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Preface

This submission has also contributed to the submission by Lighter Footprints.

The submission adds to the questions posed in the Discussion Paper by addressing important issues which are not otherwise canvassed, particularly to roles of state, territory and local government and of civil society.

The submission concentrates on governance, which is a long-term major focus of my research and teaching.

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Biographical notes

The Hon Dr Ken Coghill PhD was Member of the Victorian Parliament (from 1979 to 1996), where he was Parliamentary Secretary of the Cabinet (from 1982 to 1988) and Speaker (from 1988 to 1992).

He is now an Associate Professor at Monash University, leading research teams specialising in governance and parliamentary studies in Australia and internationally. He teaches Governance at Masters degree level.

Ken was a founding member and is now Director and Treasurer of The Accountability Round Table Ltd and is director of several other not-for-profit organisations.

He is a member of Australia’s Open Government Partnership Interim Working Group that developed Australia’s first National Action Plan.
Introduction

The emissions trajectory established for the world by the Paris Agreement of December 2015 ("Agreement" in this submission) should be a firm basis with aspiration toward a 1.5°C limit to warming as a preferred outcome.

These ambitions are difficult to achieve without a universally accepted, cooperative approach being adopted. Federal and State governments need to be working together and not at loggerheads, the political parties committing to a respectful, collaborative and cooperative way of working as a fully committed team.

Accordingly there is an urgent need for a long term, non-partisan National Plan to be developed that embraces the multitude of sectors making contributions to the national emissions profile.

All programs should reviewed to be consistent the Paris Agreement preferred outcome of warming not more than 1.5°C.

Recommendation 1

That all existing programmes be subordinated to a national objective corresponding to the Paris Agreement preferred outcome of warming not more than 1.5°C.

Future policy direction should provide clarity and predictability around climate-related policies to ensure a stable direction and investment environment.

The degree of political difficulty with attempting to re-visit this concept is not underestimated but remains a preferred ambition. The ambition level for reduction targets is similarly aggressive due to a late start to high-ambition targets and being cognisant of the demands of the science of the global climate situation.

The magnitude of change to the economy with steady, profound shift away from coal as a primary power industry fuel is not underestimated. Australia must not shirk its responsibility as a member of the global community to complete this technically achievable transition. This change is small in comparison to that imposed by other changes in the economy e.g. the abrupt termination of the motor manufacturing industry in this country. Adjustment can be made because it must be made.

As stated by Fankhauser and Jotzo “Comprehensive change in the energy sector will need a suitable policy and incentive framework to be compatible with economic growth and development objectives” and should aim for creation of frameworks that result in higher and consistent carbon prices across all the different sectors.¹

It is noteworthy that ‘Big energy producers have also called for a global carbon price and BP, Shell and Statoil were among those who wrote to the UN last year calling for “widespread carbon pricing in all countries”’.²

Governance

Effective governance will be key to meeting government climate change policy objectives and Australia’s commitments under the Paris Agreement on Climate (“Agreement”) and Australia’s more recent commitments under the Open Government Partnership (OGP) first National Action Plan (NAP).
Effective governance is essential no matter which particular policies are adopted to address climate change. Good policies will be a dead letter without effective governance.

Legal Obligations

The public trust common law principle underpins the climate change policy responsibilities of the Minister and his public servants. Each is a public officer and in the words of retired Chief Justice Brennan "undertakes and has imposed upon him a public duty and a public trust".iii

Recent litigation and court decisions suggest a trend towards enforcement of the public trust principle where public officers have failed to honour public trust obligations in a number of international jurisdictions (e.g. Iceland,1 Netherlands,2 USA3). This a welcome development, especially where prevention of harm to whole populations is at stake.

The atmosphere is a fundamental component of the matters held in common in the public trust. The Government in the person of the Minister and his agencies and personnel undertake a public duty and a public trust to protect our shared atmosphere from harm, in this case, from pollution by CO2 and other contributors to climate change.

The public trust principle supports the Government taking strong and effective measures to protect the health of the atmosphere. Action consistent with the preferred outcome of warming not more than 1.5°C would satisfy discharge of the public trust obligation, according to current knowledge.

Furthermore, Australia is obliged, as are all countries, to not cause harm to people in other countries. As the atmosphere is not limited by geography, it follows that Australia has a legal obligation to not pollute the atmosphere because of the harm that it is demonstrated to cause in other countries.

The Challenge

The scope of the transition to the targets identified in the Agreement is challenging. It includes "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". Australia has committed to “nationally determined contributions to the global response to climate change” and “to undertake and communicate ambitious efforts”.

Beyond the general 1.5°C target, a number of comparable countries have committed to reduce emissions by 80% by 2050 e.g. United Kingdom and Canada.

Governance can be designed to achieve both the 1.5°C target and an emissions reduction of 80% by 2050. However, governance of this policy area has been constrained by sub-optimal communication, collaboration and interaction amongst national, state, territory and local government. Improvements are now being addressed through Australia’s membership of the Open Government Partnership

1 Conviction of former Prime Minister for failure to act on Global Financial Crisis.

2 Netherlands Court required Government to act on climate change in accordance with policy commitments.

3 Ongoing Atmospheric Trust Litigation coordinated by Our Children's Trust in State and Federal Courts of USA.
(OGP). The following section outlines the OGP and is followed by discussion of implications for the Australian Federation and explanatory theory.

**Open Government Partnership**

Australia has joined the OGP and submitted its first National Action Plan (NAP) in December 2016. By signing the OGP Declaration and making 15 specific NAP commitments, Australia has undertaken to make a number of reforms which have significant implications for the development and implementation of climate change policies.

The commitments include upgrades of governance relevant to the climate change policies i.e. -

- **Commitment 5.1:** Delivery of Australia's Open Government National Action Plan;

- **Commitment 5.2:** Enhance public participation in government decision making.

Commitment 5.1 commits Australia to

… ensure that our Open Government National Action Plan is a platform for ongoing dialogue, collaboration and open government reform.

We will do this by establishing a permanent dialogue mechanism with civil society, which includes a multi-stakeholder forum and transparent reporting and accountability mechanisms.

The multi-stakeholder forum will at a minimum track the implementation of commitments, ensure commitments continue to be relevant and ambitious, inform the drafting of future National Action Plans and raise awareness about open government in the broader community.

The very fact of adoption of Commitment 5.1 marks a major advance in national public policy making, to sharing power rather than concentrating Commonwealth policy development in the hands of the public service and its consultants. Commitment 5.2 goes further, indicating that:

- Australia will work towards improving public participation and engagement to enhance policy and service delivery outcomes for Australians.

- We will do this by establishing a new Australian Government framework for public participation and engagement.
This commits the Commonwealth Government to applying participatory techniques which are already increasingly used by state, territory and local governments, and internationally. The academic literature and reports from practitioners confirm the potential of such techniques to improve the quality of decision-making and hence governance. Deliberative processes such as citizen juries have been particularly effective in addressing "wicked" problems.

**Recommendation 2.**

That OGP NAP Commitments 5.1 and 5.2 be recognised and reflected in the revision, development and implementation of climate change policies.

The evidence demonstrates that governance is more successful where there are trusting and collaborative relationships between social actors who exercise relevant authority. In Australia, these relationships operate in two distinct ways, as follows.

**Applying federalism**

Firstly, there are levels (or spheres) of government, defined by constitutions and statutes – the Commonwealth Constitution reserves certain powers to the Commonwealth, provides for others to be concurrent and reserves many other major policy areas to the States. The self-governing territories (ACT & NT) function much like the states in practice. Many state and territory areas of responsibility are fundamental to the implementation of the Agreement. Local government is both enabled and constrained by state and territory legislation – the trend seems to be towards expanding roles e.g. see Victoria’s “Directions” for local government.iv

A quality of the Australian federation is the relatively high level of collaboration between the levels of government through formal and informal agreements and relationships. That quality demonstrates that as a key feature of national climate change policies, policies affecting each level of government and with the potential of using the powers and capacities of each should be fostered and enhanced.

**Integrated governance**

Secondly, there are three widely accepted social sectors: the public (or state); private (or business); and civil society sectors. Their sizes and significance varies between jurisdictions but are broadly similar. Again, relationships between actors functioning in each sector are key features affecting the quality and effectiveness of governance. This has been exemplified by the increasing calls by sections of the private sector for more effective climate change policies. That example illustrates the importance of collaborative relationship driving regulation e.g. business needs regulation of corporations, land tenure and contracts. Correspondingly, government needs to understand how those regulations are best designed to serve the public interest whilst facilitating compliance.
Governance Systems

The socio-political dynamics driving relationships involved in climate change policies can be explained by network theories or integrated governance systems theory. Collectively the governments and the social sectors constitute a complex series of three-dimensional sub-systems embedded within the large national system, itself embedded within a global system. The global system and sub-system are each dynamic and constantly changing in response to changes in their socio-political and physical environment i.e. evolving. Their dynamism is due to actively driven policy actions and other factors.

As sub-systems change, so do the larger systems within which they are embedded. Thinking of each governance system and sub-system as a complex evolving system helps us explain how it functions. In the case of the Agreement, drivers influencing governance include Articles 3 and 4 which stress that “The efforts of all Parties will represent a progression over time, …”; Article 4 paragraph 3 requires successive Nationally Determined Contributions (NDC) to represent a “progression beyond the Party’s then current NDC and reflect the highest possible ambition.”

In network theory, the nature and qualities of the social actors affect the outcomes of relationships. Hostile, uncommunicative actors are likely to foster weak connections and unproductive relationships, and vice versa.

The importance of networks to innovative and entrepreneurial actions contributing to reducing emissions has recently been explained by a climate change solutions expert at The University of Melbourne, Dr Adam Bumpus. He commented on how to “help foster the next generation of clean energy entrepreneurs in a country with a ‘risk-averse mindset’ toward clean energy”.

Thinking of the functioning of the sub-systems of Australia’s overall governance system (i.e. Commonwealth, state, territory and local governments collectively), we recognise that fostering diversity and outward perspectives is more likely to contribute to meeting objectives affecting the wider federal system (e.g. nationally determined contributions) than if the Commonwealth seeks to micro-manage state, territory and local governments or, equally short-sightedly, disregard their potential contributions.

That reflects the argument of Weber & Khademian that:

A fundamental challenge to effectively managing any public problem in a networked setting is the transfer, receipt and integration of knowledge across participants. When knowledge is viewed pragmatically, the challenge is particularly acute. This perspective, the authors argue, presents a challenge to the network literature to consider the mind-set of the managers or collaborative capacity-builders who are working to achieve solutions to wicked problems. This mind-set guides network managers as they apply their skills, strategies, and tools in order to foster the transfer, receipt, and integration of knowledge across the network and, ultimately, to build long-term collaborative problem-solving capacity (p.334).

Applying good governance

Applying this, Australian climate change policies should be seen as much broader than the policies of the Commonwealth Government.
Commonwealth policies should be seen to complement those of the subnational governments (i.e. state, territory and local). Each jurisdiction should respect the responsibilities and powers of each other jurisdiction and seek to contribute to an integrated approach. In such integrated governance the Commonwealth Government should set overall objectives i.e. the provisions of the Agreement, Australia’s NDCs and its first NAP. However, it should do so collaboratively, building on established practices such as COAG and its Ministerial Councils. In other words, the Commonwealth, state/territory and local governments should interact, negotiate and cooperate with each other and with the other social sectors (private and civil society).

Beyond that, in doing so, the Commonwealth Government should welcome innovative, agile policy-making by subnational governments. Differences in policies between jurisdictions should be seen as learning opportunities and applied to develop, refine and build policy solutions in so far as these enhance achievement of Australia’s Nationally Determined Contributions and the targets of the Agreement.

A recent example is the reform of Australian Energy Market Operator (AEMO) – a key body in the intergovernmental arrangements regulating Australia’s energy supplies. Part of the reform process is the welcome appointment of Audrey Zibelman who “has extensive international experience in the public, private and not-for profit energy sectors, most recently having held the position of Chair of the New York State Public Service Commission, where she was responsible for overseeing the regulation and safety of New York’s electricity, gas, telephone, cable, water and steam utilities.” She has valuable intergovernmental experience, having been “responsible for operating the power grid and wholesale power market which serves 14 states across the eastern United States”.

**Recommendation 3**

That the Commonwealth Government use COAG to establish collaborative intergovernmental arrangements with state, territory and local governments (“subnational governments”) whereby the Commonwealth sets minimum standards and targets for the achievement of Australia’s obligations under the Agreement, to be met or bettered by subnational governments acting within their powers and, where agreed, through collaborative arrangements and/or the referral of powers.

That the Commonwealth Government establish a joint government civil society climate change working group consistent with OGP NAP Commitments 5.1 and 5.2 (see also below).

**State & Territory Government Initiatives**

Examples of state & territory government initiatives include the offices of Renewable Energy Advocate (Victoria) and Chief Environmental Scientist (Victoria) each of which establishes specialised sources of expertise that contribute indirectly to the achievement of Australia’s Nationally Determined Contributions.

The Renewable Energy Advocate is appointed to promote the state's renewable energy sector, provide independent advice to Government and assist in meeting renewable energy targets. The office acts as a voice for the development of renewable energy, listening to both communities and industry and feeding that information back to policy makers and Government.
Victoria’s Chief Environmental Scientist is appointed to support the Government in protecting the community and environment from pollution and waste.

Other examples of state & territory government initiatives are given in the Discussion Paper, such as emissions reduction targets and mechanisms.

**Recommendation 4.**

That the Commonwealth Government encourage and support state & territory governments to develop and implement conventional and innovative arrangements and mechanisms to contribute to Australia’s fulfilment of its Agreement obligations and Open Government Partnership undertakings, and to facilitate initiatives by local governments.

**Civil Society**

In similar manner and consistent with the NAP, Australian governments should embrace engagement with civil society. By sharing power, the Executive and its officers can capture information, thinking and action beyond those available to the Executive Government and the public service.

This is the Executive using techniques observed to improve outcomes, not abdication of responsibility.

Engagement can range from support for actions by others to reduce carbon emissions (support by friends and neighbours legitimates one’s own actions), to advocacy and implementing community projects orientated to reliance on renewable energy sources.

Commitments 5.1 and 5.2 provide ready-made bases for the development of community engagement on climate policies.

**Recommendation 5.**

That the Commonwealth Government establish a joint government - civil society working group for the co-creation of climate change policies within the context of intergovernmental arrangements, in accordance with OGP NAP Commitments 5.1 and 5.2.
Business Engagement

As noted above, business leaders are keen for Australia to adopt effective climate change policies. They should be drawn into forums designed to address and assist their roles in addressing climate change and making the necessary investment decisions. For example, a business roundtable could be established for the purpose.

Recommendation 6.

That the Commonwealth Government establish a joint government - private sector working group to facilitate re-structuring of investment and business activities and regulation arising from Australia’s obligations under the Agreement.

Accountability

Accountability for actions to honour nationally determined contributions is a key feature of the Agreement, which states in Article 13 -

7. Each Party shall regularly provide the following information:
   (a) A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases, prepared using good practice methodologies accepted by the Intergovernmental Panel on Climate Change and agreed upon by the Conference of the Parties serving as the meeting of the Parties to this Agreement; and
   (b) Information necessary to track progress made in implementing and achieving its nationally determined contribution under Article 4.

8. Each Party should also provide information related to climate change impacts and adaptation under Article 7, as appropriate, related to climate change impacts and adaptation under Article 7, as appropriate.

9. Developed country Parties shall, and other Parties that provide support should, provide information on financial, technology transfer and capacity-building support provided to developing country Parties under Articles 9, 10 and 11.

…

11. Information submitted by each Party under paragraphs 7 and 9 of this Article shall undergo a technical expert review …

These provisions of the Agreement should be reflected in Commonwealth climate change policies and practice.

Reports relevant to these provisions should also be published domestically, form part of a national report on the performance of Commonwealth, states, territories and local governments in progress towards nationally determined contributions, and be subject to community engagement.
This accountability will necessarily require policies and practices for research, data collection and analysis and publication relevant to climate change and the effects of climate change policies.

**Recommendation 7**

That the Commonwealth Government ensure that thorough, high quality research relevant to climate change is conducted and data collected, analysed and published to enable the IPCC, UNFCCC, citizens, civil society and any others to access information to assess all aspects of Australia’s performance in reducing emissions, in accordance with provisions of the Agreement and OGP undertakings.

**Conclusions and Closing Remarks - Governance Policy Key**

Governance policies such as those suggested above would greatly facilitate fulfilment of Australia’s nationally determined contributions as part of the challenging transition to a low carbon economy envisaged in the Paris Agreement on Climate Change.
APPENDIX 1. RECOMMENDATIONS

Recommendation 1.
That all existing programmes be subordinated to a national objective corresponding to the Paris Agreement preferred outcome of warming not more than 1.5°C.

Recommendation 2.
That OGP NAP Commitments 5.1 and 5.2 be recognised and reflected in the revision, development and implementation of climate change policies.

Recommendation 3.
That the Commonwealth Government use COAG to establish collaborative intergovernmental arrangements with state, territory and local governments ("subnational governments") whereby the Commonwealth sets minimum standards and targets for the achievement of Australia’s obligations under the Agreement, to be met or bettered by subnational governments acting within their powers and, where agreed, through collaborative arrangements and/or the referral of powers.

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Recommendation 4.
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Recommendation 5.
That the Commonwealth Government establish a joint government - civil society working group for the co-creation of climate change policies within the context of intergovernmental arrangements, in accordance with OGP NAP Commitments 5.1 and 5.2.

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APPENDIX 2. REFERENCES


ii Attracta Mooney, 2016. BlackRock calls for higher carbon price to tackle climate change, Financial Times, 26 October, available at: www.ft.com/content/bde6859a-9ac2-11e6-8f9b-70e3cabccfae


