Australian Government
Department of Industry, Science and Resources

Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022 [No. 2]

Department of Industry, Science and Resources Submission

13 October 2022

Introduction

Thank you for the opportunity for the Department of Industry, Science and Resources (the Department) to respond to the Senate Environment and Communications Legislation Committee's inquiry into the Environment Protection and Biodiversity Conservation (EPBC) Amendment (Climate Trigger) Bill 2022 [No. 2] (the Bill).

The proposed Bill would principally affect emissions intensive fossil fuel production. However, the Bill would also impact resources projects across commodities and industries beyond the resources sector. This submission outlines potential impacts to industry of the proposed climate trigger for the Committee's consideration.

The Department supports economic growth and job creation for all Australians. We do this by investing in science, technology and commercialisation; growing innovative and competitive businesses, industries and regions; and supporting a strong resources sector. We work to:

- Take advantage of, and build on, Australia's strengths;
- Help businesses invest and create jobs; and
- Drive long-term productivity, growth and sustainability.

Australian industry has an important role to play in growing Australia's economic prosperity while supporting decarbonisation to reach Net Zero by 2050. Onshore and offshore resources projects support regional economies and help our trading partners meet their own decarbonisation goals. Also manufacturers, including for metals and chemicals, provide critical inputs to downstream industries. It remains important to support the transformation and growth of our economy, and to build new capabilities that support net-zero goals – here and around the world.

Many sectors and businesses have already taken significant actions to reduce their carbon footprint. This includes:

- Voluntary efforts, such as through process improvement and carbon offsetting;
- Established mechanisms such as the Safeguard Mechanism;
- Independently setting ambitious climate targets and net-zero commitments; and
- Partnering with the scientific community to develop and implement novel solutions.

The industry sectors that could be affected by this measure include key regional employers. The resources sector provides high paying jobs to more than a quarter of a million Australians directly employed by the sector, and supports more than 270,000 jobs across Australia[1]. The manufacturing industry contributes over 800,000 jobs[2].

The resources sector

In 2021-22, the resources sector exported an estimated $414 billion worth of resources to the world[3] – around 70 per cent of total national exports (goods and services). In 2020-21, the sector

[1] Deloitte Access Economics, *Mining and METS: engines of economic growth and prosperity for Australians 2017.*
[2] Labour Force Status, August 2022, Australian Bureau of Statistics.
[3] International Trade in Goods and Services, Australia, August 2022, Australian Bureau of Statistics.

contributed more than $43 billion in taxation and royalty revenue to the nation[4], helping to fund essential services for all Australians. The sector also contributes roughly 10 per cent to the nation's Gross Domestic Product[5].

Our minerals and resources are used in Australia and around the world to make the everyday essentials we need for daily life – including use in electricity, heating and cooling. Critical minerals in particular are essential inputs to many clean energy technologies, including electric vehicles, batteries, solar, hydrogen electrolysers and energy efficient technology. The rapid deployment of clean energy technologies requires a significant increase in the supply of minerals, with the International Energy Agency forecasting a quadrupling of minerals required for clean energy technologies globally by 2040[6]. Australia's metallurgical coal, copper, iron ore and nickel are also crucial to the infrastructure and products which enable clean energy technologies, from wind turbines to wires, batteries, magnets and semiconductors.

The environmental impact created by our mining and resources sector will vary across different commodities. From the period of 1 July 2019 to 30 June 2022, approximately two thirds of resources and mining projects referred under the *Environment Protection and Biodiversity Conservation (EPBC) Act 1999* were deemed Controlled Actions[7]. Of these projects under assessment, approximately 80 per cent are awaiting an approval decision[8].

In 2020, scope 1 emissions from the resources sector contributed approximately 20 per cent of Australia's total greenhouse gases[9]. Major sources of emissions in the sector are the combustion of diesel for transportation and electricity generation, and fugitive methane emissions. The resources sector makes up 62 per cent of emissions covered by the Safeguard Mechanism[10], the largest share of any industry.

Climate Trigger

The Bill will principally affect emissions intensive fossil fuel production, however it would also impact industry and resources projects, many of which are important for achieving the goals of the Paris Agreement.

The Bill would likely impact on new proposed projects, many of which could be refused approval for exceeding the 100 kilotonnes of carbon dioxide equivalent (kt CO2-e) scope 1 emissions. This includes new coal, oil and gas and critical mineral projects in the development pipeline. Projects that

[4] Royalty and Company Tax Payments, Minerals Council of Australia, June 2022
[5] Australian National Accounts: National Income, Expenditure and Product, September 2022, Australian Bureau of Statistics.
[6] *The Role of Critical Minerals in Clean Energy Transitions*, International Energy Agency, May 2021.
[7] A referral is identified as a Controlled Action when it is likely to have a significant impact on a Matter of National Environmental Significance (MNES) and requires further assessment and approval under the EPBC Act prior to project commencement.
[8] Data provided by the Department of Climate Change, Energy, the Environment and Water, as of 8 August 2022.
[9] National Greenhouse Accounts, 2022.
[10] The Safeguard Mechanism is the Government's core policy for emissions reduction from large industrial emitters. It covers industrial facilities that emit greater than 100,000 tonnes of carbon dioxide equivalent scope 1 emissions annually.

are below the 100 kt CO2-e threshold would likely still meet the definition of activities with significant emissions and be subject to additional assessment and approval under the EPBC Act. This assumes that the emissions intensity for new projects would be in-line with existing benchmark projects and does not account for the deployment of emission reducing technologies, such as electric haul trucks and ventilation air methane abatement.

The Climate Trigger could discourage investment in Australia's resources industry, as well as the downstream manufacturing sector, which would be contrary to one of the stated purposes of the Government's proposed National Reconstruction Fund. The Government is committed to value adding to our resources sector, including the processing of our major commodities and critical minerals. Australia's investment environment is important for its long-term prosperity and provision of regional jobs. The regulations appear to remove flexibility for the Minister for the Environment when making decisions under the EPBC Act to consider factors such as current demand for products, domestic energy security and needs of export partners.

Another consideration is the impact on Australia's supply of critical minerals required for the global energy transition. Global demand for critical minerals is rapidly increasing, driven by decarbonisation efforts. Critical Minerals and other minerals, such as iron ore, bauxite, lithium, cobalt and graphite are essential inputs to many clean energy technologies such as wind turbines, solar cells and batteries. The department notes the current emissions profiles for a number of iron ore and bauxite operations in Australia exceed the 100 kt CO2-e limit for scope 1 emissions[11]. The proposed Climate Trigger could disrupt supply chains and discourage further investment in these commodities – at a time when more investment is needed to guarantee the raw materials needed to achieve the goals of the Paris Agreement.

Offshore oil and gas

The Bill could significantly impact the assessment and approval of new and existing offshore oil and gas activities, such as backfill projects which can extend the lifespan of existing offshore and onshore assets. This is particularly relevant for large backfill projects for Scarborough, Ichthys and Prelude, which will rely on extending the life of existing facilities as opposed to new construction.

Offshore oil and gas activities are currently assessed by the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA). These arrangements were streamlined in 2014 following a strategic assessment of NOPSEMA's environmental management authorisation process, which has been endorsed as a Program (the Program) that meets the requirements of Part 10 of the EPBC Act. NOPSEMA requires that the environmental impact of an activity is reduced to as low as reasonably practicable, and to an acceptable level. NOPSEMA considers the impact of direct emissions, and on a case-by-case basis, indirect consequences. NOPSEMA is required under the Program to have regard to relevant EPBC Act policy documents when making decisions, including the EPBC Act Policy Statement - 'Indirect consequences' of an action: Section 527E of the EPBC Act.

As the Program does not include this new controlling provision, it is not clear whether new offshore oil and gas developments that exceed the emissions threshold would be covered by streamlined

[11] Clean Energy Regulator (2022), *Safeguard facility reported emissions 2020-21*. Accessed 7 October 2022.

regulatory arrangements, or would require separate assessment and approval under the EPBC Act (or would not be able to proceed if they exceed the threshold for prohibited impacts on emissions).

It is also unclear whether existing oil and gas activities which have been assessed under the Program will be impacted by the Bill. Under the Program, offshore petroleum activities require an environment plan to be revised and re-assessed every 5 years in accordance with the *Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009*. In addition, multiple environment plans are generally sought to cover different phases of a project (i.e. construction, operation and decommissioning).

Separate assessment of these oil and gas activities is currently not required under the EPBC Act if the activity is undertaken in accordance with the Program. The department is unclear how the Bill will interact with the Program and whether subsequent environment plans for a project that is underway will trigger an assessment or possible prohibition under the EPBC Act. Further analysis is required to understand the impacts on existing offshore oil and gas developments.

Item 24 of the Bill states that "*the amendments made by this Schedule apply in relation to an action that begins on or after the day this item commences*". It is unclear whether projects or actions which have been approved but not yet commenced would be impacted by these proposed amendments. This may result in projects that have received environmental approval, and where subsequent investments decisions have been made, requiring additional approval and possibly being prohibited. This will increase regulatory costs associated with offshore developments and will result in significant investment uncertainty.

Facility reporting requirements

Data prepared by the Clean Energy Regulator indicates that there are currently 92 operational facilities in Australia's resources sector with emissions between 25 kt CO2-e and 100 kt CO2-e[12]. Additionally, the Department of Climate Change, Energy, the Environment and Water advised there are a further 95 resources projects currently undergoing assessment under the EPBC Act.

A legislated requirement to provide information on the emissions associated with a project, and annual assessments for facilities with emissions between 25 kt CO2-e and 100 kt CO2-e, could increase the regulatory burden and compliance costs placed on industry with the potential for duplication of regulatory reporting. Further, it is unclear how reporting requirements would interact with industry abatement mechanisms, such as carbon capture and storage.

Interaction with existing climate measures

The Government's planned approach under the *Powering Australia* plan will drive down emissions, while providing the flexibility industries need to maintain investment confidence and international competitiveness, both in relation to traditional commodities and critical minerals.

[12] Clean Energy Regulator, National Greenhouse and Energy Reporting Scheme, 2020-21, viewed 7 September 2022.

The cornerstone of the Government's policies for reducing emissions from industrial facilities, which are subject to EPBC Act approval, is the Safeguard Mechanism. This policy aims to achieve lowest cost emissions reduction from existing facilities and signal to new facilities the importance of pursuing low or zero emissions operations.

Facilities covered by the Safeguard Mechanism will be required to reduce their emissions in line with Australia's carbon budget, which is calculated as Australia's share of global emissions consistent with the temperature goals of the Paris Climate Agreement. The Climate Change Authority will report annually on Australia's progress in keeping within its carbon budget, and emissions reduction will accelerate as needed to accommodate the emissions of any new, large industrial facilities. Given the Safeguard Mechanism will deliver emissions reduction within Australia's carbon budget, the proposed regulations risk increasing business uncertainty and duplicating the regulatory burden.