



Environmental
Defenders Office

Submission to the Inquiry into the *Climate Change (National Framework for Adaptation and Mitigation) Bill 2020* and the *Climate Change (National Framework for Adaptation and Mitigation) (Consequential and Transitional Provisions) Bill 2020*

27 November 2020

About EDO

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

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

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

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

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

www.edo.org.au

Submitted to:

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Executive Summary

The Environmental Defenders Office Ltd (**EDO**) has extensive experience across Australia in providing legal advice on climate and energy policy and law reform at the national, State and Territory levels. We welcome the opportunity to provide input to this important inquiry into the *Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 (Framework Bill)*; and *Climate Change (National Framework for Adaptation and Mitigation) (Consequential and Transitional Provisions) Bill 2020 (Consequential and Transitional Provisions Bill)*.

EDO has long called for clear and effective legislation and policy at all levels to address climate change, both in terms of mitigation and adaptation.¹ As a national community legal centre specialising in environmental law, we support a just and rapid transition to clean energy, productive livelihoods, and a safe and stable climate in which humanity and other species can flourish.

Anthropogenic climate change is having significant impacts in Australia and across the globe. The annual global temperature in 2019 was 1.1 degrees Celsius (°C) warmer than pre-industrial conditions.² Australia's average annual temperature has warmed by around 1.5°C since 1850,³ and the best available science tells us that average temperatures are projected to rise further. Australia is already experiencing the impacts of climate change, which include increasing temperatures, the warming and acidification of oceans, sea level rise, decreased rainfall in southern parts of the country and increased and more extreme rainfall in the north, longer dry spells, greater number of extreme heat days and the long-term increase in extreme fire weather.

The impacts of climate change are not just environmental. There are other significant implications, including social and economic impacts, across all sectors including health, tourism, agriculture, infrastructure and national security. Urgent and rapid reductions in greenhouse gas (**GHG**) emissions from both direct and indirect sources are now required in order to meet the Paris Agreement goal of "holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit warming to 1.5°C".⁴ The longer emissions reductions are delayed, the more pronounced and severe the effects of climate change will become.

The 'Black Summer' bushfires of 2019/2020 served as a stark warning to all Australians that the dire consequences of climate change have arrived. The Black Summer was a deafening 'wake-up call' to those with the power and responsibility to curb emissions – nothing less than urgent action and strong leadership will suffice.

In this context, EDO supports the proposed Bills, subject to the qualifications set out below.

¹ For example see: [Submission on Australia's Climate Change Policy Review - Environmental Defenders Office \(edo.org.au\)](https://www.edo.org.au/submission-on-australia-s-climate-change-policy-review)

² See World Meteorological Organisation, *WMO confirms 2019 as second hottest year on record*, 15 January 2020, available at <https://public.wmo.int/en/media/pressrelease/wmo-confirms-2019-second-hottest-year-record>

³ See CSIRO (Commonwealth Scientific and Industrial Research Organisation), *Response to Notice to Give Information 21 April 2020 for the Royal Commission into National Natural Disaster Arrangements*, 21 April 2020, available at <https://naturaldisaster.royalcommission.gov.au/system/files/exhibit/CSI.500.001.0001.pdf>

⁴ In December 2015, over 190 nations affirmed a goal to reduce greenhouse gas emissions in order to limit average global warming to well below 2°C above preindustrial levels and to pursue efforts to limit warming to 1.5°C. United Nations Framework Convention on Climate Change Conference of the Parties 21, *Adoption of the Paris Agreement*, 'Annex - Paris Agreement', Article 2 (FCCC/CP/2015/L.9/Rev.1). The Paris Agreement builds on past international commitments in Cancun, Lima and elsewhere under the 1992 UN Framework Convention on Climate Change.

This submission focuses on the *Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 (Framework Bill)* and makes recommendations to strengthen the proposed provisions. We draw on examples from comparable United Kingdom (UK) and New Zealand legislation in our recommendations.

This submission addresses:

- **Core elements of effective climate change legislation**
- **Recommendations to strengthen the proposed Framework Bill and operational framework**
 1. Objects and guiding principles
 2. Quantifiable and ambitious short and medium-term emissions reductions targets
 3. Mechanism to transition Australia's economy away from fossil fuel use and production and towards clean energy and low-emissions technology
 4. Mechanism to transition Australia's economy away from fossil fuel exports to zero emissions energy exports by 2050
 5. The need for mandatory financial reporting of climate change risks
 6. Amendment of the Target and Emissions Budgets should only occur in limited circumstances
 7. Matters relevant to Emissions Budgets
 8. Greater transparency over Emissions Budgets and Emissions Reduction Plans
 9. Minister to have a duty to take reasonable steps to ensure that the Emissions Budgets and Target are met
 10. Greater transparency on Commission members' appointments and disclosure of interests
 11. Framework to establish greater coordination and consistency between the policies of Australia's climate change and emissions bodies

Core elements of climate change legislation

The EDO has made numerous law reform recommendations over the last decade as to how legislation can and should address climate change in terms of both mitigation and adaptation.⁵ While measures to address climate change can and should be addressed in a range of legislation - including energy, natural resource management, environment and planning laws - core elements of an **overarching framework Act** can be summarised as follows.

Establish a Climate Change Act: Implement a whole-of-government approach to climate change by enacting new climate change laws that deal with both climate change mitigation and adaptation in a clear and coordinated way. A new overarching Climate Change Act would include the following elements:

- **Objects:** set a clear overarching objective to reduce greenhouse gas 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 protecting workers) away from fossil fuel production and use consistent with Inter-governmental Panel on Climate Change (IPCC) advice, and establishing a whole-of-government approach to addressing climate change impacts;

⁵ See EDO reports: [Climate-ready planning laws for NSW: Rocky Hill and beyond - Environmental Defenders Office \(edo.org.au\)](#); and [A Climate Act for Queensland - Environmental Defenders Office \(edo.org.au\)](#). Examples of previous climate and energy policy & law reform submissions are available at: [National Submissions - Environmental Defenders Office \(edo.org.au\)](#)

- **Targets:** impose duties on Government Minister/s to set periodic and long-term emissions reduction targets and carbon budgets and a legislated renewable energy target for electricity use, based on expert advice consistent with internationally agreed climate goals, best available science, and the principles of ecologically sustainable development;
- **Independent expert advice:** formalise a skills-based independent statutory Climate Change Advisory Council to advise the Government and the Parliament based on the best available science for climate mitigation, and assess and report on progress in relation to meeting targets and implementing adaptation plans, and require decision makers to act consistently with this advice;
- **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, particularly in relation to planning functions;
- **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);
- **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;
- **Monitoring progress:** Develop national indicators, including for emissions reduction in line with set targets, adaptation planning and climate readiness of legislation; and regularly report against those indicators; and,
- **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 Change Act (assisted by advice from an independent Climate Change Advisory Council) and supports interagency collaboration on emissions reduction and adaptation.

We are pleased to see a number of these key elements are addressed or partially addressed in the proposed Framework Bill, and provide qualified support detailed below for the proposed:

- Objects and guiding principles (Part 1, Division 2)
- National climate change risk assessment (Part 2)
- National adaptation plan (Part 3)
- Emissions reduction target (Part 4)
- The emissions budget approach (Part 5), and
- Establishing a Climate Change Commission (Part 6).

The next part of this submission makes recommendations on how to strengthen the proposed Framework Bill and operational framework further.

Recommendations to strengthen the proposed Bill and operational framework

1. Objects and guiding principles

We support clear objects referencing the need to limit the increase in global warming to well below 2°C above pre-industrial levels and pursuing efforts to limit warming to 1.5°C above pre-industrial levels (clause 3(1)). We recommend an additional reference in clause 3(2)(d): “including facilitating the transition of Australia’s energy use and production away from fossil fuels and towards renewable energy and low-emissions technology.”

We support the proposal for guiding principles, however make the following recommendations. In relation to the ‘Principle of informed decision-making’, clause 11(1)(b) requires decision makers to have to have regard to any Technology Investment Roadmap (TIR). This is of concern as the current Roadmap predicts a major role for coal and gas in transition to lower emissions. This is not supported by EDO or the NSW Bar Association Climate Change Panel.⁶

In relation to the “Principle of fair employment transition” (clause 14), we suggest further detail could be included recognising the need for providing reasonable time for implementation of transition solutions for communities with the increased risks posed by delaying action on climate change; and specifically “including opportunities for re-training and re-deployment of workers in low-emissions technology workplaces” in clause 14(c).

2. Quantifiable short and medium-term emissions reductions targets

Whilst the proposed Framework Bill sets a long-term target of Net-Zero by 2050 and requires the Minister (on advice from the Commission) to draft Emissions Budgets and Emissions Reduction Plans, the Bill does not set any quantifiable short and medium-term emissions reductions targets, which are essential if we are to meet the goal of the Paris Agreement.

On its own, a Net-Zero by 2050 target does not regulate how many GHGs can be emitted before 2050, or the rate at which emissions must decline, in order to meet the goal of the Paris Agreement. In this regard, it is the volume of emissions that are permitted to be released before 2050, and the rate at which emissions decline, that will determine the ultimate level of global warming that Australia 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). The Net-Zero by 2050 target must therefore function in the context of meeting a Carbon Budget corresponding to a level of global warming of 1.5°C or well 2°C above pre-industrial levels. As such, further consideration should be given to more clearly linking the clauses in the Framework Bill on Emissions Budgets and the Target to a temperature outcome corresponding to the goal of the Paris Agreement.

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*. Accordingly, based on the Climate Change Authority’s calculations, to avoid exceeding 2°C of global warming and exposing Australians to the most dangerous effects of climate change, the Emissions Budget for the period starting 1 January 2022 and ending 30 December 2030 needs to have a legislated requirement of a reduction in 45% to 65% in emissions by 2030 from 2005 levels.

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 degrees Celsius and well below 2

⁶ See the NSW Bar Association commentary noting that the TIR “embraces an ongoing role for fossil fuels, and is widely considered to be in conflict with the best available academic peer reviewed research. Accordingly, the Bar Council believes that the proposed requirement to take into account “any Technology Investment Roadmap” (s 11(1)(b)) should be omitted from the Bill; available at: <https://nswbar.asn.au/the-bar-association/publications/inbrief/view/08b347d11316f1372f3414b4c43a2705>

degrees Celsius.⁷ Further, experts such as Professor Will Steffen indicate that a target of Net-Zero by 2050 is not sufficiently ambitious to meet the goal of the Paris Agreement.⁸

The objective of the Paris Agreement is to hold the increase in global temperatures to well below 2°C above pre-industrial levels, and to pursue efforts to limit that temperature increase to 1.5°C above pre-industrial levels. The stark differences, in terms of climate change risks and impacts, between a 1.5°C warming scenario and a 2°C warming scenario were highlighted in the IPCC's Special Report 15 (SR15).⁹ SR15 states that in order to avoid the most severe impacts of climate change, global temperature increase must be limited to 1.5°C above pre-industrial levels.

SR15 provides clear examples of the differences in the predicted impacts of global warming at 1.5°C as opposed to 2°C, including:¹⁰

- a. High confidence that aggregate climate-related risks are larger if global warming exceeds 1.5°C.
- b. High confidence that limiting global warming to 1.5°C compared to 2°C is projected to:
 - i. Lower the impacts on terrestrial, freshwater and coastal ecosystems and to retain more of their services to humans.
 - ii. Reduce increases in ocean temperature as well as associated increases in ocean acidity and decreases in ocean oxygen levels.
 - iii. Reduce risks to marine biodiversity, fisheries, and ecosystems, and their functions and services to humans.
- c. High confidence that the projected decline in coral reefs will be larger at 2°C (>99%) than at 1.5°C (70–90%).
- d. The projected likelihood of a sea-ice free Arctic summer is increased from one per century at 1.5°C of global warming to one per decade at 2°C.
- e. Medium confidence that limiting global warming to 1.5°C, compared with 2°C, may:
 - i. Reduce the number of people both exposed to climate-related risks and susceptible to poverty by up to several hundred million by 2050.
 - ii. Reduce the proportion of the world population exposed to a climate change-induced increase in water stress by up to 50%.¹¹
- f. High confidence that most adaptation needs will be lower for global warming of 1.5°C compared to 2°C, and medium confidence that limits to adaptive capacity for vulnerable regions, ecosystems and human health will become more pronounced at warming higher than 1.5°C.¹²

EDO strongly supports the adoption of emissions reduction targets in legislation, but we note that the current science is clear that more ambitious targets are required to meet even the Paris Agreement temperature target of well below 2°C, let alone the goal to limit warming to 1.5°C. In order to achieve the goal of the Paris Agreement, emissions reduction targets need to result in significantly greater reductions over a shorter period of time.

⁷ 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>

⁸ For example, 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 par [9]-[11]) <https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/vickery-extension-project/comments/200630-will-steffen.pdf>

⁹ Available at <https://www.ipcc.ch/sr15/chapter/spm/>.

¹⁰ SR15, p.5.

¹¹ Ibid, p.10.

¹² Ibid.

We therefore **recommend** that a clear and ambitious 2030 target is necessary if Australia is to meet 1.5°C limit, which, as set out in IPCC Special Report 15,¹³ is necessary to avoid the most significant impacts of climate change, and to ensure a 2050 target is met.

3. Need mechanism to transition Australia’s economy away from fossil fuel use and production and towards clean energy and low-emissions technology

It is critical that national Climate Change Act addresses the transition away from fossil fuels and towards renewable and low-emission technology. Whilst we welcome that the proposed Framework Bill includes a requirement that Emissions Reduction Plans must include “*policies, strategies and proposals for the deployment and development of low emissions technologies*” (clause 30(3)(d)), we consider that the Framework Bill needs to do more to encourage and support the transition of Australia’s economy away from fossil fuel use and production and towards clean energy and low-emissions technology. To this end, we **recommend** that:

- a. one of the objects of the Framework Bill under clause 3 should be to “*facilitate the transition of Australia’s energy use and production away from fossil fuels and towards clean energy and low-emission technology*;
- b. clause 30(3)(d) is amended so as to require the Minister to “consider policies, strategies and proposals for the deployment and development of low emissions technologies “*including the encouragement of transition away from fossil fuel use and production and towards clean energy and low-emissions technology*”
- c. clause 31 should be amended so as to require the Commission’s advice to the Minister on Emission Reduction Plans to include “*any new opportunities to encourage and facilitate the transition of energy use and production away from fossil fuels and towards clean energy and low-emissions technology, in respect of which the Commission must consult with the Clean Energy Finance Corporation and the Australian Renewable Energy Agency.*” The requirement that the Commission consult with the Clean Energy Finance Corporation (**CEFC**) and the Australian Renewable Energy Agency (**ARENA**) will ensure there is consistency in policies, strategies and proposals for transitioning to a renewable and low-emissions economy.

Further, we note that the Bill defines “low-emissions tech” very imprecisely by reference to technologies set out in the Technology Investment Roadmap (**TIR**). At worst, the TIR refers to coal and gas as mature technologies to support emissions reduction. At the very best, it includes Carbon Capture and Storage (**CCS**) under low emissions technology. We recommend that the definition of “low emissions technology” in the Framework Bill should be amended to exclude fossil fuels, and to exclude unproven technology that supports the continued use of fossil fuels.

4. Mechanism to transition Australia’s economy away from fossil fuel exports to zero emissions energy exports by 2050

Every major country in the World has signed the Paris Agreement, including the aim of pursuing efforts to keep warming below 1.5°C. Globally existing fossil fuel infrastructure is already sufficient to exceed this goal.¹⁴ To achieve the aims of the Paris Agreement existing

¹³ See: [Global Warming of 1.5 °C — \(ipcc.ch\)](https://www.ipcc.ch)

¹⁴ Dan Tong et al, ‘Committed emissions from existing energy infrastructure jeopardize 1.5 °C climate target’ (2019) Nature <<https://doi.org/10.1038/s41586-019-1364-3>>

fossil fuel projects will need to wind down within their historical operational life.¹⁵ IPCC scenarios consistent with keeping warming under 1.5°C show primary energy from coal declining by about 59-78% by 2030 and 73-97% by 2050 (relative to 2010).¹⁶ Similarly under the 2020 International Energy Agency (IEA) Sustainable Development Scenario (SDS), consistent with achieving the 2°C aim of the Paris Agreement, global thermal coal demand falls over 22% by 2025, over 40% by 2030 and over 65% by 2040, relative to 2019 levels.¹⁷

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.¹⁸

However, the proposed Framework Bill only seeks to set a target for Australia's domestic scope 1 and 2 emissions, not the emissions Australia exports to other countries (scope 3). The Bill only creates an obligation on the Commission to report to the Minister on fossil fuel export emission.¹⁹ Consistent with the objects of the Bill to pursue efforts to limit warming to 1.5°C above pre-industrial levels the Bill should include a net zero emissions target for exported emissions by 2050.

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

5. The need for mandatory financial reporting of climate change risks

Consistent with the guiding principles related to risk-based, integrated decision-making (clause 12) and fiscal responsibility (clause 13) in the proposed Framework Bill, we recommend that the Consequential and Transitional Provisions Bill should also address the 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.²⁰

We would **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.²¹

EDO supports the NSW Bar Association statement and recommendation:

¹⁵ Gregg Muttit, et al, *The Sky's Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production* (Oil Change International, September 2016, Report) 5 <http://priceofoil.org/2016/09/22/the-skys-limit-report/>

¹⁶ Intergovernmental Panel on Climate Change (2018) IPCC Special Report: Global Warming of 1.5C, Summary for Policymakers, p16, Scenario 1 <<https://www.ipcc.ch/2018/10/08/summary-for-policymakers-of-ipcc-special-report-on-global-warming-of-1-5c-approved-by-governments/>>.

¹⁷ IEA, 2020 World Energy Outlook, Table A.1, p337 <<https://www.iea.org/weo2020/>>

¹⁸ IEA, 2020 World Energy Outlook, Figure 1.1, p27 <<https://www.iea.org/weo2020/>>

¹⁹ S25 of the Bill.

²⁰ We note that the associated consequential amendment Bill mainly makes consequential amendments to other legislation in relation to name changes referring to the new Commission, including to the ASIC legislation, but does not include amendments to Corporations law.

²¹ 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>

The Bill does not include any requirement that Australian listed companies disclose climate-related financial risks in a consistent and useful way, along the lines of (for example) the “TCFD” framework. 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.²²

6. Amendment of the Target and Emissions Budgets should only occur in limited circumstances

The current wording of clause 24 requires the Commission to consider a broad range of factors when undertaking a review to recommend a change to the Target.

Consistent with the principle of non-regression, we submit that the Bill should provide a clear mechanism for the Target to be made more ambitious, and prevent the Target from being weakened.

In light of the gravity of the consequences of a failure to meet the Target, we **recommend** limiting the circumstances in which the Target can be amended to only 3 factors, being (1) a significant change in scientific knowledge about climate change; (2) changes in international law; and (3) technological developments.²³ We note that the definition of “significant change” has not been defined in the Act, however agree that the term should be given its natural and ordinary meaning.

7. Matters relevant to emissions budgets

Clause 28(2) identifies a list of matters to which the Commission and the Minister must have regard. We recommend that there also should be a requirement to consider the risks of failure to mitigate against climate change, and importantly, to consider the impacts on Aboriginal and Torres Strait Islander peoples, including impacts on cultural practices as well as Country. We refer the Committee to recent EDO advice relating to climate change and human rights.²⁴ Including a specific head of consideration would be consistent with the proposed guiding principle (clause 10(b)).

8. Need greater transparency over Emissions Budgets and Emissions Reduction Plans

We consider that the reports and advice given to the Minister by the Commission and the Commission’s Annual Report should (1) be made publicly available; and (2) should clearly set out the current and future projections of emissions and the Commission’s recommendations on emission reduction targets. More specifically, we **recommend** that:

- a. the Emissions Budgets and Emissions Reduction Plans are notified in the Gazette, presented by the Minister to both houses of Parliament and made publicly available on the Minister’s and Commission’s website;²⁵
- b. the Commission’s advice to the Minister on the setting of an Emissions Budget under clause 27(1) is made publicly available on the Commission’s website;

²² See: [Climate Change \(National Framework for Adaptation and Mitigation\) Bill 2020 | New South Wales Bar Association \(nswbar.asn.au\)](https://www.nswbar.asn.au)

²³ This is consistent with Climate change Act 2008 (UK) where a change in the Target is only allowed in respect of a narrow set of circumstances (most notably, change in scientific knowledge).

²⁴ See: [Australia's climate inaction is a human rights violation - UN submission - Environmental Defenders Office \(edo.org.au\)](https://www.edo.org.au)

²⁵ Note: EDO is not suggesting that these be statutory instruments and disallowable by parliament, just recommending increased transparency.

- c. the Commission’s advice to the Minister on the Emissions Reduction Plan under clause 31(1) addresses all the issues that the Commission is required to take into account when drafting advice to the Minister on the Emissions Budgets (as set out in clause 28(2)), as well as:
 - i. the latest projections for current and future emissions and removals;
 - ii. an assessment of the adequacy of the Emissions Reduction Plan to achieve the Emissions Budget for the relevant time period and the Target;
 - iii. any new opportunities to reduce emissions; and
 - iv. any new opportunities to encourage and facilitate energy use and production away from fossil fuels and towards renewable and low-emissions technology; and
- d. the Commission’s advice to the Minister on the Emissions Reduction Plan under clause 31(1) is tabled in each House of Parliament and is made publicly available on the Commission’s website; and
- e. in addition to the factors set out in clause 70, the Commission’s Annual Report is required to:
 - i. state whether the current emissions are an increase or decrease compared to the equivalent amount for the previous year; and
 - ii. include an assessment of whether Australia is on track to meet the Target, Emissions Budget and Emissions Reduction plan for the relevant year/time period.

9. Duty to take reasonable steps to ensure that the Emissions Budgets and Target are met

In light of the significant negative consequences of a failure to comply with the Emissions Budgets and the Target, we **recommend** the imposition of a statutory duty on the Minister to take reasonable steps to ensure that the Emissions Budgets (including the recommended quantified emissions reduction of 65% by 2030), the Emissions Reduction Plans and the Target are met. Such a duty is not unprecedented – it already exists under the UK’s Climate Change Act 2008. 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*”), however another option is to phrase the duty as a duty to take reasonable steps, creating an objective element to the duty.

We note that the UK’s *Climate Change Act 2008* also has a requirement that in exercising their functions under the Act, the Minister and the Commission must, at all times, have regard to the need for reductions in emissions of targeted greenhouse gases or increases in removal of such gases (or both). We would support a similar duty in legislation, but note that a requirement to “have regard to” a matter can be easily discharged and an effective duty would need to be more clearly drafted.

A clearer duty could be established to require that decision-makers must not act inconsistently with Emissions Budgets and Targets.²⁶

We note that the Consequential and Transitional Bill includes amendment to the *Public Governance Performance and Accountability Act 2013*, and inserts 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. This is

²⁶ 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.

supported. EDO has long called for such duties to be included in a range of relevant legislation at the national and state level.

10. Greater transparency on Commission members' appointments and disclosure of interests

To protect the independence of the Commission, we recommend that the following additional transparency measures are implemented with regard Commission members:

- a. that the Minister must, when appointing members to the Commission including the CEO, provide a statement of reasons, which is made publicly available, for the appointment and how the appointment meets the requirements of clause 37(2);
- b. that the Parliamentary Joint Committee on Climate Adaptation and Mitigation must provide a statement of reasons, which is publicly available, as to why it has approved or did not approve the Minister's proposal in respect of the nomination of a member to the Commission. The reasons must include how the appointment meets the requirements of clause 37(2);
- c. the disclosure of members' interests under section 29 of the *Public Governance, Performance and Accountability Act 2013* must also be made in the Commission's Annual Report, which is made available on the Commission's website.

11. Framework to establish greater coordination and consistency between the policies of Australia's climate change and emissions bodies

There are a large number of statutory corporations, government departments and agencies that address mitigation and adaptation to climate change and/or track emissions, including but not limited to, the proposed Climate Change Commission, the Climate Change Authority, CEFC²⁷, ARENA, Clean Energy Regulator and the Department of Industry, Science, Energy and Resources, and Department of Agriculture, Water and the Environment.

In order 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 information and policies are consistent. We note that the Proposed Bill does not address this specifically.

To ensure an effective and coordinated inter-governmental approach to addressing climate change, the proposed legislation 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. As recognised, the impacts of climate change have implications for the economy, health, agriculture, infrastructure, insurance, tourism, national security, environment, natural resources and a range of portfolios.

²⁷ Note EDO has concerns with the proposed amendments to the CEFC Act, see: [Government attempt to divert clean energy funds to fossil fuels may limit human rights - Environmental Defenders Office \(edo.org.au\)](https://www.edo.org.au/government-attempt-to-divert-clean-energy-funds-to-fossil-fuels-may-limit-human-rights)