Environmental Defenders Office

A Roadmap for Climate Reform

About EDO

Environmental Defenders Office (EDO) is the largest environmental legal centre in the Australia-Pacific, dedicated to protecting our climate, communities and shared environment by providing access to justice, running groundbreaking litigation and leading law reform advocacy. We are an accredited community legal service and a non-government, not-for-profit organisation that uses the law to protect and defend Australia's wildlife, people and places.

EDO recognises the Traditional Owners and Custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledges and customs so that, together, we can protect our environment and cultural heritage through law.

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Executive Summary

Australia needs climate-ready laws. Global emissions are still rising, and climate change is already impacting our environment, economy, health, security, and way of life. False and empty promises are no longer an option. Making 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 environmental assets like the Great Barrier Reef a fighting chance of survival. There are many innovative and necessary solutions to the climate crisis, and establishing strong national climate law is the foundation for success.

This is the critical decade. We need a strong legal framework in Australia to define when and how we will get to real net zero greenhouse gas emissions. A mid-century policy aspiration based on assumptions and false narratives is simply not sufficient. The climate risks must be addressed, and renewable opportunities must be embraced, in order to avoid extreme financial costs and environmental impacts, take advantage of Australia's ability to be a renewable energy leader, and ensure a just energy transition.

The scientific, social, economic, human rights and environmental imperatives are clear. Bushfire and flood-affected communities are increasingly at risk. Impacts on First Nations Peoples and our neighbours in the Pacific are increasing with further temperature rise. Unique ecosystems and iconic species are on the brink. Action and timeframes for achieving real net zero must be embraced now and must be linked to the temperature goal of limiting increase to 1.5°C. That means establishing enforceable targets, mechanisms, duties and accountability in law now.

Australia currently has over 80 pieces of legislation relating to energy and various elements of climate policy, however the sum of these parts does not equal an effective legal framework. It is time for a national Climate Act to set the path to real net zero, define responsibilities, galvanise transition and incentivise innovation in meeting our targets to stay within a carbon budget that will limit warming to 1.5°C.

There is no more time to lose, but so many benefits to be gained by making climate-ready laws now.

This Roadmap identifies **5 opportunities** for Australia and makes **58 recommendations** for the reform of Australian climate law. These recommendations are designed to be acted upon in the first term of the new Australian parliament - the next three critical years.

Opportunity 1:

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Opportunity 2:

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Opportunity 3:

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Opportunity 1: Climate Act now

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; ecosystems; and built and natural assets exposed, reducing 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.

Now is the time to end the political climate wars and provide certainty and a pathway forward. It is time for a nationally coordinated legislative framework for achieving real net zero emissions and limiting warming to 1.5°C.

The climate science could not be clearer. The Inter-governmental Panel on Climate Change (**IPCC**) Sixth Assessment Report (**IPCC AR6 Report**)[1] 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.

"It's all about our future generations. That's what I worry for. What are they going to have, who are they going to be? Our lives are not just lived on the land, but in the sea – this home that we have loved for thousands of generations."

Plaintiff and Munupi Senior Lawman, Dennis Tipakalippa, Tiwi Islands.

Limiting global temperature increase to 1.5°C provides the best opportunity for us to avoid the worst impacts of climate change. It is also critical for the survival and sovereignty of Indigenous and First Nations Peoples[2], 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.[3] The Climate Act should recognise and include human rights considerations consistent with Australia's obligations under international agreements.

Limiting global temperature increase to 1.5°C is also necessary to uphold our obligations under other international agreements, including to protect internationally recognised world heritage assets such as the Great Barrier Reef,[4] 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.[5]

Australia also has obligations under international human rights law (including the United Nations Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women). The United Nations Human Rights Council recently adopted resolution 48/13 recognising that a clean, healthy and sustainable environment is a human right. This right includes a right to a safe climate.[6] Climate change action is also necessary to meet Australia's obligations regarding the right to life.[7] The right to a safe climate is independent of Australia's obligations under the Paris Agreement. As Australians are already experiencing harm due to 1.1°C temperature increase, human rights oblige the Australian Government to take action by limiting further global temperature increases and, certainly, to no more than 1.5°C.

There are significant costs that could be saved by stronger action now. The Climate Council estimates that by 2038, extreme weather events alongside the impacts of a higher sea level will cost the Australian economy $100 billion every year.[8] The Reserve Bank of Australia, the Australian Securities and Investment Commission and the Australian Prudential Regulation Authority have cited risks posed by climate change as a central concern for the economy and financial stability. In addition, eighty-five per cent of Australians live within 50km of the coast, meaning billions of dollars are at risk from increased natural disasters.[9] Decisive action now could help ameliorate these financial impacts.

It is time for a national Climate Act

To effectively limit warming, maximise transition opportunities, and ensure we have the right mix of tools, rules and incentives to meet our targets, Australia needs an overarching Climate Act coordinate our climate change response.

We need a Climate Act to deliver a clear, strategic and accountable plan to achieve the necessary GHG emissions reductions; to send a clear signal of the government's intention, commitment and level of ambition to limit warming; drive low-carbon investment and innovation; enable effective remedies to ensure Australia's climate action by both Government and business is consistent with human rights obligations; lower the cost of a just transition to a low-carbon economy; provide certainty and confidence for business and civil society, with positive influence on investor confidence; and deliver a range of positive economic and social benefits.

We recommend that a new national Climate Act include the elements set out below:

- **Objects:** Set a clear overarching objective to reduce GHG emissions and make decisions consistent with limiting the increase in global warming to no more than 1.5°C above pre-industrial levels. The objects should also refer to planning for a rapid and just transition (including supporting workers to transition) away from fossil fuel production and use, consistent with IPCC advice, and establishing a whole-of-government approach to addressing climate change impacts (*see Opportunity 2*);
- **Targets:** Impose duties on government minister/s to set periodic and long-term GHG emissions reduction targets and carbon budgets in line with limiting warming to 1.5°C and a legislated renewable energy target for electricity use, based on the best available science and the principles of ecologically sustainable development (*see Opportunity 2 and 3*);
- **Duties:** Create a duty on ministers and relevant decision makers to make decisions consistent with relevant climate change legislative objects and targets when exercising prescribed functions (*see Opportunity 3*);
- **Governance:** Allocate ministerial responsibility specifically for climate change, and create a Climate Change Division in the Department of Prime Minister and Cabinet that administers an overarching Climate Act and supports interagency collaboration on emissions reduction and adaptation. Establish a national Environment Protection Authority (EPA) to, amongst other responsibilities, collate data, develop and set national standards, and undertake compliance and enforcement activities (*see Opportunity 3*);
- **Independent expert advice:** Formalise a skills-based independent statutory Climate Change Advisory Council to advise the government and the parliament on the best available science for climate mitigation and adaption, and to assess and report on progress in relation to meeting targets. Require decision makers to act consistently with this advice (*see Opportunity 3*);
- **National standards:** Establish national standards and guidance on a range of issues including climate impact assessments, mandatory climate considerations; emissions reporting (including scope 3 and fugitive emissions); land sector carbon accounting, energy efficiency, and renewable energy project pathways (*see Opportunity 4*);
- **Transition plan and authority:** Consult on and establish a plan for a rapid and just transition for effected communities and workers. Establish a statutory body to coordinate transition planning and implementation, with transition costs funded in part by the redirection of current fossil fuel subsidies. The plan for Australia's policy commitments must ensure First Nations Peoples and our neighbours in the Pacific region are included in energy transition policies (*see Opportunity 4*);
- **Risk assessment:** Adopt a high-level process for a national climate risk assessment, and require specific policies and initiatives for sectors identified at high risk from climate change impacts (e.g. housing, infrastructure, agriculture, energy, insurance, tourism, health) (*see Opportunity 5*);

- **Adaptation Plans:** Require a national Adaptation Plan to be made, published, and periodically reviewed by the Minister on advice from the Climate Change Advisory Council. Sectoral and regional adaptation plans should also be made consistent with the national Adaptation Plan (*see Opportunity 5*); and,
- **Monitoring and reporting progress:** Develop national indicators of success, including for emissions reduction in line with set targets, adaptation planning and climate readiness of legislation; and regularly report against those indicators (*see Opportunity 5*).

These elements are explored further throughout this Report.

Recommendation

Provide a clear path forward for effective and coordinated action on climate change by:

1. Establishing a national Climate Act – including objects, legislated targets and timeframes, duties, governance, independent expert advisory body, national standards, transition authority, national risk assessment, adaptation planning, and monitoring and reporting.

Opportunity 2: Provide clarity and certainty for business and community by charting a path to real net zero

Providing certainty starts with establishing clear legally enforceable targets based on the science, and then providing the tools and rules for how the targets will be met.

Legislating a clear and ambitious target is a critical first step in national climate reform. The target is the hook on which to hang the multitude of necessary climate legal and policy reforms.

Many jurisdictions are committing to a long-term target of net zero GHG emissions by 2050 and adopting various approaches to implementing short and medium term targets to meet the goal of the Paris Agreement, including by setting interim 'emissions budgets'. Some states such as Victoria, South Australia, Tasmania and the ACT have legislated targets, but we have no national legislated target.

It is time to legislate a real national net zero target.

There are multiple "net zero" scenarios examined in IPCC reports. Some of these scenarios rely on assumptions about unviable technologies like carbon capture and storage, and controversial proposals like carbon offsetting, to justify increased production of fossil fuels, even as global emissions and temperatures keep rising. International Energy Agency (**IEA**) analysis confirms the inevitable fact that there must be no new coal and gas projects.[10] There is only one solution to the climate crisis, and that is genuine and rapid emissions reductions. There is no credible evidence that production of Australian fossil fuels for export will reduce global emissions to safe levels, or alleviate poverty. Quite the opposite is true. Genuine or real net zero targets and pathways do not rely on these assumptions or false narratives. They do require a stop to development of new fossil fuels, and a phase out of existing fossil fuels consistent with the science. A new Climate Act needs to set a real net zero target linked to actual verifiable emissions reduction.

While it is important, a 'Net-Zero by 2050' target on its own does not regulate how many GHGs 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 Net-Zero by 2050 target must therefore function in the context of meeting a carbon budget[11] 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 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.[12] 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 levels.[13] 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.

Updated analysis indicates that to save assets such as the Great Barrier Reef, Australia needs to reduce greenhouse gas emissions by **74% of 2005 levels by 2030** and achieve **net zero by 2035**.[14] The more time that passes before we take significant action, the stricter the reduction targets must be if we are to meet the goal of the Paris Agreement.[15]

A clear and ambitious science-based **2030 target** is therefore necessary to ensure a real net-zero by 2050 target, aligned with the Paris Agreement temperature goals, is possible to meet. It is imperative that a sufficiently ambitious and binding 2030 target is established in law as soon as possible to require Australia to take immediate action to deeply reduce its GHG emissions.

A 2021 federal parliament inquiry reported that legislating a GHG emissions reduction target would:[16]

- provide long-term policy certainty and reduce legal and regulatory risks;
- improve investor confidence and certainty for business;
- be consistent with the work of the IPCC and broad international scientific consensus;
- align with the same commitment made by many of Australia's international trading partners such as New Zealand, the United Kingdom, Japan and South Korea;[17]
- align with the same commitment made by many international and domestic corporations; and
- improve human health.

The Law Council of Australia summarised the benefits of a legislated net zero goal:

> *"...a legislated target would provide certainty to policy makers about the guiding policy goal and timing. This will be essential when developing emissions reduction and adaptation plans and assessing the relative merits of different policy options. This assessment is an essential part of the law-making process. For the business and community sectors, a legislated target would provide certainty about the long-term policy framework and reduce legal and regulatory risks."*[18]

The Australian Government must legislate a pathway for achieving real net zero in line with a carbon budget that is consistent with the goal of limiting global temperature rise to 1.5°C, and to setting interim targets and goals that specify the rate at which emissions must decline, including 5-yearly carbon budgeting. A clear and ambitious **2030 target** is necessary to ensure a real net-zero target aligned with the Paris Agreement temperature goals is achievable. Such a target, translated into the next **Nationally Determined Contribution** to the Paris Agreement, would confirm to the international community, including our Pacific neighbours that Australia takes seriously its obligations to act on climate change.

Recommendations

Provide clarity and certainty by legislating a path to real net zero by:

2. Legislating a clear and ambitious **2030 and real net zero target** pathway aligned with the Paris Agreement temperature goals – experts recommend that to save assets like the Great Barrier Reef, the target needs to be at least 74 percent emissions reduction below 2005 levels by 2030 and net zero by 2035.
3. Designing and legislating a process to achieve targets aligned with Australia limiting itself to a fair share of the remaining 1.5°C **carbon budget**, including interim targets and goals that specify the rate at which emissions must decline. The initial budget should be set for the period to 2025, followed by interim **5 yearly carbon budgets** for 2030 and 2035.
4. Confirming and communicating a strengthened **Nationally Determined Contribution (NDC)** to the Paris Agreement specifying a revised 2030 target consistent with achieving real net zero in line with a carbon budget that limits global temperature rise to 1.5°C (ie at least 74% reduction below 2005 levels by 2030).
5. Establishing a process to include other targets under the new Climate Act, including for example, in relation to methane. This process must include consultation with affected industries.

Opportunity 3: Define leadership and responsibility for meeting targets

To ensure that strengthened emissions reduction targets and temperature goals are met, clear **duties** must be identified in law. This requires establishing relevant duties for decision makers and policy makers in legislation to consider climate impacts and to ensure decisions are made consistent with legislated targets and carbon budgets. Broader **governance** arrangements also need to be reformed to clarify leadership and responsibility.

Duties

Australian courts are recognising climate change duties exist, for example, in *Sharma v Minister for the Environment* (Sharma), the Federal Court initially held that the Commonwealth Environment Minister owed all Australian children a duty of care when she decided whether to approve or refuse an extension to an existing coal mine under Australia's Commonwealth environmental law. However, this ruling was not upheld on appeal. At the state level, in a case brought by Bushfire Survivors for Climate Action, the NSW Land and Environment Court held the NSW EPA has a duty to develop policies, objectives and guidelines to regulate GHG emissions and protect NSW communities from the impacts of climate change. Rather than relying on brave communities and individuals to bring public interest cases to have these duties considered and confirmed by the courts, it would be better for all stakeholders to have specific duties clearly set out in legislation.[19]

Legislated duties are not unprecedented – already existing in Victoria and in the laws of over 30 other countries including New Zealand, Canada and the UK.[20] A clear duty should be established in a new Climate Act to require that decision makers must act consistently with emissions targets and carbon budgets.[21]

Duties should extend to all relevant decision makers, not just a Climate or Environment Minister. Relevant public authorities and entities should be required to consider the potential risks of climate change and report on material risks when performing their duties or exercising their powers.[22] A general obligation

Our members have been working for years to rebuild their homes, their lives and their communities. This ruling means they can do so with confidence that the EPA must now also work to reduce greenhouse gas emissions in the state. Global warming is creating the conditions that can lead to hotter and fiercer fires, and all of us need to work to make sure we're doing everything we can to prevent a disaster like we saw during 2019 and 2020.

Jo Dodds – Bushfire Survivors for Climate Action

should be included in a national Climate Act to ensure that consideration of climate change (both mitigation and adaptation) is integrated into a wide range of decision making processes under other relevant laws. Mechanisms could include setting clear legal duties to consider climate change in exercising decision-making functions and developing institutional guidance and support on technical matters. To assist decision makers, guidelines should be developed to specify the ways in which climate change should be taken in account in decision-making processes – for example, how the decision will impact on climate change and how climate change will impact on the subject matter of the decision. The question of whether the decision will contribute to Australia's GHG emissions, and whether it is consistent with any relevant emissions reduction targets and carbon budget, should also be a mandatory consideration. Guidelines could be used to assist decision makers across portfolios to understand their statutory obligations.

Relevant climate considerations should include potential risks from, and impacts of, factors including: biophysical impacts; long and short term economic, environmental, health, social, cultural and human rights impacts (and specific considerations of the human rights impacts on First Nations and Indigenous Peoples); direct and indirect impacts; and cumulative impacts.[23]

In addition to establishing duties, it is also important to provide effective remedies consistent with human rights obligations. The Act should include a justiciable right to a safe climate and a safe, clean, healthy and sustainable environment which is available in relation to mitigation, adaptation and climate change loss and damage. This would help meet Australia's obligations under international human rights law and international environmental law principles and agreements (i.e., polluter pays principle), which are currently not being met by Australia's legal system. The Full Court's decision in Sharma exposed the failings of the Australian legal system to hold accountable decision-makers for decisions which place health, lives and property at risk. It is especially important for the Government to consider this given Allsop CJ's consideration in Sharma that harm (loss and damage) from climate change is a political question and thus Government should be providing effective remedies consistent with its human rights obligations at international law.

"To comply with their international human rights obligations, States should apply a rights-based approach to all aspects of climate change and climate action, noting that states have procedural and substantive obligations...Enable affordable and timely access to justice and effective remedies for all, to hold States and businesses accountable for fulfilling their climate change obligations"... "Respect the rights of indigenous peoples in all climate actions, particularly their right to free, prior and informed consent" and "With respect to substantive obligations, States must not violate the right to a safe climate through their own actions; must protect that right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil that right. States must avoid discrimination and retrogressive measures. These principles govern all climate actions, including obligations related to mitigation, adaptation, finance and loss and damage."

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/74/161, 15 July 2019.[24]

Climate Leadership

Australia must be a leader in climate policy and have laws implementing a commitment to do our fair share towards meeting not only domestic targets, but global targets under the Paris Agreement. Our Pacific neighbours are already suffering at 1.1 degrees of warming, and have increased vulnerability to further temperature rises, while contributing the least to the climate crisis.

It is therefore important that a national Climate Act is not limited to setting a target for Australia's domestic scope 1 and 2 emissions, but must also address the emissions Australia exports to other countries (scope 3). Consistent with the commitment to pursue efforts to limit warming to 1.5°C above pre-industrial levels, a national Climate Act should include a net zero emissions target for exported (scope 3) emissions.

The Australian Government has international obligations to ensure that it does not cause transboundary harm to its neighbours, particularly the states most vulnerable to climate change in the Pacific. This is the well-established 'no harm' rule of customary international law and is included in international agreements to which Australia has ratified (for example the Convention on Biological Diversity). Under a new Climate Act, environmental assessments, such as Climate Impact Statements, must include assessment of the impact of scope 3 emissions on these Pacific states as part of Australia's due diligence obligations under international law, and more comprehensive climate reporting is needed to track progress towards achieving goals, targets and benefits for the region.

The Pacific covers a third of the earth and is home to vibrant and diverse cultures that speak a quarter of the world's languages. We should not have to bear the burdens of climate change when we are the least responsible for it. Our emissions are historically and currently negligible. The harm that we face is existential, with so many communities facing displacement from our ancestral homes. We need Australia to comply with its international law obligations, including the 'no harm' rule, which makes Australia duty bound to prevent, reduce and control the risk of environmental harm to other states. This includes Scope 1, 2 and 3 emissions. Scope 3 emissions are within the jurisdiction or control of Australia, regardless of where they are ultimately emitted. Australia has an obligation to Pacific Island States to assess and mitigate against transboundary harm with respect to any project which contributes to global greenhouse gas emissions (including Scope 3 emissions) and this should be a requirement of every environmental impact statement.

Fleur Ramsay, Samoan and Acting Manager of EDO's Pasifika (Pacific) Program.

Governance

There are a large number of statutory corporations, government departments and agencies that currently have responsibility for mitigation and adaptation to climate change and/or for tracking GHG emissions, including but not limited to, the Climate Change Authority, Clean Energy Finance Corporation (CEFC), Australian Renewable Energy Agency (ARENA), Clean Energy Regulator, the new Department of Climate Change, Energy, the Environment & Water.[25] To ensure that Australia's climate change policies are consistent and coordinated, it is imperative that a climate change framework is introduced to ensure that emissions standards information and policies are consistent and consistently applied, and that relevant agencies are supported to galvanise the renewable energy transition.

In terms of governance more broadly, a Climate Act will help coordinate and enshrine the necessary whole-of-government approach to addressing climate change. Climate change considerations and analysis need to be fully built-in to mainstream policy making across all relevant agencies and all levels of government. Government departments need additional climate literacy, particularly departments that set strategic direction, as well as economic advisory and natural resource management (NRM) agencies such as the Treasury, Department of Prime Minister & Cabinet, the Productivity Commission and departments responsible for infrastructure, transport, agriculture and water.

Climate change has implications for the economy, health, agriculture, infrastructure, insurance, tourism, national security, environment, natural resources and a range of portfolios. To ensure an effective and coordinated inter-governmental approach to addressing climate change, a national Climate Act should be administered by a Climate Change portfolio, sitting under the Prime Minister and Cabinet. This would ensure that implementation and administration of the legislation is coordinated across relevant portfolios.

Additionally, a national Environment Protection Authority (EPA) will be critical in collating data and information; developing and setting national standards, for example for emissions and energy efficiency; and for compliance and enforcement of climate related legislation. EDO has made detailed recommendations for a national EPA including that legislation establish a range of duties – see EDO's report: *'Implementing effective independent Environmental Protection Agencies in Australia'* available at edo.org.au.

Recommendations

Establish clear **duties** on relevant decision-makers by:

6. Legislating a clear duty to require that decision makers must act consistently with legislated Emissions Budgets and Targets designed to achieve real net zero emissions in line with a carbon budget that limits global temperature rise to 1.5°C.
7. Amending the Public Governance Performance and Accountability Act 2013 to insert duties to consider and report on climate change risks and impacts, and to act consistently with the best available science, when exercising powers.
8. Including a general obligation in a new national Climate Act to ensure consideration of climate change (mitigation and adaptation), and a prohibition on acting inconsistently with the best available science, are integrated into a wide range of decision-making processes under other relevant laws (see also *Opportunity 4*). This should include recognition of First Nations and Indigenous knowledge and science.
9. Legislating a non-exhaustive list of relevant climate considerations in decision making recognising that the potential risks from, and impacts of, climate change may include: biophysical impacts; long and short term economic, environmental, health, social, cultural and human rights impacts (particularly those on First Nations and Indigenous Peoples); direct and indirect impacts; and cumulative impacts.
10. Developing guidelines to assist decision-makers specifying the ways in which climate change should be taken into account in decision making.
11. Including a justiciable right to a safe climate and a safe, clean, healthy and sustainable environment which is available in relation to mitigation, adaptation and climate change loss and damage.
12. Legislating and implementing a real net zero emissions target for exported (scope 3) emissions consistent with the commitment to pursue efforts to limit warming to 1.5°C above pre-industrial levels. This is essential to assist global markets to achieve real net zero, to assist our Pacific neighbours, to comply with our international obligations and do our fair share in facilitating the planned and just transition away from fossil fuels in Australia and globally.

Improve climate **governance** by:

13. Allocating Ministerial responsibility specifically for climate change, and creating a Climate Change Division in the Department of Prime Minister and Cabinet that administers an overarching Climate Act (assisted by advice from an independent Climate Change Advisory Council) and supports interagency collaboration on emissions reduction and adaptation.
14. Formalising a skills-based independent statutory Climate Change Advisory Council to advise the Government and the Parliament on the best available science for climate mitigation, and assess and report on progress in relation to meeting targets and implementing adaptation plans.
15. Require decision makers to act consistently with advice provided by the Climate Change Advisory Council.
16. Establishing a national Environment Protection Authority (EPA) to administer an environmental justice framework to address climate impacts on overburdened communities. Relevant EPA duties to enshrine in legislation include:

- A duty to protect the environment and human health from the harmful effects of pollution (including climate pollution), through assessment, enforcement, monitoring and reporting and standard setting;
- a duty to act consistently with the human right to a healthy environment and rights to enjoy and benefit from culture;
- a duty to achieve environmental justice;
- a duty to implement legislation in accordance with principles of ecologically sustainable development;
- a duty to take action to prevent and mitigate greenhouse gas pollution and support ecologically sustainable adaptation to manage the impacts of climate change; and
- a duty to consider the impacts on First Nations Peoples, including impacts on cultural practices as well as Country and to act in accordance with First Nations' Lore and Cultural Protocols when addressing impacts of climate change.

Opportunity 4: Incentivise innovation and galvanise our energy transition

Australian climate law and policy must include the mechanisms and policy drivers needed to ensure that GHG emissions are reduced in line with emissions targets and carbon budgets. Once targets, budgets and duties are established in law, there is considerable scope to design policy settings and legal mechanisms that galvanise emissions reduction and incentivise renewable energy transition using a combination of regulatory 'sticks and carrots.' As the most recent IPCC advice identified, we need "substantial and deep [emissions] cuts this decade to all sectors of the economy". There are a range of related legislative reforms needed to reduce emissions across sectors, enhance adaptation, and facilitate the energy transition.

Incentivising the renewable energy transition

It is critical that a national Climate Act addresses the transition away from fossil fuels and towards renewable and low-emission technology. This includes legislating an explicit **object** to *"facilitate the transition of Australia's energy use and production away from fossil fuels and towards renewable energy and low-emission technology.* The definition of "low emissions technology" in a national Act should explicitly exclude technology relying on fossil fuels, and exclude unproven technology that supports the continued use of fossil fuels.

Creating investor certainty through reinvigorating a national Renewable Energy Target (RET); incentivising renewables (for example, by restoring feed in tariffs and providing subsidies for increasing storage capacity); providing a clear pathway for assessment and approval of ecologically sustainable renewable energy projects and associated transmission infrastructure, including requirements for free, prior, informed consent from First Nations Peoples; extending the roles of the CEFC and ARENA to support development of renewables (not fossil fuel-based energy sources); and strengthening and incentivising energy efficiency solutions are all commitments that the Australian Government can make now. There are also significant opportunities in transport reform, including legislating mandatory vehicle emissions standards, removing the fuel tax credit scheme (rebate), and incentivising uptake of electric vehicles.[26]

Reinstating a strengthened and certain RET has been demonstrated to be one of the most effective tools in climate legislation. As noted by the Australian Panel of Experts in Environmental Law (APEEL):

> *Standards such as the RET are both effective and efficient, because, while prescribing socially preferred outcomes, they leave the means of achieving them up to regulatees, thereby providing incentives for least cost solutions. This appears to be the case in practice as well as in theory, with the available evidence suggesting that the RET is one of the most cost effective emissions reductions policies available.*

While some states and territories have legislated RETs, we recommend a robust national RET should be reinstated and strengthened to incentivise genuine renewable energy investments (excluding options such as burning forest biomass). This should also include an explicit **Renewable Energy Storage Capacity Target**, for example, as recommended by the Victoria Energy Policy Centre.[27]

We further recommend maintaining and strengthening the use of feed in tariffs (FITs). As noted by APEEL, FITs are the most widely used policy in the world for accelerating renewable energy deployment, and there are a considerable number of success stories.[28] Instead of amendments to revise the RET downward and policies to reduce feed-in tariffs for technologies such as roof-top solar, Australia needs to provide investment certainty and incentives using these proven mechanisms.

A critical part of incentivising the energy transition is to instigate an independent review of government subsidies for high-emissions activities – including fossil fuel production, power generation and use. Schemes to examine include fuel tax credits, royalty exemptions, and accelerated depreciation of fossil fuel producing

assets. The independent review should be tasked to recommend how to reduce or phase-out subsidies and tax concessions that create incentives to pollute, or act as a barrier to emissions reduction. Subsidies should be redirected to emissions reduction, renewable energy storage technology development, environment protection, economic transition and community development.

Identifying and removing subsidies to environmentally harmful activities, including fossil fuel production and consumption, is consistent with various international bodies' recommendations, including the Organisation for Economic Co-operation and Development (OECD), World Bank, International Energy Agency and the G20. There is positive value in redesigning grants, concessions and incentives so that they encourage environmental improvement and discourage (not subsidise) harm.

More broadly, the legislative and policy settings should prohibit public financing – the use of tax payer money – for new fossil fuel projects.

While the costs of low-emissions technologies, including solar photovoltaics (PV), wind, lithium-ion batteries and electric vehicles, have fallen and technological progress continues to accelerate, we need to remove barriers and redirect subsidies towards renewable energy uptake at all scales.

Recommendations

Incentivise **renewable energy** by:

17. Legislating an explicit **object** in a new Climate Act to facilitate the transition of Australia's energy use and production away from fossil fuels and towards renewable energy and low-emission technology.
18. Setting a clear legislative definition of renewable energy (which does not include fossil fuels in any form).
19. Reinvigorating a national mandatory **renewable energy target** (RET) to provide investment certainty and increased uptake, including an explicit Renewable Energy Storage Capacity Target.
20. Restoring and strengthening feed in tariffs.
21. Providing subsidies for development and purchase of renewable energy storage capacity and smart grids.
22. Provide a clear pathway for assessment and approval of **ecologically sustainable renewable energy projects** and associated transmission infrastructure – by establishing national ecologically sustainable development standards for renewable energy projects. This includes, for example, frameworks to ensure that renewable energy projects are appropriately located, sited, designed and operated to ensure development avoids, minimises and mitigates adverse impacts on the natural environment (fauna and flora), water resources, First Nations heritage, cultures and access to Country, and associated ecological processes. This must include clear mandatory requirements for free prior informed consent and extensive consultation with impacted First Nations communities.
23. Extending the roles of the Clean Energy Finance Corporation (CEFC) and the Australian Renewable Energy Agency (ARENA) to support development of and renewable energy (which does not include fossil fuels in any form).
24. Establishing effective and best practice **national emissions and efficiency standards for electricity** - for example, the Council of Australian Governments could adopt greenhouse gas emissions standards and emission limits for power stations under federal and state mirror legislation.

Incentivise **transition in high emissions sectors and industries** by:

25. Embracing significant opportunities in **transport reform**, including removing the fuel tax credit scheme (rebate), and incentivising uptake of electric vehicles.
26. Establishing effective and best practice **national emissions and efficiency standards** for **transport** sectors, including mandatory vehicle emissions standards.
27. Instigate an **independent review** of government subsidies for high-emissions activities – including fossil fuel production (with or without carbon capture and storage (CCS) proposals), power generation and use. Examples to examine include the fuel tax credits scheme, royalty exemptions and accelerated depreciation of fossil fuel-producing assets. The independent review should be tasked to recommend how to reduce or phase-out subsidies and tax concessions that create incentives to pollute, or act as a barrier to emissions reduction.
28. **Redirect fossil fuel subsidies** – discontinue financial support (public funding), subsidies, investments and incentives that encourage fossil fuel or other activities that are contrary to genuine emissions reduction efforts (to be clear, this includes discontinuing financial support for proposals such as CCS, which is a distraction from, and delays, real climate action). Subsidies should be redirected to emissions reduction, environment protection, economic transition and community development.
29. Invest in **research and development** to support hard to transition industries to reduce their greenhouse gas emissions, for example, manufacturing and agriculture.

Direct regulation for emissions reduction

In terms of direct regulation of emissions, first and foremost this includes clear mechanisms to facilitate a **planned phasing out of fossil fuel** energy sources and fossil fuel production according to a legislated timeframe. This 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 GHG emissions reduction targets and carbon budgets.

Providing legal clarity on how emissions budgets and targets apply to any new or expanded fossil fuel proposals is critical. For existing emitters, we must ensure our primary emissions reduction mechanism – currently the Safeguard Mechanism under the National Greenhouse Energy and Reporting scheme[29] - is expanded in scope and coverage, includes scope 3 emissions, and ensures a progressive downward adjustment of emissions baselines. Although highly politicised, internalising environmental costs in decision making, including via a 'polluter pays' approach, by putting a price on greenhouse gas pollution, has been an effective tool in emissions management. We recommend a robust and comprehensive emissions trading scheme (ETS), but in the first instance amendments can be made to strengthen the Safeguard Mechanism.

There are tools and rules that need strengthening – including for example, clear requirements and parameters for using genuine carbon offsets;[30] effectively implementing nationally harmonised, binding limits on (or pricing of) fugitive emissions from all coal and gas extraction projects; and establishing effective and best practice national emissions and efficiency standards (for example, for electricity, building, agriculture and transport sectors). 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.

The planned transition for the Australian economy needs to encompass not just a plan for real net zero domestic emissions, but also a plan for our economy in a global economy of net zero emissions.

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.[31] To achieve the aims of the Paris Agreement existing fossil fuel projects will need to wind down within their planned operational life[32] 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).[33] 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.[34]

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.[35]

"Beyond projects already committed as of 2021, there are no new oil and gas fields approved for development in our pathway [to net-zero], and no new coal mines or mine extensions are required."

International Energy Agency
"Net Zero by 2050; A Roadmap for the Global Energy Sector

Recommendations

Strengthen mechanisms for **direct regulation for emissions reduction** to meet targets including by:

30. 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).
31. 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.
32. Internalising environmental costs in decision-making, including via a 'polluter pays' approach, by putting a price on greenhouse gas pollution.
33. For existing emitters, we recommend a robust and comprehensive emissions trading scheme (ETS), but in the first instance amendments can be made to strengthen the Safeguard Mechanism.
34. Expand the scope of the primary emissions reduction mechanism/ETS to include scope 3 emissions.
35. Expand the coverage of the primary emissions reduction mechanism/ETS to include more emitters.
36. Ensure a progressive downward adjustment of baselines is built into the primary emissions reduction mechanism/ETS.
37. Ensure the primary emissions reduction mechanism/ETS implements nationally harmonised, binding limits on (or pricing of) **fugitive emissions** from current coal and gas extraction projects.
38. 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.
39. Setting a clear legislative definition of "low emissions technology" to explicitly exclude technology relying on fossil fuels, and exclude unproven technology that supports the continued use of fossil fuels (for example, fossil-fuel based hydrogen or carbon-capture and storage).
40. Reviewing and strengthening requirements and scrutiny of **carbon offsets**;
41. Establishing effective and best practice **national emissions and efficiency standards** for **building** - we recommend harmonised, mandatory building sustainability standards that: apply across residential, commercial, industrial and infrastructure sectors (new building developments and precincts, and existing building retrofits); maximise efficiency for energy, water, thermal comfort, carbon and appliances (taking account of regional differences in climate, hydrology, vegetation, and geography); minimise embodied energy and waste from construction and operation; move over time from low-carbon to zero-carbon to carbon-positive living; and ensure inclusive, liveable communities with public and active transport connections to workplaces, homes and nature.
42. Establishing effective and best practice **national emissions and efficiency standards** for **agriculture**.
43. Applying principles of 'continual improvement' and 'best available technology' to keep environmental and pollution standards up to date.

Related legislative reforms

A new and effective national approach to addressing the climate challenge will also require a range of reforms to other relevant laws if emissions reduction targets are to be met, and to ensure a resilient and sustainable future.

Under a national Climate Act and governance framework, the recommended Climate Division in the Department of Prime Minister & Cabinet should instigate a review of relevant legislation with the task of identifying the reforms necessary to ensure there is a whole of government approach to meeting emissions reduction targets. The recommended Climate Change Advisory Council and national EPA should have clear roles in advising on and developing national standards to ensure consistency across jurisdictions and relevant regulatory regimes.

Some key areas of related law reform are identified below.

National energy market (NEM): Australia's Energy and Environment Ministers should work closely to increase the integration of GHG emissions reduction into energy policy in order to limit the costs of a climate-changed world. We recommend that the National Energy Objective (**NEO**) – set out in the National Energy Law as mirrored across the Commonwealth, states and territories – be amended to include environmental and climate change considerations. This would enable decisions by energy market regulators and participants that better account for immediate and longer-term climate risks and solutions.

Carbon offsetting: The increasing use of carbon offsets undermines the urgent task of reducing fossil fuel emissions to limit global warming consistent with international agreement, particularly where carbon offsets are shown to be falling short of best practice. Carbon offsets frameworks need improved regulation. At a minimum, this requires high standards for offsets **integrity and transparent and robust accounting rules**. We recommend clear rules and safeguards relating to governance, additionality, leakage, biodiversity, robust carbon accounting for the land sector, and land rights and free prior informed consent of First Nations Peoples, to ensure integrity of carbon offsets in any accredited domestic or international schemes. The system must avoid perverse incentives and encourage and maximise opportunities for biodiversity co-benefits while recognising that land carbon is not an appropriate offset for fossil fuel carbon emissions. An urgent review of the integrity of offsets under the Carbon Credit (Carbon Farming Initiative) Act 2011 should be instigated.

"The ERF's [Emissions Reduction Fund] carbon offset crediting scheme is currently suffering from a distinct lack of integrity. People are getting ACCUs [Australian Carbon Credit Units] for not clearing forests that were never going to be cleared; they are getting credits for growing trees that are already there; they are getting credits for growing forests in places that will never sustain permanent forests; and they are getting credits for operating electricity generators at large landfills that would have operated anyway."

Professor Andrew MacIntosh, Former Chair of the Emissions Reduction Fund Integrity Committee[36]

Environmental law: 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. In addition to the establishment of a national EPA, Australia needs new and effective environment laws. The national environment law – currently the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) – should be rewritten or substantially strengthened, and provide for increased national oversight of emissions intensive projects (a **greenhouse gas trigger** for federal consideration and approvals) and for avoidance of carbon loss (a **land-clearing trigger** for projects with a significant impact). Other mitigation opportunities include:

- 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.

National standards should be established for land clearing including requiring assessment of carbon storage and emissions impacts arising from clearing. Establishing a national environment standard for **climate impact assessment** on threatened species and ecological communities could include mandatory climate impact statements for projects, submitted with environmental impact assessments.

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[37] 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.

One of the most magical things about Gimuy used to be watching the flying foxes cover the evening with a curtain of black. Now, we barely see any. Soon, we will probably see none. I expect that we are probably going to see another mass die-off of the species in the very near future. I suspect that there won't be any flying foxes in Gimuy within five years. This will mean another connection to Country gone. What else will then keep us connected to the land? One less animal means one less Goopi, one less spirit. When we are losing spirits, our storylines are changing. We have stories about the fish, the crabs, the prawns, the reefs and the flying foxes too. We will always tell stories, but as the animal's lives are changing, so must the stories.

Jiritju Fourmile, Yidinji Nation, Gimuy/Cairns. EDO report '*Flying-Fox Roost Management Reform for Queensland*, available at edo.org.au

Water management law is another area that requires amendment to ensure it is climate-ready. Reforms required include: an **adaptive water allocation** scheme where water allocation and extraction is based on climate change projections as well as the use of historic climate data; and a national standard that ensures climate considerations are addressed in **water sharing plans** at the sub-national level. This standard should provide that climate change is a relevant consideration in all Government decision making that relates to the extraction of water from the environment. Policy and guidelines should be developed in relation to climate change to ensure that Government decision making with respect to water resources is based on transparent and demonstrated best available scientific knowledge.

Consumer law: Reform is needed to establish guidelines and enforcement options in relation to 'greenwashing' and claims relating to 'clean' technologies, and eco-labelling in relation to emissions-intensive products or 'climate friendly' products. Reform proposals in the European Union include provisions that climate-related claims - for example, claims that relate to future climate performance targets by a certain date - should be prohibited unless supported by clear, objective and verifiable commitments supported by an independent monitoring system.[38] Australia needs clear standards regarding net zero claims. This is currently not covered by ACCC Green marketing and the Australian Consumer Law.[39] The ACCC and ASIC need dedicated budgets to investigate net zero claims/disclosures.

Directors duties: Reform is needed to amend corporations law to specify director's duties in relation to climate change impacts, risks and disclosure. Australian laws need to impose mandatory disclosure requirements regarding climate change risks on Australian companies. We recommend that this take place by way of amendment of the Corporations Act 2001 (Cth) (and regulations) and the ASX Listing Rules. We recommend that the mandatory disclosure rules require disclosure according to the Task-Force for Climate-related Disclosures (TCFD) framework.

A decade ago the Basin Plan failed to incorporate climate change into Australia's water policy and management. We've come a long way since 2012 and now recognise that these two issues are not independent of one another. To effectively manage our water resources, we need to account for the impact climate change will have on it.

Climate change will have devastating impacts on the Murray Darling Basin, from less rainfall and runoff, increased evaporation and sea level rise impacting the iconic Coorong. If we continue considering climate change and water management as two separate issues, we sign the death warrant for this already struggling ecosystem.

Kate McBride, Fifth-generation farmer from Western NSW

Transport: Emissions from the transport sector are significant and transport planning should be better linked to strategic planning and emissions reduction targets. As noted, policy reform is needed to embrace the significant opportunities in transport reform, including legislating mandatory vehicle emissions standards, removing the fuel tax credit scheme (rebate), and incentivising uptake of electric vehicles.

Waste: In relation to waste sector emissions, it has been recommended that the best way forward to ensure continued reductions in waste emissions is by enhancing and harmonising current state and territory regulatory approaches to reducing emissions from waste, especially landfill gas, and diverting organic waste from landfill.[40] National standards and guidelines should be developed to ensure the necessary harmonisation of regulatory approaches. A new national EPA could play a coordinating role in this reform process.

Agriculture: Agricultural sectors have been asking for Government support to be part of the transition and take advantage of trade opportunities that reward action on climate change. Adaptation and transition planning is essential as climate change impacts the agriculture sector, for example in relation to water availability and crop viability. A review of relevant legislation is needed to identify opportunities to: set baseline emissions and targets, including targets for methane, in different agricultural sectors; invest in technologies to help reduce emissions throughout the supply chain, including on-farm through decarbonising machinery and fertilisers, and off farm through transport, delivery, and processing systems; establish incentives for new verifiable carbon farming practices and strengthen the integrity of existing programs; develop improved methodologies for land sector carbon accounting; and incentivise carbon and biodiversity co-benefit schemes.

Human rights and environmental justice: There are a range of reforms that could be made to ensure Australian policy processes are consistent with Australia's human rights obligations and the UN Framework principles on Human Rights and The Environment.[41] These include: requiring that **Climate Impact Reporting** in Australia includes impacts on human rights and transboundary impacts; reviewing and improving transparency in relation to the role of Australian bodies in financing overseas projects – for example, reviewing Export Finance & Insurance Corporation Regulations; protecting the rights and freedoms of children and the public to express their views on climate change and undertake **peaceful protest**; protecting the rights of non-government organisations and charities to advocate for action on climate change.[42] In particular, Australia should adhere to its obligation to provide both procedural and substantive human rights in Australia which are directly related to climate change, such as the right to life with dignity, the right to a safe, clean, healthy and sustainable environment (which includes a right to a safe climate) and the right to culture and free, prior, informed consent.

Recommendations

Ensure a **whole of government approach to climate ready laws** by:

44. Instigating a review led by the recommended Climate Division in the Department of Prime Minister & Cabinet under a national Climate Act and governance framework, of relevant legislation with the task of identifying the reforms necessary to ensure there is a whole-of-government approach to meeting emissions reduction targets. The review should also identify investment needed for sectors where transition is challenging – for example, including agriculture and manufacturing.

45. Establishing clear roles for the recommended Climate Change Advisory Council and national EPA in advising on and developing consistent **national standards** to ensure across jurisdictions and relevant regulatory regimes.

46. In the first instance, reviewing and **reforming related legislation** to include climate considerations and establishing national standards to embed climate considerations and requirements in decision making, including in relation to:

- National Energy Market rule amendments;
- Carbon offsetting;
- Environment and biodiversity provisions to address impacts and adaptation;
- Water management;
- Directors duties and disclosure and reporting requirements in Corporations law;
- Regulation of climate-related claims and 'greenwashing' under consumer law;
- Transport;
- Waste; and
- Human rights and environmental justice.

Rapid and just transition

Transition policy must leave no sector or community behind – government must lead genuine transition planning for affected coal communities, workers in high emissions intensity industries and sectors, and highly impacted communities. A range of opportunities need to be consulted upon including: reskilling workers to emerging industries, incentivising carbon-biodiversity co-benefit schemes such as stewardship payments for rural landowners to manage land for carbon and biodiversity. In addition, there needs to be a review of existing infrastructure and adequacy of rehabilitation bonds to ensure communities aren't left with stranded assets and the impacts of the transition.

Survival and sovereignty of First Nations communities and Pacific States relies on limiting global temperature increase to 1.5°C. These communities are already suffering substantial climate harm at the current of 1.1°C warming. Australia's policy commitments and actions must ensure First Nations communities and our neighbours in the Pacific are included in the design and delivery of energy transition policies, as they see fit. This should include empowering First Nations communities to manage and protect Country.

These changes should occur within a climate justice framework, ensuring that the most affected communities (from both an economic and climate change perspective) are themselves invested in energy transition through equitable and genuine transition investments in these communities. A commitment to achieving our targets and staying within a carbon budget that will limit warming to 1.5°C requires commitment to establishing clear policy drivers, incentives and legal mechanisms which are just and equitable. On the ground this includes a range of measures, for example, exploring and implementing climate justice opportunities to provide renewable energy/energy justice to renters and social housing tenants and remote communities.[43] Natural disaster planning and adaptation planning should be on an environmental justice basis, not just an economic one. That is, ensuring that we identify at risk communities and target adaptation responses to those most at risk / disadvantaged by the climate change already locked in.

For further information on addressing environmental and climate justice issues for disproportionately impacted vulnerable communities, see EDO's report '*Implementing effective independent Environmental Protection Agencies in Australia*', available at edo.org.au'

Recommendations

Coordinate and implement a **rapid and just transition** by:

47. Establishing a statutory body to coordinate transition planning and implementation, with transition costs funded in part by the redirection of current fossil fuel subsidies.
48. Consulting on and establishing a plan for a rapid and just transition for effected communities and workers, leaving no sector or community behind and involving genuine transition planning for affected and highly impacted communities. This should be done in the context of an environmental justice framework.
49. Ensuring First Nations Peoples and our neighbours in the Pacific region are included in the design and delivery of energy transition policies, as they see fit, and First Nations communities are empowered to manage and protect Country.

Opportunity 5: Plan for and measure success

Once we have established a national climate legal framework with targets, duties and provisions to galvanise the transition from fossil fuels to renewable energy, we need mechanisms to assess and track progress to ensure that standards, emissions reduction targets and carbon budgets are met within legislated timeframes. This involves **monitoring and reporting**, frameworks for **risk assessment and adaptive planning**, and ensuring expert advice guides continual improvement.

The Australian Government should commit to expanding the Emissions and Energy Reporting System under the National Greenhouse and Energy Reporting Act 2007 **(**NGER Act) to provide a more comprehensive picture of Australia's GHG emissions. This needs to be expanded in terms of scope – who reports, but also in terms of the detail of what is monitored and reported. This is necessary to address gaps in current reporting and ensure that methodology is consistently updated to reflect the best available science. There are reporting gaps and discrepancies that need to be addressed to ensure we meet our targets. For example, the IEA estimates that global methane emissions from the energy sector are actually about 70% higher than reported in official data.[44] Reporting estimated emissions based on EIA documents is clearly inadequate.[45]

Australia needs to establish mechanisms by which emissions are tracked from the first stages of project development (for example, by requiring Climate Impact Statements and emissions disclosure statements for new proposals) through to disclosure and mandatory reporting of climate risk; and requirements for reporting on scope 3 emissions (for example, the emissions burnt by the wholesale consumer of fossil fuels). There should be clear legal requirements for: monitoring and reporting climate impacts on human rights, climate impacts statements for new laws and policies, and State of the Climate Reporting across jurisdictions and all sectors (electricity, transport, land sector etc).

A national Climate Act should establish a monitoring, reporting and verification framework to require the Australian Government to track, periodically review and publicly report on progress towards the Climate Act's goals, including the legislated targets. An independent audit and analysis of reporting would be an essential component, underpinned by public access to data and information. This framework would be a critical way to drive action, enhance ambition over time, and deliver public transparency and accountability around climate action, particularly the progress towards emission reductions targets.

Reporting must also include **mandatory financial reporting** of climate risks. As noted, Australian laws need to impose mandatory disclosure requirements regarding climate change risks on Australian companies. We recommend that this take place by way of amendment of the Corporations Act 2001 (Cth) (and regulations) and the ASX Listing Rules. We recommend that the mandatory disclosure rules require disclosure according to the Task-Force for Climate-related Disclosures (TCFD) framework. We note that New Zealand has recently announced plans for such mandatory disclosure for companies with assets of over $1 billion.[46] As noted by the NSW Bar Association in relation to proposed legislation in 2020:

> *The TCFD framework has been endorsed or supported by (amongst others) APRA, the Reserve Bank, ASIC and the ASX Corporate Governance Council. The Bar Council believes that a mandatory reporting requirement should be included in the Bill.*[47]

We need a high-level process for a national climate **risk assessment**, and specific policies and initiatives for sectors identified at high risk from climate change impacts (for example, housing, infrastructure, agriculture, energy, insurance, tourism, health). In relation to **national natural disaster arrangements**, there needs to be further investigation and recommendations for how Australia could achieve greater national coordination and accountability – through common national standards, rule-making, reporting and data sharing – with respect to key preparedness and resilience responsibilities for natural disasters and extreme events, explicitly including in

relation to mitigating and adapting to the impacts of climate change.[48] There is also the key question of how disaster responses are resourced, including consideration of polluter pays sources. As noted, natural disaster planning should have an environmental justice basis, identifying and prioritising highly impacted and overburdened communities.

We also need a national **Adaptation Plan** to be made, published, and periodically reviewed, with sectoral and regional adaptation plans also made consistent with the national adaptation plan. It is essential that we have a strengthened expert Climate Change Advisory Council and National EPA to assess and advise on progress towards targets, budgets, adaptation and continuous improvement based on best available science.

It is only through robust and comprehensive monitoring and reporting that we will be able to ensure that the new climate laws are working, that targets are being met, and progress is being made on building adaptation and resilience. The legal mechanisms recommended in this report should be designed so that they can be adjusted or strengthened in accordance with best available science on climate impacts. Legally backed adaptive management in fit for purpose climate laws will underpin our success at addressing the climate challenge.

The incoming Australian Government must urgently restore climate research funding and capabilities cut over the past nine years, immediately complete a national climate change risk assessment, create a national climate change mitigation and adaptation strategy to limit global warming, build community resilience, strengthen infrastructure, and increase response and recovery capabilities.

Emergency Leaders for Climate Action Statement[49]

Recommendations

Plan for and **measure success** by:

50. Requiring a **National Climate Risk Assessment** - adopt a high-level process for a national climate risk assessment, and require specific policies and initiatives for sectors identified as being at high risk from climate change impacts (e.g. housing, infrastructure, agriculture, energy, insurance, tourism, health).
51. Requiring a **National Climate Adaptation Plan** to be made, published, and periodically reviewed by the Minister on advice from the Climate Change Advisory Council. Sectoral and regional adaptation plans should also be made consistent with the national adaptation plan and ecologically sustainable development.
52. Building climate change considerations into coordinated natural disaster response and resilience planning.
53. Establishing mechanisms by which emissions and impacts are **monitored and reported** including from the first stages of project development (for example, by requiring Climate Impact Statements for new projects), through to emissions disclosure statements and mandatory reporting of climate risk, to ongoing monitoring of all emissions.
54. Expanding the Emissions and Energy Reporting System under the National Greenhouse and Energy Reporting Act 2007 (NGER Act) to provide a more comprehensive picture of Australia's GHG emissions. This includes expanding entities covered by the scheme and requiring comprehensive reporting on scope 3 emissions (i.e. the emissions burnt by the wholesale consumer of fossil fuels) and ensuring that emissions calculation methods are consistent with current best practice.
55. Improve the methodology for fugitive emissions accounting and reporting.
56. Requiring **Climate Impacts Statements** for new laws and policies, and requiring Climate Impact Statements to include impacts on human rights.
57. Requiring **State of the Climate Reporting** across jurisdictions and all sectors (electricity, transport, land sector etc).
58. Requiring **mandatory financial reporting of climate risks**. Australian laws need to impose mandatory disclosure requirements regarding climate change risks on Australian companies. We recommend that this take place by way of amendment of the Corporations Act 2001 (Cth) (and regulations) and the ASX Listing Rules. We recommend that the mandatory disclosure rules require disclosure according to the Task Force for Climate-related Disclosures (TCFD) framework.

Conclusion: It is time for a national Climate Act

It is clear that to effectively implement the necessary commitments, maximise transition opportunities and ensure we have the right mix of tools, rules and incentives to meet our targets, Australia needs an overarching Climate Act to coordinate our climate change response.

Australia currently has over 80 pieces of legislation relating to energy and various elements of climate policy, however the sum of these parts does not equal an effective legal framework to ensure the necessary action on climate change. It is time for a national framework Climate Act to set the path to real net zero, define responsibility, galvanise transition away from fossil fuels and incentivise innovation in meeting our targets to stay within a carbon budget that will limit global heating to 1.5°C.

This report has identified a range of key mechanisms that need to be enshrined in law to mandate a whole-of-government approach to both climate change mitigation and adaptation, in a clear and coordinated way.

We need a Climate Act to deliver a clear, strategic and accountable plan to achieve the required GHG emissions reductions; send a clear signal of a government's intention, commitment and level of ambition; drive low-carbon investment and innovation, and lower the cost of a just transition to a low-carbon economy; provide certainty and confidence for business and civil society, with positive influence on investor confidence; and deliver a range of positive economic and social benefits.

There is no more time to lose, but so many benefits to be gained by making climate-ready laws now.

References

[1] The IPCC Sixth Assessment Report is available at: https://www.ipcc.ch/assessment-report/ar6/

[2] In this report the term "Indigenous" is used in relation to Pasifika Peoples, and the term "First Nations" is used in relation to both Aboriginal and Torres Strait Islander Peoples in Australia and the Torres Straits.

[3] See: Australia's climate inaction is a human rights violation - UN submission - Environmental Defenders Office (edo.org.au) available at: https://www.edo.org.au/2020/07/10/australias-climate-inaction-human-rights-violation/

[4] See: Legal Letter Warns PM Over Failure to Protect Great Barrier Reef - Environmental Defenders Office (edo.org.au) available at: https://www.edo.org.au/2021/11/16/legal-letter-warns-pm-over-failure-to-protect-great-barrier-reef/

[5] For example, the Bramble Cays melomys (*Melomys rubicola*).

[6] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/74/161, 15 July 2019.

[7] See ICCPR, Human Rights Committee, General Comment No. 36, 2019 at para 62. Available at: https://docstore.ohchr.org/SelfServices/FilesHandler.

[8] See: Compound Costs: How Climate Change is Damaging Australia's Economy | Climate Council available at: https://www.climatecouncil.org.au/resources/compound-costs-how-climate-change-damages-australias-economy/?atb=DSA01b&gclid=CjwKCAjwy7CKBhBMEiwA0Eb7ava_2RRL6Pv3raZeSQxUraUmoxc9pr9Z1cqwKJTdEtYEafkrDJkJKBoC_KsQAvD_BwE

[9] 63 billion dollars' worth of residential buildings are at risk of inundation with a 1.1m sea level rise according to the Department of Environment and Energy: http://www.environment.gov.au/climatechange/adaptation/publications/climate-change-risks-australias-coasts.

[10] See: Net Zero by 2050: a Roadmap for the Global Energy Sector. Available at: Net Zero by 2050 – Analysis - IEA available at: https://www.iea.org/reports/net-zero-by-2050

[11] A carbon budget calculates the amount of GHG that can be released into the atmosphere for any nominated temperature rise. The carbon budget changes over time as more GHG emissions are released. There are a number of ways to allocate the carbon budget amongst population or jurisdictions.

[12] See: The Registry of NDC communications at: Nationally Determined Contributions Registry | UNFCCC available at: https://unfccc.int/NDCREG

[13] 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-future-emissions-reduction-targets.pdf

[14] See: Legal Letter Warns PM Over Failure to Protect Great Barrier Reef - Environmental Defenders Office (edo.org.au) available at: https://www.edo.org.au/2021/11/16/legal-letter-warns-pm-over-failure-to-protect-great-barrier-reef/

[15] For example, Professor Will Steffen has calculated that a global reduction of emissions by 50% by 2030 and net-zero emissions by 2040 is needed to limit global warming to 1.8 degrees (well-below 2 degrees), from a 2018 emissions baseline – Prof Will Steffen, Expert Report to NSW Independent Planning Commission, Public Hearing – Vickery Extension Project, 30 June 2020 (at parr [9]-[11]) https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/comments/200630-will-steffen.pdf

[16] See: Advisory report on the Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 and Climate Change (National Framework for Adaptation and Mitigation) (Consequential and Transitional Provisions) Bill 2020 – Parliament of Australia (aph.gov.au) At 1.90 and 2.53. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment_and_Energy/ClimateBills2020/Report

[17] We note the significant increase in the number of countries that committed to phasing out coal at COP 26 – see: End of Coal in Sight at COP26 | UNFCCC available at: https://unfccc.int/news/end-of-coal-in-sight-at-cop26

[18] See: Advisory report on the Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 and Climate Change (National Framework for Adaptation and Mitigation) (Consequential and Transitional Provisions) Bill 2020 – Parliament of Australia (aph.gov.au) At 1.90. Available at: https://www.aph.gov.au/Parliamentary_Business/Committees/House/Environment_and_Energy/ClimateBills2020/Report

[19] Such legislated duties already exist in Victoria and in the laws of over 30 other countries including New Zealand, Canada and the UK.

[20] For example, the UK's Climate Change law phrases the duty as an absolute one ("It is the duty of the Secretary of State to ensure that the next UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline"); and the Climate Change (Scotland) Act 2009 places a legal duty on the Scottish Ministers to 'ensure that the net Scottish emissions account for the year 2050 is at least 80% lower than the [1990] baseline'.

[21] An example of this type of requirement can be found in section 137 of the Environment Protection & Biodiversity Conservation Act 1999 in relation to World Heritage decisions.

[22] We note that the 2020 Climate Change (National Framework for Adaptation and Mitigation) (Consequential and Transitional Provisions) Bill 2020 proposed an amendment to the Public Governance Performance and Accountability Act 2013 to insert in Part 3 – Duties to consider climate change impacts - a new subsection 19A that requires the accountable authority of a Commonwealth entity to consider the potential risks of climate change and report on material risks when performing their duties or exercising their powers.

[23] Ibid. 1.57 Part 3, Items 21 and 22.

[24] Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/74/161, 15 July 2019 At [62], [64](c) and [65].

[25] Formerly the Department of Industry, Science, Energy and Resources, and Department of Agriculture, Water and the Environment.

[26] See: Reducing emissions from the transport sector - Environmental Defenders Office (edo.org.au). Available at: https://www.edo.org.au/publication/reducing-emissions-from-the-transport-sector/

[27] See: Electricity storage: the critical electricity policy challenge for our new Government. A policy proposal, May 2022, available at: Victoria Energy Policy Centre (VEPC). Available at: https://www.vepc.org.au/

[28] The APEEL Technical Paper on Energy Regulation is available at: Australian Panel of Experts in Environmental Law Blueprint and Technical Reports - Environmental Defenders Office (edo.org.au) available at: https://www.edo.org.au/publication/australian-panel-of-experts-in-environmental-blueprint-and-technical-reports/

[29] See: The safeguard mechanism (cleanenergyregulator.gov.au) available at: http://www.cleanenergyregulator.gov.au/NGER/The-safeguard-mechanism

[30] EDO's view is that any use of 'carbon offsetting' must be strictly regulated via a robust, science-based scheme, developed with expert, scientific advice and that meets best practice, considering differences between the geological and active carbon cycle. Inadequately regulated offset schemes could significantly undermine achievement of emissions reduction targets and therefore must be strictly limited. Specific concerns have been raised about the integrity of the Australian Government's Emissions Reduction Fund (ERF), and carbon credits issued under specific ERF methods, including Human Induced Regeneration and Avoided Deforestation. See, The Australia Institute, An Environmental Fig Leaf? Restoring integrity to the Emissions Reduction Fund, 2022, available at https://australiainstitute.org.au/report/an-environmental-fig-leaf/; see also, for example, ABC News, Insider blows whistle on Australia's greenhouse gas reduction schemes, 24 March 2022, available at https://www.abc.net.au/news/2022-03-24/insider-blows-whistle-on-greenhouse-gas-reduction-schemes/100933186.

[31] Dan Tong et al, 'Committed emissions from existing energy infrastructure jeopardize 1.5 °C climate target' (2019) Nature available at: <https://doi.org/10.1038/s41586-019-1364-3 19> available at: https://www.nature.com/articles/s41586-019-1364-3

[32] 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, available at: http://priceofoil.org/2016/09/22/the-skys-limit-report/

[33] Intergovernmental Panel on Climate Change (2018) IPCC Special Report: Global Warming of 1.5C, Summary for Policymakers, p16, Scenario 1 available at: <https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>.

[34] See: IEA, 2020 World Energy Outlook, Table A.1, p337 <https://www.iea.org/weo2020/>

[35] See: IEA, 2020 World Energy Outlook, Figure 1.1, p27 <https://www.iea.org/weo2020/>

[36] See: Australia's carbon market a "fraud on the environment" - ANU available at: https://www.anu.edu.au/news/all-news/australia%E2%80%99s-carbon-market-a-%E2%80%9Cfraud-on-the-environment%E2%80%9D

[37] Loss of terrestrial climatic habitat caused by anthropogenic emissions of greenhouse gases is listed as KTP under the EPBC Act, see https://www.awe.gov.au/environment/biodiversity/threatened/key-threatening-processes/loss-of-habitat-caused-by-greenhouse-gases

[38] See: Recital (4), page 18 "Environmental claims, in particular climate-related claims, increasingly relate to future performance in the form of a transition to carbon or climate neutrality, or a similar objective, by a certain date. Through such claims, traders create the impression that consumers contribute to a low-carbon economy by purchasing their products. To ensure the fairness and credibility of such claims, Article 6(2) of Directive 2005/29/EC should be amended to prohibit such claims, following a case-by-case assessment, when they are not supported by clear, objective and verifiable commitments and targets given by the trader. Such claims should also be supported by an independent monitoring system to monitor the progress of the trader with regard to the commitments and targets." Available at: 1_1_186774_prop_em_co_en.pdf (europa.eu)

[39] See: Green marketing and the Australian Consumer Law (accc.gov.au) available at: https://www.accc.gov.au/system/files/Green%20marketing%20and%20the%20ACL.pdf

[40] See: Prospering in a low-emissions world: An updated climate policy toolkit for Australia | Climate Change Authority available at: https://www.climatechangeauthority.gov.au/publications/prospering-low-emissions-world-updated-climate-policy-toolkit-australia

[41] See: Framework Principles on Human Rights and the Environment | UNEP - UN Environment Programme available at: https://www.unep.org/resources/policy-and-strategy/framework-principles-human-rights-and-environment

[42] See: Global Warning Report: The Threat to Climate Defenders in Australia - Environmental Defenders Office (edo.org.au) available at: https://www.edo.org.au/publication/global-warning-report-the-threat-to-climate-defenders-in-australia/ and Australia's climate inaction is a human rights violation - UN submission - Environmental Defenders Office (edo.org.au). Available at: https://www.edo.org.au/2020/07/10/australias-climate-inaction-human-rights-violation/

[43] For example, see: New HEATWATCH report for Western Sydney – Sweltering Cities available at: https://swelteringcities.org/2022/02/17/new-heatwatch-report-for-western-sydney/ and see: https://theconversation.com/how-climate-change-is-turning-remote-indigenous-houses-into-dangerous-hot-boxes-184328 available at: https://theconversation.com/how-climate-change-is-turning-remote-indigenous-houses-into-dangerous-hot-boxes-184328

[44] See: Methane emissions from the energy sector are 70% higher than official figures - News - IEA available at: https://www.iea.org/news/methane-emissions-from-the-energy-sector-are-70-higher-than-official-figures

[45] See: Emissions exposé: Australia's biggest polluters are emitting more than approved and getting away with it - Australian Conservation Foundation (acf.org.au) available at: https://www.acf.org.au/emissions_expose

[46] Media Release, 15 September 2020, The Hon James Shaw, New Zealand Minister for Climate Change. Available at: https://www.beehive.govt.nz/release/new-zealand-first-world-require-climate-risk-reporting

[47] See: Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 | New South Wales Bar Association (nswbar.asn.au) available at: https://nswbar.asn.au/the-bar-association/publications/inbrief/view/08b347d11316f1372f3414b4c43a2705

[48] See: Bushfire Royal Commission - Environmental Defenders Office (edo.org.au) available at: https://www.edo.org.au/publication/bushfire-royal-commission/

[49] See: ELCA - Six-point plan for the incoming Federal Government. (emergencyleadersforclimateaction.org.au) available at: https://emergencyleadersforclimateaction.org.au/wp-content/uploads/2022/05/ELCA-Six-point-plan-for-the-incoming-Federal-Government..pdf

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