critique of the emissions trading schemes established under the Kyoto Protocol, see W McKibbin, and P Wilcoxon, 'The Role of Economics in Climate Change Policy', *Journal of Economic Perspectives*, vol 16 no 2, pp 107-29.
- 58 Whether this is the case will depend on the gas in question. In relation to CO₂, the major greenhouse gas associated with human-induced climate change, the site of release is irrelevant because CO₂ is a long-lived gas that is well mixed in the atmosphere.
- 59 The Mandatory Renewable Energy Target (MRET) scheme requires that an additional 9,500 GWh of electricity be provided by renewable sources above 1997 levels by 2010, which will raise the proportion of electricity from renewables from 10.5 to 11.1 per cent. There are similar schemes in Victoria and New South Wales. The argument in favour of retaining and extending MRET is premised on the notion that the price of emission permits may not be sufficiently high in the early years of an emissions trading scheme to ensure continued investment in the renewable sector. In these circumstances, MRET may facilitate a smoother transition in the electricity market to carbon constraints. Termination of MRET and other similar state schemes may also have equity implications for people who have invested in renewable energy generators.
- 60 Fossil-fuel based electricity generation currently accounts for around 30 per cent of Australia's emissions.
- 61 Nicholas Stern, *The Economics of Climate Change – The Stern Review*, Cambridge University Press, Cambridge, 2007, p 381.
- 62 See Taylor, and Skully, above n 17; and Taylor, above n 17.
- 63 In reality, even though the environment minister may technically have the power to impose offset conditions on major emitters, this is unlikely to occur unless the proposal has support within Cabinet.