



Environmental
Defenders Office

**Submission on the Northern Territory draft
Greenhouse Gas Emissions Management for New
and Expanding Large Emitters**

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Submitted via email at environment.policy@nt.gov.au

Executive Summary

1. The Environmental Defenders Office (**EDO**) welcomes the opportunity to provide comment on the new draft policy on Greenhouse Gas Emissions Management for New and Expanding Large Emitters (**draft Policy**) from the Northern Territory (**NT**) Department of Environment, Parks and Water Security (**DEPWS**).
2. The EDO is an independent community legal centre specialising in public interest environmental law. The EDO advocates for strong environmental laws and effective compliance and enforcement of the regulatory frameworks that protect our important natural assets and unique landscapes.
3. We have reviewed the draft Policy. This policy applies to new projects and expanding projects that require environmental approval under the *Environment Protection Act 2019* (**EP Act**), and are defined, under the draft Policy, as “large greenhouse gas emitting projects/actions”. The effect of the draft policy is that projects defined as large greenhouse gas emitting projects are “expected” to develop and implement a Greenhouse Gas Abatement Plan (**GGAP**).
4. The draft Policy refers to the NT Government’s ‘Climate Change Response: Towards 2050’ (**Climate Change Response**) which identifies the NT’s target to achieve net zero greenhouse gas emissions by 2050. The draft Policy acknowledges that the NT “needs to slow emissions growth in the short term, and encourage all sectors of the economy to reduce their emissions over time.”¹ The practical effect of this is that greenhouse gases from large greenhouse gas emitting projects need to be “first avoided, and then mitigated”² to achieve net zero emissions.
5. The submissions of the EDO in relation to the draft Policy are outlined below. In summary, it is the EDO’s view that, in order to effectively reduce greenhouse gases and the risks associated with climate change, it is essential that the draft Policy provide for:
 - a. Clear definitions of the projects, expanding projects, actions or variations that are subject to the draft Policy;
 - b. A consistent emissions threshold for defining “large greenhouse gas emitting actions”;

¹ Draft Policy, p 4.

² Ibid.

- c. A binding requirement for the proponents of large greenhouse gas emitting projects to prepare a GGAP for consideration by the Minister prior to the grant of environmental approval under the EP Act;
 - d. A binding requirement for GGAPs to be implemented following the grant of environmental approval under the EP Act, and for that implementation to be reviewed annually by the Minister or NT EPA;
 - e. A requirement that GGAPs include consideration of a project's Scope 3 emissions;³
 - f. A requirement that GGAPs include strategies to avoid, mitigate or offset a project's greenhouse gas emissions, with the overarching goal of making the projects carbon neutral (no net emissions).
6. In summary, while the EDO strongly supports the development of emissions reduction policies and clear plans to reduce emissions from projects in the NT, we note (as set out below) that the draft Policy is brief, lacks detail and guidance, does not provide any binding requirements, and is limited in application. We recommend strengthening and expanding the draft Policy to more comprehensively address the urgent need for:
- a. The robust assessment of the impacts of greenhouse gas emissions from projects in the NT; and
 - b. Deep reductions in greenhouse gas emissions from projects in the NT.

Application of Draft Policy

7. We recommend that the draft Policy include a clear definition of the projects or expanding projects to which it applies. Currently the draft Policy refers to new projects, expanding projects, actions, significant variations, large greenhouse gas emitting projects or actions. This multitude of definitional terms is likely to cause confusion regarding the application of the draft Policy.
8. Further, the draft Policy states (at p.5), "as a guide, 'large greenhouse gas emitting actions' under this policy are...". The use of "as a guide" is imprecise and apt to cause confusion. We recommend that a clear and unambiguous definition of 'large greenhouse gas emitting actions' be included in the draft Policy.

³ As defined in the draft Policy, p 5.

9. In addition, the draft Policy separates large greenhouse gas emitting activities into the two categories of “industrial activities” or “land use activities”.⁴ However, no clear definitions are provided as to what constitutes an “industrial activity” or a “land use activity,” or the scope of the activities covered by the draft Policy. We recommend that these terms should be clearly defined in the draft Policy to avoid confusion.

Threshold for Large Greenhouse Gas Emitting Actions

10. The draft Policy defines large greenhouse gas emitting actions by reference to threshold limits for their estimated scope 1 emissions. The EDO considers that limiting the threshold for application of the draft Policy, and therefore the preparation of a GGAP, to scope 1 emissions artificially constrains which proposals will be subject to the draft Policy without true reference to their likely environmental impacts. In our view, the methodology used for determining whether the emissions of proposals meet the threshold should not be confined to annual scope 1 emissions but should include consideration of all the emissions of proposals (including scope 2 and 3 emissions). Limitation to scope 1 emissions is arbitrary and does not reflect proper consideration of the environmental impacts of proposals.
11. The emissions threshold set out for industrial activities in the draft Policy excludes “emissions generated from land clearing associated with the proposal”. In our view, these emissions should not be excluded because all emissions from the proposal (regardless of their source) are relevant to the proposal’s environmental impacts. Emissions generated from land clearing as part of industrial activity still contribute to climate change, and there is no justification for excluding these emissions from the threshold that determines whether a GGAP should be prepared for the proposal.
12. The emissions threshold set out for land use activities is significantly higher (5 times) than that for industrial activities. We note that the draft Policy indicates that “[there] are differences between industrial activities and land use activities (primarily involving land clearing).”⁵ However, in our view, this is not a sufficient justification for imposing a significantly higher threshold for emissions from land clearing before a GGAP is prepared. As noted above, all greenhouse gas emissions from a proposal have an environmental impact regardless of the source or nature. That is, emissions caused by land use activities

⁴ Draft Policy, p 5.

⁵ Ibid 4.

have exactly the same environmental impact on the NT as emissions caused by industrial activities. Therefore, we recommend that the emissions threshold for application of the draft Policy should be consistent for industrial and land use activities.

13. The draft Policy indicates that “[if] the Australian Government’s methodologies are not used, clear reasoning and justification for use of alternative method(s) must be demonstrated.”⁶ However, the nature and type of permissible alternative methods is not specified in the draft Policy. We recommend that the draft Policy should require any proponent choosing to use alternative methods to demonstrate that those methods are of equivalent rigour to the Australian Government’s methodologies.
14. The draft Policy does not apply to emissions arising from livestock.⁷ The EDO submits that if the purpose of land clearing actions on a property is to keep livestock, this has a cumulative impact on greenhouse gas emissions, and should be considered as contributing to the overall emissions of the project. Therefore, we recommend removing this exclusion from the draft Policy.
15. Finally, the draft Policy does not apply to emissions arising from the clearing of ‘previously cleared vegetation’ or ‘regrowth’.⁸ The EDO submits that regrowth provides the same carbon sequestration services as vegetation that has not previously been cleared. Therefore, the environmental impacts from the greenhouse gas emissions that result from the clearing of regrowth are exactly the same as those from the clearing of an equivalent volume of vegetation that has not previously been cleared. We therefore recommend that emissions from clearing “previously cleared vegetation” or “regrowth” should not be excluded from the draft Policy.

Expected Management Action

16. The draft Policy indicates that “[all] new projects and expanding projects subject to this policy are **expected** to keep their emissions as low as reasonably practical”⁹ (emphasis added). The EDO submits that the use of “expected” is imprecise and does not impose any binding requirement. We recommend that the draft Policy state that applicable projects be “required” to keep their emissions as low as low as reasonably practical.

⁶ Draft Policy, p 6.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid.

Requirements for GGAPs

17. The draft Policy indicates that projects are “expected” to develop and implement a GGAP. The EDO submits that the use of “expected” is imprecise and does not impose any binding requirement. We recommend that the draft Policy should specify that a GGAP is “required” to be developed and implemented for applicable projects.
18. We submit that a GGAP should be required to include estimates of both annual and total emissions over the life of the proposal. In our view, this information is essential for decision-makers to properly assess the overall and total likely impact of the proposal on the NT’s environment. For example, we note that the recent review of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) is proposing national standards and recommending requirements for full emissions disclosure of projects.¹⁰

The draft Policy requires a GGAP to include “a commitment to periodic public reporting on implementation and progress against targets”.¹¹ The EDO submits that this is imprecise. We recommend that the draft Policy require public reporting under a GGAP to occur on an annual basis.
19. The draft Policy also provides that a GGAP should include “regular interim and long-term targets that reflect incremental reductions in emissions over the life of the proposal” and “a timetable for review”.¹² However, the draft Policy does not define “interim and long-term targets”, and does not specify who is required to review GGAPs or how often GGAPs are required to be reviewed. In the EDO’s view, allowing proponents to propose their own emissions reduction timeframes is not appropriate. These targets should be required to be consistent with environmental objectives and contemporary science. Further, more detail is required to be included in the draft Policy regarding the GGAP review process. We recommend that the draft Policy should require GGAPs to be reviewed annually by the Minister for Environment or NT EPA.
20. The draft Policy indicates that a GGAP “may identify the use of greenhouse gas emissions offsets to manage residual emissions”¹³. However, the draft Policy does not define what is meant by “residual emissions.” In this regard, it is unclear whether the draft Policy intends

¹⁰ See: [Final report | Independent review of the EPBC Act \(environment.gov.au\)](https://www.environment.gov.au/epbc-reports/epbc-act-review)

¹¹ Draft Policy, p 7.

¹² Ibid.

¹³ Ibid.

for all “residual emissions” above net zero to be managed by way of offset, or only “residual emissions” above the threshold for ‘large greenhouse gas emitting actions’. The EDO recommends that these matters be clarified in the draft Policy.

21. Further, the EDO submits that if offsets are to be considered in the draft Policy and GGAPs, they must be strictly regulated via a robust, science-based scheme, developed with advice from independent expert consultants, that meets best practice, and considers differences between the geological and active carbon cycle.¹⁴

Recommendation that GGAPs are required to be considered by the Minister for Environment

22. The draft Policy does not require GGAPs to be considered or utilised in any approval processes for applicable projects, or in any other manner. To cure this uncertainty, the EDO recommends that the draft Policy should require the Minister for Environment to have regard to GGAPs when determining environmental approvals for applicable projects under the EP Act.¹⁵
23. Further, we recommend that the draft Policy should require that, if the Minister grants environmental approval for an applicable project, the Minister must impose a binding condition on that approval that the GGAP must be implemented by the project’s proponent, including compliance with requirements included in the GGAP for annual public reporting and annual review by Minister or NT EPA.

Recommendation for Overarching Goal that Projects be Carbon Neutral

24. The EDO submits that the draft Policy is unclear in regard to the extent that it is intended that applicable projects avoid, mitigate or offset their greenhouse gas emissions – specifically, whether the draft Policy intends that projects are to avoid, mitigate or offset to net zero emissions, or to some other level. To avoid this ambiguity, and for the reasons set out below, we recommend that the draft Policy specify that GGAPs are required to include strategies to avoid, mitigate or offset a project’s greenhouse gas emissions, with the overarching goal of making the projects carbon neutral (no net emissions).
25. Australia is already experiencing the impacts of climate change, which include the warming and acidification of oceans, sea level rise, decreased rainfall in southern parts of

¹⁴ <https://www.climatecouncil.org.au/resources/land-carbon-report/>

¹⁵ Draft Policy, p 4.

the country and increased, more intense, rainfall in the north, and the long-term increase in extreme fire weather. Extreme heat days, longer dry spells, and harsher fire weather will increasingly become the norm, although the severity of impacts will be less if emissions can be reduced.¹⁶

26. In light of the unequivocal scientific evidence of the impacts of anthropogenic climate change, the international community agreed in late 2015 to keep the increase in global average temperature to well below 2 degrees Celsius (°C) above pre-industrial levels; and to pursue efforts to limit the increase to 1.5°C (**the Paris Agreement**).¹⁷ The Paris Agreement provides clear impetus for strong action and targets on climate change across government, business and community sectors. Failing to limit global warming to 1.5°C will have catastrophic impacts including greater levels of sea-level rise and coastal inundation, extreme heatwaves, severe droughts, the death of coral reefs, and mass extinctions.¹⁸ The impacts of climate change are not just environmental; there will be significant implications across all sectors, including health, the economy and national security.¹⁹
27. The Climate Change Response in the NT, like similar commitments in other jurisdictions, identifies the Northern Territory's target to achieve net zero greenhouse gas emissions by 2050. While it is important, on its own, this target does not regulate how many greenhouse gases can be emitted before 2050, or the rate at which emissions must decline, in order to meet the goal of the Paris Agreement of limiting global temperature to increase to well below 2 degrees Celsius (°C) above pre-industrial levels, while pursuing efforts to limit the increase to 1.5°C.
28. 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

¹⁶ The impacts of a warming climate on Australia are set out in more details in Bureau of Meteorology and CSIRO, *State of the Climate 2018* (2018), www.bom.gov.au/state-of-the-climate.

¹⁷ 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 pre-industrial 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.

¹⁸ Intergovernmental Panel on Climate Change, *Special Report Global Warming of 1.5°C*, An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, (2018), <https://www.ipcc.ch/sr15/>.

¹⁹ *Ibid.*

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 target set by the Climate Change Response must therefore function in the context of meeting a carbon budget (a limit on greenhouse gas emissions) corresponding to a level of global warming of 1.5°C or well below 2°C above pre-industrial levels. All new significant sources of greenhouse gases, including scope 3 emissions, work against achieving the targets identified in the Paris Agreement.

29. Having regard to the above, the EDO submits that the draft Policy specify that GGAPs are required to include strategies to avoid, mitigate or offset a project's greenhouse gas emissions, with the overarching goal of making the projects carbon neutral (no net emissions).

Recommendation not to exclude Scope 3 Emissions

30. The draft Policy only requires avoidance and reduction measures in relation to a project's scope 1 and 2 emissions, and explicitly excludes scope 3 emissions. EDO opposes restricting the draft Policy to scope 1 and 2 emissions.
31. The principle that scope 3 emissions are a relevant consideration in environmental impact assessment, such as that conducted by the Minister for Environment in determining environmental approvals under the EP Act, has long been judicially recognised in Australia. This was summed up recently by the New South Wales Land and Environment Court, in *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 (**Rocky Hill**), confirmed that scope 3 emissions are relevant considerations in the assessment and determination of development proposals, with Preston CJ stating:
"... the consideration of the impacts of the Project on the environment and the public interest justify considering not only the Scope 1 and Scope 2 emissions but also the Scope 3 emissions of the Project."
32. All greenhouse gas emissions arising directly or indirectly from an activity lead to global warming and climate change impacts (including within the NT), regardless of where they are emitted. As the draft Policy itself states, "the contribution to emissions reductions by different development projects will need to reflect the level of greenhouse gas emissions released into the atmosphere by the project, and the capacity to first avoid, and then

mitigate emissions from the project”.²⁰ The atmosphere does not discriminate between scope 1, 2, and 3 emissions. Thus, from an environmental perspective, all emissions, including scope 3 emissions, should be considered, both in regard to the application of the draft Policy and in GGAPs. We further submit that a GGAP including scope 3 emissions would be an important consideration for the Minister for Environment in making determinations of environmental approvals under the EP Act in respect to projects to which the draft Policy applies.

Cumulative Impacts of Emissions

33. The draft Policy does not refer to the cumulative impact of greenhouse gas emissions from projects. Consideration of cumulative impacts is crucial to effectively assess the contribution of proposals to global emissions and the impacts of climate change. All sources of greenhouse gases contribute to climate change regardless of their origin or nature, which makes scope 3 greenhouse gas emissions relevant in calculating cumulative emissions. The Court in *Rocky Hill* recognised the contribution of a mine’s cumulative emissions to global greenhouse gas emissions and climate impacts, stating:

*“There is a causal link between the [mine’s] cumulative GHG emissions and climate change and its consequences. The [mine’s] cumulative GHG emissions will contribute to the global total of GHG concentrations in the atmosphere. The global total of GHG concentrations will affect the climate system and cause climate change impacts. The [mine’s] cumulative GHG emissions are therefore likely to contribute to the future changes to the climate system and the impacts of climate change.”*²¹

34. In the EDO’s view, the draft Policy must consider the cumulative impacts of emissions from proposals. The DEPWS or the Minister should not consider the emissions of each proposal in isolation but should instead consider such emissions in the context of other existing and reasonably foreseeable future proposals. [REDACTED] The draft Policy should therefore require proponents to describe in a GGAP the cumulative impacts of a proposal’s greenhouse gas emissions in the context of global emissions.

²⁰ Draft Policy, p 4.

²¹ *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 [525].

Concurrent Reform Processes

35. We note that NT mining laws are currently under review, including in relation to how projects are assessed under the EP Act. This presents an opportunity to clarify the requirements for comprehensive emissions assessment, and any policy should be designed to complement and assist implementation of reforms, providing clarity and certainty to proponents and communities.
36. Similarly, we note the recent independent review of the EPBC Act²² has proposed significant reform at the national level, including the application of national environmental standards. This will have implications for NT legislation.²³

²² Final report | Independent review of the EPBC Act (environment.gov.au),

²³ See our recent submission: [Submission on the draft Northern Territory Assessment Bilateral Agreement - Environmental Defenders Office \(edo.org.au\)](#)