



Environmental Defenders Office

16 November 2021

The Hon Scott Morrison MP
Prime Minister
Kirribilli House
109 Kirribilli Ave
KIRIBILLI NSW 2061

By hand and email

Dear Prime Minister,

A duty to ensure the survival of the Great Barrier Reef for all Australians

- 1 We act for Greenpeace Australia Pacific.
- 2 Our client is concerned that, during COP26, you communicated a Nationally Determined Contribution (**NDC**) under the Paris Agreement to the United Nations Framework Convention on Climate Change (**Paris Agreement**) that is wholly inconsistent with your international and domestic obligations to ensure survival of the Great Barrier Reef (**the Reef**) for the use and enjoyment of all Australians.¹
- 3 Survival of the Reef requires global average temperature rise to be limited to 1.5° Celsius. On behalf of its more than one million supporters in Australia and the Pacific, our client says that you must prepare and communicate an NDC with a 2030 target that is consistent with keeping global temperature rise to 1.5° Celsius. **To achieve this, Australia's emissions reduction target must be at least 74 per cent below 2005 levels by 2030, with net-zero emissions reached by 2035.** Your current commitment is grossly inadequate, at 26-28% below 2005 levels by 2030 and net-zero emissions by 2050.²
- 4 As you know, Parties to the Paris Agreement have since been requested to review and strengthen the 2030 targets in their NDCs by the end of next year to align with the temperature goal set out in the Paris Agreement.³

¹ *Australia's Nationally Determined Contribution Communication 2021*, Australian Government Department of Industry, Science, Energy and Resources.

² *Ibid*, a p 3.

³ *Glasgow Climate Pact, The Conference of the Parties serving as the Conference to the Paris Agreement*, cl 29, unedited advance version: https://unfccc.int/sites/default/files/resource/cma3_auv_2_cover%20decision.pdf

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- 5 By preparing and communicating targets consistent with the survival of the Reef, you would be acting within Australia's obligations under the *Convention Concerning the Protection of World Cultural and Natural Heritage* (**World Heritage Convention**), and your duty to the Australian public to exercise your prerogative powers in the best interests of the nation.
- 6 Failure to do so is inconsistent with your international and domestic obligations to ensure survival of the Reef for the use and enjoyment of all Australians, including importantly First Nations peoples.
- 7 Our client invites you to confirm that you will prepare and communicate an updated NDC to the United Nations that complies with your legal obligations, being *at least 74 per cent below 2005 levels by 2030, with net-zero emissions reached by 2035*.
- 8 Given the gravity of the threat posed by global temperature rise to one of Australia's greatest icons, if you take the view that an updated NDC is not required, our client requests that you provide an explanation as to how it is that you say the NDC prepared and communicated by you is consistent with the survival of the Reef.
- 9 We seek your response within two weeks of the date of this letter, that is, by **30 November 2021**.

Climate change is the greatest threat to survival of the Great Barrier Reef

- 10 As you know, climate change is the greatest threat to the survival of the Reef.⁴ The Intergovernmental Panel on Climate Change (**IPCC**) finds that:⁵

“Coral reefs ... are projected to decline by a further 70–90% at 1.5°C (high confidence) with larger losses (>99%) at 2°C (very high confidence). The risk of irreversible loss of many marine and coastal ecosystems increases with global warming, especially at 2°C or more (high confidence).”

- 11 Australia's climate has already heated on average over 1.1° Celsius since national records began in 1910.⁶ The Reef has suffered three major bleaching events in the last five years (in 2016, 2017 and 2020) affecting 98% of the Reef and undermining the resilience of coral reef

⁴ Great Barrier Reef Marine Park Authority, *Position Statement: Climate change*, GBRMPA Document No 100486 Revision: 1, 25 June 2019, <https://elibrary.gbrmpa.gov.au/jspui/retrieve/9ad23e79-5915-4866-941a-ff6e566cbe71/v1-Climate-Change-Position-Statement-for-eLibrary.pdf>

⁵ IPCC, *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* (World Meteorological Organization, Geneva, 2018).

⁶ Bureau of Meteorology (Australian Government), *Annual Climate Statement 2020*, available at www.bom.gov.au/climate/current/annual/aus (accessed 29 October 2021).

ecosystems.⁷ The projections by the IPCC set out above are already emerging at a larger spatial scale.⁸

- 12 Our client puts you on notice that any action, or indeed inaction, taken by you that is inconsistent with limiting global temperature rise to 1.5 ° Celsius will cause catastrophic and irreversible harm to the Reef. This includes the preparation and communication of an NDC.

Australia's international obligations to save the Great Barrier Reef

- 13 The Reef is protected under the World Heritage Convention. Australia is a signatory to the World Heritage Convention and has a duty to ensure the identification, protection, conservation, presentation and transmission to future generations of the Reef. Australia agreed to do all it can to this end.⁹ The Commonwealth Government has a duty to take the appropriate measures necessary to protect, conserve, present and rehabilitate the Reef,¹⁰ and must not undertake deliberate measures that might directly or indirectly damage it.¹¹
- 14 Australia is also a signatory to the Paris Agreement and has an obligation to pursue efforts to keep global average temperature rise to below 1.5° Celsius above pre-industrial levels, recognising that this would significantly reduce the risks and impacts of climate change.¹²
- 15 The actions taken by you at COP26 in preparing and communicating an NDC that is wholly inconsistent with efforts to limit global temperature rise to 1.5° Celsius constitute a breach of Australia's international obligations to protect the Reef from climate change.

Your domestic obligations to set targets for survival of the Great Barrier Reef

- 16 The Reef is embedded in the Australian identity, in the same way that iconic structures like the Opera House and Harbour Bridge are internationally recognised symbols of the Australian way of life. The Australian public expects that our national icons will be protected and maintained for current and future generations, including importantly for First Nations peoples.
- 17 The power to prepare and communicate an NDC lies with the executive government. The High Court of Australia has recognised that the executive government must exercise its prerogative power for the benefit of the nation.¹³ Accordingly, when exercising the power to prepare and communicate an NDC, you must act in the best interests of Australia and all its people. The power to prepare and communicate an NDC can only be exercised by you as a

⁷ Hughes, Terry et al. "Emergent properties in the responses of tropical corals to recurrent climate extremes." *Current Biology* 31 (2021): 1-7, p 4.

⁸ Ibid.

⁹ Article 4.

¹⁰ Article 5.

¹¹ Article 6.3.

¹² Article 2.1(a).

¹³ *Victoria v Commonwealth and Hayden* [1975] HCA 52, (1975) 134 CLR 338, 397. *Davis and Others v The Commonwealth of Australia and Another* (1988) 166 CLR 79.

member of the executive and cannot be derogated to the States and Territories, or to any other government.

- 18 On any view, exercising your prerogative powers in a way that leads to the certain loss for all Australians of the iconic Great Barrier Reef could not be said to be for the benefit of the whole of the nation, and all its people. Add to this outcome the real and foreseeable risks to Australian lives and property posed by sea level rise, catastrophic weather events, prolonged droughts, extreme flooding and uncontrollable bushfires, and it is clear that any reasonable person in your position would conclude that Australia's current NDC does not benefit the nation and all of its people. Together with the rapid global shift away from fossil fuels, our client's view is that there's little evidence that Australia's NDC benefits *any* Australians, let alone the entire nation.

The targets that are necessary for survival of the Reef

- 19 The projected impacts of climate change on warm water coral reefs are devastating. These impacts are widely accepted and commonly known. In 2018, the IPCC reported:¹⁴

- (a) the distribution and abundance of coral reefs has decreased by approximately 50% over the past 30 years;*
- (b) between 2016 and 2018, large coral reef systems like the Reef lost as much as 50% of their shallow water corals;*
- (c) climate change is the greatest threat to coral reefs;*
- (d) global warming of 1.5° Celsius will result in the loss of 70-90% of the remaining reef-building corals; and*
- (e) 99% of corals will be lost under warming of 2° Celsius or more.*

- 20 The threats to the Reef from climate change are obvious and existential. If global heating reaches 2° Celsius, the Reef will no longer be available for the use and enjoyment of all Australians, and plainly could not be transmitted to future generations.

- 21 The NDC prepared and communicated by you under the Paris Agreement, which commits to reducing greenhouse gas emissions by 26-28% below 2005 levels by 2030, and net-zero emissions by 2050, is not consistent with limiting global heating to 1.5° Celsius. The 2021 UN Environment Programme's Emissions Gap Report found:¹⁵

A continuation of the effort implied by the latest unconditional NDCs and announced pledges is at present estimated to result in warming of about 2.7°C (range: 2.2–3.2°C) with a 66 per cent chance.

- 22 In January 2021, the Climate Targets Panel concluded that to reach the goal of limiting global heating to 1.5° Celsius, Australia's 2030 emissions reduction target ***must be 74 per***

¹⁴ IPCC, *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* (World Meteorological Organization, Geneva, 2018) box 3.4.

¹⁵ United Nations Environment Programme (2021). *Emissions Gap Report 2021: The Heat Is On – A World of Climate Promises Not Yet Delivered*. Nairobi, p 36.

cent below 2005 levels, with net-zero emissions reached by 2035.¹⁶

- 23 Your government is aware of, and acknowledges, the existential threat posed by climate change to the Reef.¹⁷ Yet your current NDC is wholly inconsistent with the ongoing survival of the Reef – an Australian icon – and its transmission to future generations.

You must prepare and communicate an NDC consistent with 1.5° Celsius

- 24 Given the inadequacy of Australia’s NDC, our client is of the view that you are not complying with Australia’s obligations under the World Heritage Convention, or your obligations to the Australian people to exercise your prerogative powers for the benefit of the nation.
- 25 Global temperature rise of more than 1.5° Celsius does not just mean certain loss of the iconic Reef, it also condemns all Australians to catastrophic climate impacts that will inevitably lead to an unliveable continent. The devastating bushfires of 2019/2020 were a reminder for Australians of the horrors of living in an unstable climate.
- 26 The science is clear - a target that is inconsistent with limiting global temperature rise to 1.5° Celsius threatens to destabilise the very bases on which our society is built - harming not just the places we love that sustain us, but the Australian economy, our security, identity and way of life. Given this, on any view, the 2030 targets set out in your NDC are wholly inconsistent with your obligations to exercise your prerogative powers for the benefit of the nation. The proposed 2030 target will also exacerbate transboundary harm to the land, homes, nationhood and cultural identity of our Pacific neighbours.
- 27 As the Prime Minister of Australia, you alone have the power to mandate meaningful action on climate change, and to ensure that Australia’s international commitments under the Paris Agreement and Australia’s NDC are reflected in domestic legislation and policies. We have **enclosed** EDO’s climate statement, which sets out five actions the Commonwealth government can take now. Our client urges you to consider these five actions and lead your government to legislate for stronger climate action in Australia.

Your response to this letter

- 28 Our client invites you to confirm that you will prepare and communicate an updated NDC to the United Nations that complies with your legal obligations, being *at least 74 per cent below 2005 levels by 2030, with net-zero emissions reached by 2035.*

¹⁶ Climate Targets Panel, *Australia’s Paris Agreement Pathways: Updating the Climate Change Authority’s 2014 Emissions Reduction Targets* (January 2021), p 6.

¹⁷ See, for e.g. Great Barrier Reef Marine Park Authority, *Position Statement: Climate Change*, GBRMPA Document No 100486 Revision: 1, 25 June 2019, <https://elibrary.gbrmpa.gov.au/jspui/retrieve/9ad23e79-5915-4866-941a-ff6e566cbe71/v1-Climate-Change-Position-Statement-for-eLibrary.pdf>; Great Barrier Reef Marine Park Authority, *Great Barrier Reef Outlook Report 2019*, Section 6.3, pp 161-167; *Reef 2050 Long-Term Sustainability Plan* (2018), Annexure G to the Great Barrier Reef Intergovernmental Agreement 2015, section 3.3.1, pp 28-36.

- 29 Given the gravity of the threat posed by global temperature rise to one of Australia's greatest icons, if you take the view that an updated NDC is not required, our client requests that you provide an explanation as to how it is that you say the NDC prepared and communicated by you is consistent with the survival of the Reef.
- 30 We seek your response within two weeks of the date of this letter, that is, by **30 November 2021**.

Yours sincerely,
Environmental Defenders Office


David Morris
CEO

Encl.

EDO, *The time to act on climate is now – making the most of COP26*, October 2021,
<https://www.edo.org.au/2021/10/08/the-time-to-act-on-climate-is-now-making-the-most-of-cop-26/>