Environmental Defenders Office

Submission to the Inquiry into the Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022

13 October 2022

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

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Introduction

The Environmental Defenders Office (**EDO**) welcomes the opportunity to provide comment on the *Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill* 2022 (**the Bill**). As Australia's largest public interest environmental law organisation, EDO has been engaged in environmental and climate policy and law reform for decades. We strongly support fundamental legislative reform in this term of parliament to address the inter-related climate and extinction crises.

EDO has consistently advocated for climate change considerations to be expressly included in the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**). It is nonsensical that our national environmental law does not directly address the greatest challenge facing the Australian environment. In over 1000 pages, the Act fails to explicitly, clearly and comprehensively address the threat of climate change.

A national trigger to oversee significant greenhouse gas emitting projects has long been a major gap in national environmental law. Despite previous Ministers and several reviews recommending a greenhouse trigger:[1]

- climate change impacts of an activity alone will not trigger the requirement for assessment and approval under the EPBC Act;
- existing EPBC Act development assessment and approval conditions related to climate change are currently incidental to protecting listed matters of national environmental significance, such as threatened species or world heritage areas; and
- the Environment Minister cannot definitively review or reject a proposal on the grounds that its greenhouse gas emissions are excessive or an unacceptable risk to the environment or the community.

A new standalone climate trigger is needed to link Australia's new emissions reduction targets and carbon accounting with critical decisions on development impact assessment and development approval conditions.

The Bill seeks to add a new matter of national environmental significance ("**trigger**") to the EPBC Act relating to emissions of greenhouse gases. This would create a new class of controlled action and new assessment/approval/prohibition requirements for emissions-intensive actions.

EDO has consistently recommended a significant greenhouse gas emissions trigger be inserted into the Act with: appropriate scope to cover a range of relevant projects through a set emissions threshold plus a designated development list and call in power; a prohibition on projects that exceed a carbon budget; and for climate considerations to be explicitly built into planning and

[1] When Environment Minister Robert Hill introduced the EPBC Bill in 1998, he noted his government's commitment to negotiate a greenhouse trigger once the Act was passed: Senate Hansard, *Environment Protection and Biodiversity Conservation Bill 1998* [1999], Second Reading Speech, 22 June 1999, at 5990. The Hawke Review proposed an interim greenhouse trigger until an economy-wide carbon price was in place, and a requirement for strategic-level mitigation (recommendation 10).

decision-making throughout the Act.[2] Many of the elements of the Bill align with the intent of the EDO model for a trigger and are **supported**.

In examining the role of an effective climate trigger in the national legal and policy landscape, this submission addresses:

1. **The need for coordinated climate law and policy reform**
2. **The need for fundamental reform of the EPBC Act**
3. **The role of a climate trigger**
    a. **EDO proposal for a significant greenhouse gas emissions trigger**
    b. **Analysis of proposed legislation**
        - **Thresholds for significant impact and prohibited impact**
        - **Consideration of a national carbon budget and emissions reduction targets**
        - **No approval process exemptions**
        - **Penalties**
        - **Measuring emissions**

We would welcome the opportunity to discuss our analysis with the Committee at a hearing.

1. The need for coordinated climate law and policy reform

For decades, climate policy in Australia has been over-politicised, unduly influenced by the fossil fuel industry, inconsistent, piecemeal, uncertain, and therefore ineffective in reducing emissions and reducing impacts. Despite having (eventually) ratified the Kyoto Protocol and now being a signatory to the Paris Agreement under the United Nations Framework Convention on Climate Change (**UNFCCC**), domestic implementation of climate policy has been plagued by inadequate policy and absent law. The lack of overarching national climate legislation or cohesive policy has left communities; industries; iconic ecosystems and species; and built and natural assets exposed to the impacts of climate change, and has reduced our ability to maximise and benefit from energy transition opportunities.

This gaping hole in our legal and policy landscape has been brought into sharp focus again and again as we have tallied up the impacts of drought, bushfire, floods and other extreme weather events on our environment, community and economy. EDO welcomes the recent steps taken to end the political climate wars and provide certainty and a pathway forward. It is clearly time for a nationally coordinated and comprehensive legislative framework for achieving real net zero emissions and limiting warming to 1.5°C.

The passage of the Climate Change Bills[3] establishing a legislated emissions reduction target is a welcome first step, noting that the targets set in those Bills need to be rapidly increased in accordance with current climate science. We note that the new targets are not yet backed by substantive policy and mechanisms for implementation across relevant legislation. Simply

[2] See: 200521-EDO-Submission-to-the-inquiry-into-the-EPBC-Amendment-Climate-Trigger-Bill-2020.pdf and see: EDO Submission to the EPBC Act Review Discussion Paper - Environmental Defenders Office
[3] Climate Change Bill 2022 and Climate Change (Consequential Amendments) Bill 2022.

legislating the targets does not equate to emissions reduction unless a range of implementation mechanisms are built into relevant regulatory frameworks – including climate *and* environmental laws.

The climate science could not be clearer. The Inter-governmental Panel on Climate Change (**IPCC**) Sixth Assessment Report (**IPCC AR6 Report**)[4] confirms it is unequivocal that human influence has heated the atmosphere, ocean and land; and that this unprecedented human-induced climate change is already affecting many weather and climate extremes in every region across the globe. IPCC AR6 Report confirms that every tonne of carbon dioxide (**CO_2**) emissions adds to global warming, and concludes that limiting human-induced global warming to a specific level requires limiting cumulative CO_2 emissions and reaching at least net zero emissions, including driving strong reductions in other greenhouse gas (**GHG**) emissions. The IPCC has also confirmed that to avoid the worst impacts and costs, we need to limit warming of average surface temperatures to no more than 1.5°C above pre-industrial levels. The window of time to achieve this goal is closing, we need to act now.

Australia needs coordinated and comprehensive climate-ready laws. Global emissions are still rising, and climate change is already impacting our environment, economy, health, security, and way of life. Making comprehensive national laws to address the climate challenge will help reduce the risks and impacts of a changing climate, set us on a path to sustainability, ensure a just transition for communities, and give our iconic threatened species and environmental assets like the Great Barrier Reef a fighting chance of survival.

EDO has published a Roadmap for Climate Reform that identifies 5 opportunities for Australia and makes 58 recommendations for the reform of Australian law. These recommendations are designed to be acted upon in the first term of the new Australian parliament - the next three critical years. As part of the range of necessary and complementary reforms, we have also made recommendations for strengthening the Safeguard Mechanism and improving regulation of carbon offsets.[5]

A critical piece of the comprehensive reforms needed to ensure climate ready national laws is reform of the EPBC Act.

2. The need for fundamental reform of the EPBC Act

The EPBC Act is 20 years old and in need of fundamental reform. It is not fit for purpose and is failing to address the extinction crisis and the climate crisis. EDO was heavily involved in the independent 10-year statutory review of the Act by Professor Graeme Samuel,[6] and has developed a body of recommendations for reform of the outdated legislation.[7] Critical reforms needed include the establishment of legally enforceable **national environmental standards** and the establishment of an independent national **Environment Protection Authority** (**EPA**).

[4] Available at: Sixth Assessment Report — IPCC
[5] Available at EDO Submission to the Independent Review of Australian Carbon Credit Units - Environmental Defenders Office
[6] See: EPBC Act Review | Independent review of the EPBC Act (environment.gov.au)
[7] See: Our legal solutions for the dire state of the environment - Environmental Defenders Office (edo.org.au)

Explicitly addressing climate change in the EPBC Act – including by inserting a greenhouse gas emissions trigger – is just one part of the reform package that is needed to reverse the trajectories of environmental decline so starkly evidenced in the 2021 *State of the Environment* Report.[8]

The EPBC Act currently requires the Minister to consider the impacts or likely impacts of climate change and related effects when considering the impact of proposed actions on matters of the existing nine national environmental significance. This is an important part of assessment and approval in relation to existing triggers, and the Bill must not undermine this existing requirement when introducing a climate trigger. A standalone trigger – and a range of further amendments – are needed to augment and clarify how climate change is explicitly addressed under the Act, in addition to existing triggers.

There are a range of reforms needed to ensure our national environmental law is climate ready. Australian communities expect their national government to maintain strong environmental regulation and oversight of all major projects, including in relation to energy projects, be they power stations or coal and gas mines, or other projects that put increasing pressure on our national wildlife and landscapes, that are already facing the impacts of a changing climate.

Decisions made under the EPBC Act - as the key legislation for assessing and approving major projects – are absolutely critical in terms of meeting emissions reduction targets, staying within the carbon budget, and limiting warming to 1.5°C.

Limiting global temperature increase to 1.5°C provides the best opportunity for us to avoid the worst impacts of climate change. Limiting global temperature increase to 1.5°C is necessary to uphold our obligations under international agreements, including to protect internationally recognised world heritage assets such as the Great Barrier Reef,[9] the Wet Tropics, and the Blue Mountains World Heritage Area (extensively burnt in the Black Summer bushfires); and to prevent further climate-induced extinctions of Australian biodiversity like the Bramble Cay Melomys (*Melomys* rubicola) recently extinct from Maizab Kaur (Meuram Traditional Owners).[10]

Limiting global temperature increase to 1.5°C is also critical for the survival and sovereignty of First Nations Peoples, including in the Torres Strait Islands and Pacific Island States, who, even at the current level of 1.1°C warming, are already suffering extensive climate harms.[11]

In terms of **mitigation**, to achieve emissions reduction targets[12] and to complement and augment the significant necessary reform of the Safeguard Mechanism under separate legislation, the EPBC Act needs to be substantially strengthened to provide for increased national oversight of

[8] See: State of the Environment report - DCCEEW
[9] See: Legal Letter Warns PM Over Failure to Protect Great Barrier Reef - Environmental Defenders Office (edo.org.au)
[10] The Bramble Cay Melomys was the first Australian mammal to disappear as a direct result of climate change. Nominated as an endangered species by HSI in 2006, its island home was increasingly inundated by sea level rise. A delayed response from state and federal agencies turned a species emergency into an extinction tragedy. See also: Woinarski et al. 'The contribution of policy, law, management, research and advocacy failings to the recent extinctions of 3 Australian vertebrate species' (2016) *Conservation Biology*.
[11] See: Australia's climate inaction is a human rights violation - UN submission - Environmental Defenders Office (edo.org.au)
[12] See: EDO submission on the Climate Change Bill 2022 and the Climate Change (Consequential Amendments) Bill 2022.

emissions intensive projects via a greenhouse gas emissions trigger. This is the focus of the Bill before the Committee, and is discussed in detail below.

We note that other EPBC Act mitigation opportunities include:

- a land clearing trigger for projects with a significant carbon emission impact;
- increasing protection of carbon-rich ecosystems (for example, forests, woodlands, native grasslands, savannahs, peatlands, coastal and marine ecosystems such as mangroves, tidal marshes, kelp forests and seagrass meadows) and areas of climate refugia on both public and private land;
- recognising the value of forests as carbon sinks, galvanising the transition from native forest logging to plantations (ie, end native forest logging); and
- ensuring there is a consistent nation-wide ban on burning native forest biomass – ie, ensure definitions of renewable energy do not include native forest biomass.

There are also a range of EPBC Act reforms needed to address climate change as a key threatening process and to assist **adaptation** and build resilience.[13]

We note that the Australian Government is currently working on a response to the Samuel Review of the EPBC Act and has flagged amending legislation in the 2023 and a separate process to establish a new national EPA. This must be a **comprehensive reform package**, and not a selection of 'cherrypicked' recommendations. Establishment of a climate trigger amendment must not be at the expense of the full package of necessary reforms.

3. The role of a climate trigger

A climate trigger in the EPBC Act is therefore an important element within the broader climate and environment legal reform landscape. This part of the submission sets out EDO's proposed trigger and provides analysis of the Bill.

a. EDO proposal for a significant greenhouse gas emissions trigger

Human-induced climate change has been listed as a key threatening process to biodiversity for nearly two decades. Yet the extinction of the melomys, the repeated bleaching of the Great Barrier Reef, the unprecedented bushfire impacts on the Tasmanian Wilderness World Heritage Area which destroyed Gondwanan landscapes, are harbingers of biodiversity loss that Australia will increasingly face if our regulatory systems fail to respond more effectively to climate change.

[13] In terms of adaptation, all jurisdictions should recognise the impacts of climate change as a key threatening process (KTP). This could be achieved by specific actions and policies that effectively respond to the existing climate change KTP listed under the EPBC Act and by complimentary KTPs and Threat Abatement Plans (TAPs) that address specific impacts (for example, fire regimes - of which climate change is a key driver). Threat abatement plans (or equivalent) should require monitoring of impacts of climate change on ecosystems. Recovery planning must remain mandatory for climate impacted threatened species and communities; and recovery planning must include specific requirements to identify and address climate change impacts. Legislation should include emergency listing provisions and other responsive powers that provide for necessary intervention when threatened species and ecological communities and critical habitats are impacted by climate events such as bushfires.

As set out in our Roadmap for Climate Reform, EDO advocates for comprehensive national climate legislation to establish enforceable targets, duties, and emissions reduction mechanisms across all sectors and relevant decision-making frameworks, including in national environmental legislation. This means systematically and explicitly embedding greenhouse gas emission reduction and adaptation in environmental law, policy and decision-making frameworks, including by establishing a standalone significant greenhouse gas emissions trigger in the EPBC Act.

As noted, a national trigger to oversee high greenhouse gas emitting projects has long been a major gap in the national environmental law. Despite previous Ministers and several reviews recommending a greenhouse trigger:[14]

- climate change impacts of an activity alone will not trigger the requirement for assessment and approval under the EPBC Act;
- existing EPBC Act development assessment and approval conditions related to climate change are currently incidental to protecting listed matters of national environmental significance, such as threatened species or world heritage areas; and
- the Environment Minister cannot definitively review or reject a proposal on the grounds that its greenhouse gas emissions are excessive or an unacceptable risk to the environment or the community.

A new standalone climate trigger is needed to link Australia's emissions reduction targets and carbon accounting with critical decisions on impact assessment and development conditions.

EDO recommends that a trigger should have two limbs:

- At a **strategic level**, the Act should expressly require decision-makers to consider climate change mitigation and adaptation opportunities in strategic assessments and bioregional planning processes; and
- At the **project level**, a national EPA would be explicitly required to assess projects with major greenhouse footprints, reject unacceptable climate impacts, and apply conditions and limits on other assessable projects.

Clearly inappropriate activities which would involve significant greenhouse gas emissions, including downstream 'scope 3' emissions resulting from the activity, should be prevented from being approved or applied for under the EPBC Act where in exceedance of Australia's carbon budget. The mechanisms used in the Act to prevent approval of nuclear installations and designated commercial fishing activities provide helpful examples of how clearly inappropriate greenhouse gas emitting activities could be prohibited under the Act.[15] These activities could

[14] When Environment Minister Robert Hill introduced the EPBC Bill in 1998, he noted his government's commitment to negotiate a greenhouse trigger once the Act was passed: Senate Hansard, *Environment Protection and Biodiversity Conservation Bill 1998* [1999], Second Reading Speech, 22 June 1999, at 5990. The Hawke Review proposed an interim greenhouse trigger until an economy-wide carbon price was in place, and a requirement for strategic-level mitigation (recommendation 10).

[15] This power has been used in the EPBC Act for inappropriate commercial fishing activities (Ch5B) and certain nuclear installations (s140A).

include, for example, fossil fuelled power stations, thermal coal mines and gas activities above a specified threshold.

Most sources of Australia's emissions require some form of development approval at the state or territory level (for example, land-clearing, mining, new power stations and major transport infrastructure). Yet state planning laws do not systematically or explicitly require decision-makers to meaningfully take into account a project's impacts on climate change.[16] States and territories do not generally impose conditions to minimise climate impacts, plan for adaptation or set cumulative carbon budgets.[17] Climate change readiness, like biodiversity protection, needs action at all levels, including national leadership.

A standalone greenhouse trigger in environmental legislation is necessary to give the new national EPA strategic oversight of high-emissions proposals that are not sufficiently regulated by existing laws; and would ensure strategic plans under the Act are climate-ready.

Key elements of the recommended EDO trigger are:

- Insert a standalone greenhouse gas emission trigger that recognises **any development that produces over 100,000 tonnes of CO2 equivalent per year** (including downstream 'scope 3' emissions) as a matter of national environmental significance. It is critical that all emissions are assessed, not just scope 1.
- This should be supplemented by provision for all projects on a **designated development list** (including expansion of existing projects and significant land use change, including significant land clearing (if no separate clearing trigger) and motorway projects etc) to trigger the approval provisions. This would ensure the trigger was more comprehensive in capturing diffuse emissions. A quantitative trigger may be easier to apply and administer but might miss smaller but still significant projects, hence the need for a schedule list.
- For clarity, projects should be **prohibited** or unable to be approved where they are in exceedance of Australia's carbon budget. Linking a prohibition to the carbon budget ensures decisions relate to how quickly the remaining carbon budget is spent, however we note there are a range of ways to impose a prohibition.
- Best practice **climate impact assessment** and emissions disclosure must include mandatory consideration of scope 3 emissions in applying the trigger.
- We are also recommend a **call in power** – this could potentially capture projects contributing to the climate crisis that aren't necessarily covered by the threshold or the designated development schedule. Amending legislation should specify clear criteria for when a call in power may be exercised.

[16] For example, see Climate-ready planning laws for NSW: Rocky Hill and beyond - Environmental Defenders Office (edo.org.au)

[17] Many states have recently set emissions reduction targets. Some have been legislated, and this is to be commended. However, state laws do not set systematic carbon budgets, nor do they cap or forecast cumulative emissions from developments they approve.

In addition to a standalone trigger, climate considerations need to be expressly embedded in relevant plan-making processes and standard setting mechanisms under the Act, including:

- **Bioregional plans** – to assist adaptation planning including for developments in hazard zones (bushfire/floods), wildlife corridors, and climate refugia. (This should be coordinated with states and territories);
- **Strategic assessments** - in terms of both emissions reduction and adaptation planning;
- **Recovery plans** –recovery actions may need to be reviewed and strengthened to ensure they are climate-ready, and can recover species and build ecosystem resilience, and should be updated regularly, including in response to major climate events such as the Black Summer bushfires;
- **Emergency listing provisions** - for species and ecological communities most at risk or impacted by major climate events;
- **National best practice standards** - for a range of air pollutants related to projects;
- **Objects** – to ensure climate objects are operationalised in all relevant decisions and implementation of the Act; and
- **National plans, programs, policies** – can and should be linked to setting carbon budgets.[18]

To ensure an effective trigger, critical reform includes the development of **national environmental standards** for mandatory climate impact statements for projects, submitted with environmental impact assessments; for comprehensive climate impact assessment on threatened species and ecological communities; and for comprehensive assessment of carbon storage and emissions impacts arising from land clearing. Best practice Climate Impact Assessment includes all emissions – ie, scope 3 and fugitive emissions.

b. Analysis of proposed legislation

The Bill seeks to add a new matter of national environmental significance ("trigger") to the EPBC Act relating to emissions of greenhouse gases. This involves inserting a new subdivision FC directly after the part where the water trigger was added as subdivision FB. This would mean a new class of controlled action and assessment/approval/prohibition requirements for emissions-intensive actions. The drafting of the proposed new trigger generally follows the format and structure of other triggers under Part 9, for example – entailing 'requirement for approval' provisions and offence provisions. This approach to drafting a new trigger is generally supported, subject to the comments and recommendations below.

Many of the elements of the Bill align with the intent of the EDO model for a trigger and are **supported**. This part of the submission addresses key elements of the proposed trigger in the Bill, namely: emissions thresholds – significant impact and prohibited impact; Ministerial consideration of a national carbon budget and emissions reduction targets; no approval process exceptions; penalties; and measuring emissions.

[18] For example, as initially proposed by Hon Zali Steggall MP see: https://www.zalisteggall.com.au/climate_change_national_framework_for_adaptation_and_mitigation_bill_2020

Thresholds for significant impact and prohibited impact

The Bill proposes that a new trigger for emissions of greenhouse gases will be established, with two thresholds:

- **Significant Impact on Emissions:** For actions that would emit between 25,000 to 100,000 tonnes of carbon dioxide equivalent scope 1 emissions in any one year, including in pre-construction stage, the Minister must consider the project through Part 9 of the Act, as the Minister currently does with matters of national environmental significance; and,
- **Prohibited Impact on Emissions:** For projects that would emit above 100,000 tonnes of carbon dioxide equivalent scope 1 emissions, these projects would be treated similarly to nuclear projects under the Act, where the Minister is forced to reject the project's approval.

Significant Impact threshold

We note that the Bill has a lower threshold for the trigger – namely projects emitting 25,000 to 100,000 tonnes of carbon dioxide equivalent scope 1 emissions in any one year – compared with the EDO model of 100,000 tonnes per year (including scope 3). The lower threshold in the Bill would capture the smaller projects intended to be covered by the EDO designated development schedule and call in power. These are alternate mechanisms to achieve the same goal of ensuring all relevant projects are covered under the trigger.

We therefore **support** the proposed range of emissions for the significant impact threshold, but if the lower threshold is not supported by the Committee more broadly, we **recommend** that a designated development list and call in power be included to ensure appropriate coverage of projects by the trigger.

Providing legal clarity on how emissions budgets and targets apply to any new or expanded or fossil fuel projects that fall within the Significant Impact threshold will be critical (discussed further below).

Prohibited Impact threshold

The Bill also proposes a Prohibited Impact threshold - which would operate to prevent the Minister from approving an action if the total amount of emissions of greenhouse gases exceeded 100,000 tonnes per year.

We note that even 100,000 tonnes per year is a high threshold for scope 1 emissions. Currently, for example, scope 1 emissions for a collection of mines in NSW that are doing very little to reduce emissions range from 36000 - 200,000. Scope 2 emissions have a similar range. With available technology, projects should be vastly reducing scope 1 emissions with a zero goal. (We refer the Committee to our submission on strengthening the Safeguard Mechanism that also discusses a 100,000 t.p.a threshold).

A numerical threshold is one way to impose a prohibition and would provide clarity on the relevant emissions threshold. The option of establishing a prohibition linked to an assessment of the remaining carbon budget would provide adaptability in terms of considering the speed at which the carbon budget is spent. A third option would be to legislate a moratorium on new coal and gas projects. The different options for imposing a prohibition are aimed at achieving a similar goal and should be considered by the Committee in terms of administratively simplicity and effectiveness to achieve the necessary goal of phasing out fossil fuel emissions.

As set out in our Roadmap for Climate Reform, legislation needs to include clear mechanisms to facilitate a **planned phasing out of fossil fuel** energy sources and fossil fuel production according to a legislated timeframe. This is essential to ensure a safe climate for all, and will also assist in avoiding financial and environmental risks of stranded assets in an increasingly carbon-constrained world. This involves economic and policy decisions, but there remains an important role for legal mechanisms to ensure decisions (both project and policy) are made consistent with appropriate emissions reduction targets and carbon budgets. Application of the proposed Prohibited Impact threshold would help facilitate this.

Regarding the prohibition provisions, we note that every major country in the world has signed the Paris Agreement, including the aim of pursuing efforts to keep warming to 1.5°C. Globally approved fossil fuel projects and infrastructure is already sufficient to exceed this goal.[19] To achieve the aims of the Paris Agreement existing fossil fuel projects will need to wind down within their planned operational life[20] and no new fossil fuel projects can be approved. IPCC scenarios consistent with keeping warming to 1.5°C show primary energy from coal declining by 59-78% by 2030 and 73-97% by 2050 (relative to 2010).[21] Similarly under the 2020 International Energy Agency (**IEA**) Sustainable Development Scenario (**SDS**), consistent with limiting warming to 2°C, global thermal coal demand falls over 22% by 2025, over 40% by 2030 and over 65% by 2040, relative to 2019 levels.[22]

Accordingly, Australia can expect the purchasers of our fossil fuel exports, who are signatories to the Paris Agreement to rapidly reduce their demand for our fossil fuel exports, leaving our industries, workers and economy exposed if Australia does not have a plan to manage this transition. Already major purchasers of our fossil fuel exports including China, Japan and Korea have committed to net zero emissions by 2050 (or 2060 in the case of China). IEA has global thermal coal demand falling by over 60% from 2019 levels by 2030 under the net zero emissions scenario.[23] IEA modelling has confirmed no new coal or gas projects are needed stating: “Beyond projects already committed as of 2021, there are no new oil and gas fields approved for

[19] Dan Tong et al, ‘Committed emissions from existing energy infrastructure jeopardize 1.5 °C climate target’ (2019) Nature <https://doi.org/10.1038/s41586-019-1364-3 19>
[20] Gregg Muttit, et al, The Sky’s Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production (Oil Change International, September 2016, Report) 5 http://priceofoil.org/2016/09/22/the-skys-limit-report/
[21] Intergovernmental Panel on Climate Change (2018) IPCC Special Report: Global Warming of 1.5C, Summary for Policymakers, p16, Scenario 1 <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>.
[22] IEA, 2020 World Energy Outlook, Table A.1, p337 <https://www.iea.org/weo2020/>
[23] IEA, 2020 World Energy Outlook, Figure 1.1, p27 <https://www.iea.org/weo2020/>

development in our pathway [to net-zero], and no new coal mines or mine extensions are required."[24]

Further, this reality has been long-recognised by the Climate Council:

> *The inevitable conclusion from the commitment by the world's governments to protect humanity from climate change is that the vast bulk of fossil fuel reserves cannot be burned. To have just a 50:50 chance of preventing a 2°C rise in global temperature: 88% of global coal reserves, 52% of gas reserves and 35% of oil reserves are unburnable and must be left in the ground. Put simply, tackling climate change requires that most of the world's fossil fuels be left in the ground, unburned.*
>
> *…*
>
> *What does this mean for Australia? If all of Australia's coal resources were burned, it would consume two-thirds of the global carbon budget based on a 75% chance of meeting the 2°C warming limit. For Australia to play its role in preventing a 2°C rise in temperature requires over 90% of Australia's coal reserves to be left in the ground, unburned. Similarly, the development of new coal mines, particularly the Galilee Basin, is incompatible with tackling climate change. Instead, if developed, they could well become stranded assets in a world that is rapidly cutting carbon emissions.*[25]

Our Roadmap for Climate Reform recommends strengthening mechanisms for **direct regulation for emissions reduction** to meet targets including by:

1. Setting enforceable deadlines to **phase out domestic reliance on fossil fuels**, including prohibiting specified greenhouse gas emitting activities/projects that will drive exceedance of Australia's 'fair share' of a 1.5°C carbon budget (ie, no new fossil fuel projects or non-renewable energy projects).
2. Providing legal clarity on how emissions budgets and targets apply to all projects and sectors. This will involve providing both project and sector-specific guidance.
3. Requiring **Climate Impact Assessments** and emissions disclosure statements for energy and major projects (a national standard should be developed for this process, with guidance for mandatory consideration by decision-makers). To level the playing field, a national standard for climate impact statements and full emissions disclosure should be developed and required for all energy and major projects. This must be a mandatory consideration for decision makers and linked to ensuring emissions targets and carbon budgets are met.

Both the Significant Impact threshold and Prohibited Impact threshold in the Bill are consistent with these findings and recommendations and are **supported.**

[24] International Energy Agency "Net Zero by 2050; A Roadmap for the Global Energy Sector.
[25] See: Climate Council, 2015, Unburnable *Carbon: why we need to leave fossils in the ground*, available at: http://www.climatecouncil.org.au/uploads/a904b54ce67740c4b4ee2753134154b0.pdf piii-iv.

Ministerial consideration of a national carbon budget and emissions reduction targets

It is proposed that when deciding whether to approve a 'Significant Impact on Emissions' (ie a project that would emit between 25,000 and 100,000 t.p.a), the Minister must consider whether the project will be consistent with the national carbon budget and achievement of emissions reduction targets.

The Bill establishes a role for the Climate Change Authority to develop a national carbon budget to 2050 and to assess the remaining budget annually (proposed clause 517B). EDO **supports** this approach and recommends that the process for setting and reviewing the carbon budget be transparent, accountable and science-based.

EDO **supports** a clear requirement that the Minister must consider *both* emissions targets and a carbon budget.

While it is important, a 2030 target and a 'Net-Zero by 2050' target does not regulate how many greenhouse gas emissions can be emitted before 2050, nor the rate at which emissions must decline, in order to meet the goal of limiting the temperature increase to 1.5°C. In this regard, it is the volume of emissions that are permitted to be released before net zero, and the rate at which emissions decline, that will determine the ultimate level of global warming that Australia, and the world, will have to endure. For example, if emissions are permitted to continue at high levels for too long into the future, the corresponding rate and depth of emissions reductions required to achieve the goal of the Paris Agreement will become impossible to achieve (both technologically and economically).

Any real emissions reduction target must therefore function in the context of meeting a carbon budget[26] corresponding to a level of global warming of no more than 1.5°C above pre-industrial levels. Mechanisms in climate legislation for emissions budgets and interim and long-term targets should clearly link to a temperature outcome corresponding to the goal of the Paris Agreement – ie, to be well below 2°C and preferably 1.5°C. As stated above, limiting heating to no more than 1.5°C is consistent with Australia's human rights obligations.

Australia lodged an updated Nationally Determined Contribution (**NDC**) to the Paris Agreement in June 2022, increasing the 2030 target to reducing GHG emissions by 43% below 2005 levels by 2030, and reiterating a target of net zero by 2050.[27] This is an important first step in re-establishing global credibility on climate action, but must be imminently strengthened in accordance with the science. The Climate Change Authority calculated that to limit global warming to less than 2°C above pre-industrial levels, Australia needs a 45%-65% reduction in emissions by 2030 from 2005

[26] A carbon budget calculates the amount of greenhouse gases that can be released into the atmosphere for any nominated temperature rise. The carbon budget changes over time as more greenhouse gas emissions are released. There are a number of ways to allocate the carbon budget amongst population or jurisdictions.
[27] See: The Registry of NDC communications at: Nationally Determined Contributions Registry | UNFCCC available at: https://unfccc.int/NDCREG

levels.[28] However, we note that this calculation does not accord with the goal of the Paris Agreement, which requires warming to be limited to between 1.5°C to well below 2°C. Therefore, a more ambitious interim target is required.

EDO **recommends** that in addition to increasing the targets in accordance with the science, it is necessary to insert new object in to the EPBC Act to cross reference the targets in the *Climate Change Act 2022* – similar to the amendments proposed by the Climate Change (Consequential Amendments) Bill 2022. Inserting a direct reference to emissions reduction targets in the EPBC Act will give clear direction that decisions under the Act must align with the object to meet Australia's emissions reduction targets.

No approval process exemptions

The Bill also provides that the Minister will be "expressly prohibited from using alternative approval processes (bilateral agreements, bioregional plans, conservation agreements) for actions involving a significant impact on emissions. Subject to limited exceptions, all actions that have, will have or are likely to have a significant impact on emissions must be assessed under Part 9, or in accordance with an endorsed policy, plan or program under Part 10."

EDO has significant concerns about pathways to streamline or exempt project decisions from assessment and approval requirements under Part 9 – particularly in the absence of strong enforceable national environmental standards. For example, in relation to the proposed use of bilateral agreements to hand national environmental approval powers to states and territories, our concerns with this alternate pathway are set out in the report commissioned by the Places You Love alliance: Devolving Extinction: The risks of handing environmental responsibilities to state & territories - Environmental Defenders Office (edo.org.au).

We encourage the Committee to consider how the proposed trigger applies to existing carve outs, such as decisions made by NOPSEMA.

In the absence of broader EPBC Act reform establishing enforceable national environmental standards, we **support** the proposed provision.

Penalties

The Bill proposes both civil penalties (5000 penalty units for an individual and 50,000 penalty units for a corporations) and criminal penalties (7 years imprisonment or 420 penalty units or both) for taking an action that will or is likely to significantly impact the environment without an appropriate approval or exemption under the Act.

These penalties appear to be consistent with the existing trigger provisions in the EPBC Act. EDO supports the onus being on the defendant to prove a valid approval or exemption for the activity.

[28] See: Climate Change Authority (CCA) 2015, Final Report on Australia's Future Emissions Reduction Targets. Available at: https://www. climatechangeauthority.gov.au/sites/default/ files/2020-07/Final-report-Australias-futureemissions-reduction-targets.pdf

Measuring emissions

The Bill includes the following clause:

> **527F Emissions**
>
> (1) For the purposes of this Act, an emission of greenhouse gas, in relation to an action, means the release of greenhouse gas into the atmosphere as a direct result of the action, including:
> (a) any activities (such as land clearing) preparatory to the action; and
> (b) any activities ancillary to the action.
>
> (2) The Minister may determine, by legislative instrument, methods, or criteria for methods, by which the amounts of emissions of greenhouse gases are to be measured for the purposes of this Act and may specify:
> (a) different methods or criteria for emissions from different sources; and
> (b) different methods or criteria depending on the circumstances in which the emissions occurred; and
> (c) conditions relating to the use of methods determined by the Minister or of methods which meet criteria determined by the Minister; and
> (d) rating systems for those methods (including different rating systems for different circumstances); and
> (e) the particular rating given to each of those methods.

We **support** fulsome consideration of all relevant emissions associated with a project, including those associated with preparatory land clearing and ancillary actions. We note that to capture the range of high emitting land clearing activities, a standalone land clearing trigger would be more comprehensive.[29]

We recommend that methods for measuring emissions should cover a range of emissions, including scope 3 emissions. As noted above, climate impact assessment should involve full disclosure of all relevant emissions.

[29] See: EPBC Climate Trigger Bill 2020 - Environmental Defenders Office (edo.org.au)