



Environmental
Defenders Office

A Roadmap for Climate Reform

Recommendations 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 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.

The EDO 'Roadmap for Climate Reform' 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:

Climate Act now



Opportunity 2:

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



Opportunity 3:

Define leadership and responsibility for meeting targets



Opportunity 4:

Incentivise innovation and galvanise our energy transition



Opportunity 5:

Plan for and measure success



Summary of Recommendations

➤ Opportunity 1: Implement a Climate Act

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

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 per cent 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 **five-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 per cent 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

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 prohibition on acting inconsistently with the best-available science, is 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 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 Federal 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
- when addressing impacts of climate change 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 in our climate transition

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 could 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.

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.

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.

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

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.

These recommendations are discussed in further detail in our **Roadmap to Climate Reform report**. Scan the QR code to read the report







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