

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

*Presented and read a first time*

## **Climate Protection Bill 2008**

*(Mr Windsor)*

**A Bill for an Act to make provisions for dealing  
with the threat posed by climate change**



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# **A Bill for an Act to make provisions for dealing with the threat posed by climate change**

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Climate Protection Bill 2008*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

### **3 External Territories**

This Act extends to the external Territories.

### **4 Interpretation.**

In this Act, unless the contrary intention appears:

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

1                    **climate system** means the totality of the atmosphere,  
2                    hydrosphere, biosphere and geosphere and their interactions.

3                    **convention** means the United Nations Framework  
4                    Convention on Climate Change adopted at New York on 9  
5                    May 1992.

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

8                    **greenhouse gasses** means those gaseous constituents of the  
9                    atmosphere, both natural and anthropogenic, that absorb and  
10                   re-emit infrared radiation, and include carbon dioxide (CO<sub>2</sub>),  
11                   methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydro fluorocarbons  
12                   (HFCs), perfluorocarbons (PFC's) and sulphur hexafluoride  
13                   (SF<sub>6</sub>). For the purposes of this Act, the definition of  
14                   greenhouse gases does not include water vapour.

15                   **greenhouse gas emissions** means emissions of greenhouse  
16                   gases measured in tonnes of carbon dioxide equivalents.

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

21                   **Minister** means the Minister for the Climate Change.

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

26                   **public transport** means trains, ferries, buses, light rail and  
27                   taxis available for public use.

28                   **recycling** means the inclusive process of collecting, sorting,  
29                   and reconstituting through remanufacturing in Australia,  
30                   materials that would otherwise become solid waste.

1                    **renewable energy** means energy derived from an eligible  
2                    renewable energy source.

3                    **sectors** include agriculture, mining, power, industry, and  
4                    transport including air transport.

5                    **sink** means any process, activity or mechanism which  
6                    removes a greenhouse gas, or a precursor of a greenhouse  
7                    gas, from the atmosphere.

8                    **source** means any process or activity which releases a  
9                    greenhouse gas, or a precursor of a greenhouse gas into the  
10                    atmosphere.

## 11                    **5 Objects of Act**

- 12                    (1) The Parliament, by passing this Act, acknowledges:
- 13                    (a) that climate change represents a severe and immediate  
14                    threat to the environment in Australia and globally;
- 15                    (b) that human activities in Australia and globally have  
16                    been substantially increasing the atmospheric  
17                    concentrations of greenhouse gases;
- 18                    (c) that these human derived greenhouse gases will increase  
19                    the natural greenhouse effect;
- 20                    (d) that this has resulted in and will continue to result in  
21                    additional warming of the Earth's surface;
- 22                    (e) that this has and will continue to adversely effect  
23                    ecosystems and humankind;
- 24                    (f) that, as at the date of assent to this Act, Australia has  
25                    among the highest per capita emissions of human  
26                    derived greenhouse gases in the developed world;
- 27                    (g) that immediate and effective action is required, both in  
28                    Australia and globally, to substantially reduce  
29                    greenhouse gas emissions; and
- 30                    (h) that recycling of waste material has a significant role to  
31                    play in reducing greenhouse gas emissions.

- 1           (2) The objects of this Act are to:
- 2               (a) ensure that Australia meets its obligations under the
- 3                     Convention and the Kyoto Protocol;
- 4               (b) substantially reduce human derived greenhouse gas
- 5                     emissions from Australia;
- 6               (c) set a mandatory target for reducing human derived
- 7                     greenhouse gas emissions from Australia by at least
- 8                     30% below 1990 levels by 2020 and by at least 80%
- 9                     below 1990 levels by 2050 and to ensure Australia
- 10                  meets this target;
- 11               (d) substantially increase the percentage of Australia's
- 12                     energy being sourced from renewable energy sources;
- 13               (e) assist with global efforts to stabilise and reduce human
- 14                     derived greenhouse gas concentrations in the
- 15                     atmosphere;
- 16               (f) assist developing countries to adjust to a carbon
- 17                     constrained world and mitigate the impacts of climate
- 18                     change;
- 19               (g) implement **ecologically sustainable development**. The
- 20                     principles of ecologically sustainable development are:
- 21                     (i) *the precautionary principle*—namely, that if there
- 22                        are threats of serious or irreversible environmental
- 23                        damage, lack of full scientific certainty should not
- 24                        be used as a reason for postponing measures to
- 25                        prevent environmental degradation;
- 26                     (ii) *inter-generational equity*—namely, that the
- 27                        present generation should ensure that the health,
- 28                        diversity and productivity of the environment are
- 29                        maintained or enhanced for the benefit of future
- 30                        generations;
- 31                     (iii) conservation of biological diversity and ecological
- 32                        integrity—namely, that conservation of biological
- 33                        diversity and ecological integrity should be a
- 34                        fundamental consideration, and

- 1 (iv) improved valuation, pricing and incentive  
2 mechanisms—namely, that environmental factors  
3 should be included in the valuation of assets and  
4 services, such as ‘polluter pays’—that is, those who  
5 generate pollution and waste should bear the cost of  
6 containment, avoidance or abatement; and  
7 (h) contribute to the conservation of materials used in the  
8 manufacture of goods within Australia;  
9 (i) assist with the avoidance of greenhouse gas emissions from  
10 landfills; and  
11 (j) facilitate the utilisation of the energy embodied in  
12 manufactured goods through materials recycling.

13 **Part 2—Mandatory target for reducing greenhouse**  
14 **gas emissions**

15 **6 National Target for reducing greenhouse gas emissions**

- 16 (1) It is the duty of the Prime Minister to ensure that emissions of  
17 greenhouse gases from all sectors from Australia by the year  
18 2020 do not exceed a level which is at least 30% below 1990  
19 emissions levels.  
20 (2) It is the duty of the Prime Minister to ensure that emissions of  
21 greenhouse gases from all sectors from Australia by the year  
22 2050 do not exceed a level which is at least 80% below the  
23 1990 emissions levels.

24 **7 National Strategy for Reductions in Greenhouse Gas Emissions**

- 25 (1) The Prime Minister must, within 6 months of the  
26 commencement of this Act, lay before Parliament a National  
27 Strategy to achieve the reductions in greenhouse gas  
28 emissions from Australia required to meet the National  
29 Targets for 2020 and 2050 set out in section 5;  
30 (2) The National Strategy must include:

- 1 (a) policies and actions intended to reduce Australia's  
2 greenhouse gas emissions;
- 3 (b) an analysis of the effectiveness of policies and actions  
4 previously implemented with the intention of reducing  
5 Australia's greenhouse gas emissions;
- 6 (c) an inquiry into the impact of Government taxation and  
7 subsidies on Australian greenhouse gas emissions;  
8 including tax deductions and subsidies for fossil fuel  
9 production and consumption, car use, the aviation  
10 industry, fuel excise arrangements, the Energy Grants  
11 Credit Scheme, and fringe benefits tax allowances for  
12 motor vehicles;
- 13 (d) a proposed scheme to phase out direct and indirect  
14 subsidies that support fossil fuel production and  
15 consumption (with appropriate measures to prevent  
16 negative social impacts from subsidy removal, including  
17 measures to support public transport);
- 18 (e) a proposed scheme to use public funds freed by subsidy  
19 removal to support the development of renewable  
20 energies and fuels, energy efficiency and demand side  
21 management;
- 22 (f) a scheme for either or both of:
- 23 (i) taxation of greenhouse gas emissions (a carbon  
24 tax);
- 25 (ii) trading of greenhouse gas emissions (an emissions  
26 trading scheme);
- 27 (g) a scheme to substantially increase funding for research  
28 and development for demand side management, energy  
29 efficiency and renewable energy;
- 30 (h) a scheme to assist developing countries adjust to a  
31 carbon constrained world and mitigate the impacts of  
32 climate change;
- 33 (i) a scheme to facilitate research into increasing  
34 agricultural soil carbon through biologically based  
35 techniques;

- 1 (j) an assessment of any other steps that could be taken to  
2 reduce Australia's greenhouse gas emissions in  
3 accordance with the principle that those responsible for  
4 generating greenhouse gas emissions should make a  
5 financial contribution to the cost of measures to reduce  
6 such emissions (the **polluter pays principle**); and  
7 (k) a clear timeline for when the elements within the  
8 National Strategy will be implemented;  
9 (l) an evaluation of any shortfall of inflows into the Murray  
10 Darling system that can be attributable to climate  
11 change with a view to replacing that "climate change  
12 component" from outside sources where climate change  
13 has led to an increase in water supplies;  
14 (m) that in any evaluation of the impacts of climate change  
15 on the Murray Darling system, an independent study  
16 into the potential impacts of mining on groundwater  
17 systems in New South Wales, Victoria, Queensland and  
18 South Australia are interconnected to surface water  
19 systems be conducted.
- 20 (3) The schemes outlined in paragraphs 7 (2)(c) (d), (e) and (g)  
21 must be fully implemented within 2 years of the date of  
22 assent of this Act.
- 23 (4) Prior to implementation, any scheme referred to in  
24 paragraphs 2(f) must be certified by an independent panel  
25 consisting of 6 members, with at least 2 representatives from  
26 environmental non-government organisations, and at least 2  
27 members with expertise in economic instruments or market  
28 based trading.

## 29 **8 Public consultation on the National Strategy**

- 30 (1) Before the National Strategy is laid before Parliament, the  
31 Prime Minister must publish a notice:  
32 (i) stating how copies of the draft National Strategy may be  
33 obtained, and

## Section 2

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- 1 (ii) inviting submissions to the Prime Minister on the draft  
2 National Strategy, within 30 days.
- 3 (2) The notice must:  
4 (i) be published in the *Gazette*, and  
5 (ii) also be published, on at least 2 occasions, in a  
6 newspaper circulating nationally.
- 7 (3) Submissions received must be appropriately considered.

### 8 **9 Just Transitions Committee**

- 9 (1) The Prime Minister must, within 3 months of the  
10 commencement of this Act, establish a Just Transitions  
11 Committee (including representatives from state  
12 governments, communities directly dependent on  
13 employment in coal mines, farmers, industry, unions and  
14 non-governmental organisations).
- 15 (2) The role of the Just Transitions Committee will be to  
16 consider and make recommendations in relation to a plan for  
17 an equitable and fair transition for coal mining employees  
18 and communities affected by Australia's commitment to a  
19 comprehensive greenhouse reduction program.
- 20 (3) The regulations may make provision for the just transitions  
21 committee.

### 22 **10 Reporting**

- 23 (1) Commencing within 12 months of Royal Assent, the Prime  
24 Minister must, by 31 March each year, table in each House of  
25 Parliament, and advertise in a national newspaper, a report of  
26 Australia's greenhouse gas emissions over the previous year.
- 27 (2) The report referred to in subsection(1) must also quantify  
28 greenhouse gas emissions resulting from or likely to result  
29 from the use of fossil fuels which have been exported from  
30 Australia over the previous year.

- 1 (3) Commencing within 12 months of Royal Assent, the Prime  
2 Minister must, by 31 March each year, lay before Parliament,  
3 and advertise in a national newspaper, a report on the  
4 progress in implementing the National Strategy, and any  
5 changes to the National Strategy that the Prime Minister  
6 proposes to make.

## 7 **Part 3 – Energy Efficiency**

### 8 **11 Nationally co-ordinated approach to energy efficiency**

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

## 18 **Part 4 - GreenPower**

### 19 **12 Government agencies to purchase accredited renewable energy**

- 20 (1) All Agencies must establish a timeline to purchase electricity  
21 with 100% renewable energy accredited under the National  
22 GreenPower Accreditation Program.
- 23 (2) For the purpose of this Act, ‘Agency’ has the same meaning  
24 as in *Financial Management and Accountability Act 1997*.

## 1 **Part 5 – Greenhouse impact statements**

### 2 **13 Greenhouse Impact Statements**

- 3 (1) Before any Act, regulation or statutory instrument is made,  
4 the responsible Minister must ensure that a Greenhouse  
5 Impact Statement is prepared in connection with the  
6 substantive matters to be dealt with by the Act, regulation or  
7 statutory instrument.
- 8 (2) The Greenhouse Impact Statement must contain an  
9 assessment of the impact of the proposed Act, regulation or  
10 statutory instrument on greenhouse gas emissions from  
11 Australia and globally.
- 12 (3) Before an Act, regulation or statutory instrument is made, the  
13 responsible Minister must ensure that:
- 14 (a) as far as is reasonably practicable, a notice is published  
15 in the *Gazette* advising where a copy of the Greenhouse  
16 Impact Statement may be obtained or inspected, and  
17 inviting comments and submissions within a specified  
18 time, but not less than 21 days from publication of the  
19 notice;
- 20 (b) as far as is reasonably practicable, a copy of the  
21 Greenhouse Impact Statement is made available on the  
22 relevant Department website inviting comments and  
23 submissions within a specified time, but not less than 21  
24 days from publication of the Greenhouse Impact  
25 Statement on the Department website; and
- 26 (c) all comments received are appropriately considered.
- 27 (4) The Minister must, by 31 March each year, prepare an annual  
28 Greenhouse Report which summarises the impact that Acts,  
29 regulations and statutory instruments made, in the previous  
30 year, had on greenhouse gas emissions from Australia and  
31 globally.

1 **Part 6–Recycling**

2 For a company involved in the collection, sorting, processing  
3 and remanufacture of recycled goods, the audited carbon  
4 abatement value of that recycling activity chain, including  
5 emissions avoided from landfill, should be credited against  
6 that company’s emissions liability under any Carbon  
7 Pollution Reduction Scheme (CPRS).

8 **Part 7–Miscellaneous**

9 **14 Schedules**

10 Each Act that is specified in a Schedule to this Act is  
11 amended or repealed as set out in the applicable items in the  
12 Schedule concerned, and any other item in a Schedule to this  
13 Act has effect according to its terms.

14 **15 Regulations**

15 The Governor-General may make regulations prescribing  
16 matters:  
17 (a) required or permitted by this Act to be prescribed; or  
18 (b) necessary or convenient to be prescribed for carrying  
19 out or giving effect to this Act.  
20

1       **Schedule 1 - Amendment of the *Environment***  
2                       ***Protection and Biodiversity***  
3                       ***Conservation Act 1999***

4       **1 After paragraph 3(i)(e)**

5               Insert:

- 6                       (ae) to reduce greenhouse gas emissions from Australia  
7                               and to assist with global efforts to stabilise and  
8                               reduce human derived greenhouse gas  
9                               concentrations in the atmosphere;

10       **2 After subparagraph 3(2)(e)(i)**

11               Insert:

- 12                       (ia) ensure that projects having an adverse impact on  
13                               the climate system are assessed and approved by  
14                               the Commonwealth; and

15       **3 After paragraph 3A(a)**

16               Insert:

- 17                       (aa) decision-making processes should consider and  
18                               where possible minimise the adverse impact of  
19                               climate change on the environment;

20       **4 After section 22A**

21               Insert:

22       **22B Offences relating to nuclear power reactors**

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

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

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

7 **5 After Subdivision E of Division 1 of Part 3**

8 Insert:

9 **Subdivision EA – Protection of the environment from**  
10 **greenhouse gas emissions**

11 **22C Prohibition of logging in old growth forests**

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

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

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

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

24 **6 Section 528**

25 Insert:

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

32 **7 Section 528**

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## Section 2

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1           Insert:

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

### 7   **8 Section 528**

8           Insert:

9                   *climate system* means the totality of the atmosphere,  
10                  hydrosphere, biosphere and geosphere and their interactions.

### 11   **9 Section 528**

12          Insert:

13                  *greenhouse gases* means those gaseous constituents of the  
14                  atmosphere, both natural and anthropogenic, that absorb and  
15                  reemit infrared radiation, and include carbon dioxide (CO<sub>2</sub>),  
16                  methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydro fluorocarbons  
17                  (HFCs), perfluorocarbons (PFC's) and sulphur hexafluoride  
18                  (SF<sub>6</sub>). For the purposes of this Act, the definition of  
19                  greenhouse gases does not include water vapour.  
20

1 **10 Section 528**

2 Insert:

3 *greenhouse gas emissions* means emissions of greenhouse  
4 gases measured in tonnes of carbon dioxide equivalents

5

1

2

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

3

4

**1 Section 4**

5

Omit:

6

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

7

8

9

**2 After section 39**

10

Insert:

11

(1) The Minister shall cause a review of the renewable power  
percentage to be conducted in 2010 and in 2015.

12

13

(2) The review must be conducted by a panel consisting of  
8 members, with at least 2 representatives from  
environmental non-government organisations, at least 2  
members nominated by the Office of the Renewable Energy  
Regulator; and 2 academics with expertise in renewable  
energy.

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(3) The renewable power percentage may only be amended if the  
amendment will result in an increase in the renewable power  
percentage.

20

21

22

**3 Section 40**

23

Repeal the section, substitute

24

**40 Renewable power percentage from 2020 to 2050**

25

(1) Regulations must specify a renewable power percentage from  
2020 to 2050.

26

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

4                   **4 After section 43**

5                               Insert:

6                   **43A Use of renewable energy shortfall charge**

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