



Environmental
Defenders Office

**Submission on incorporating an emissions reduction objective
into the national energy objectives.**

10 February 2023

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.

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Submitted to:

[Consultation on proposed legislative changes to incorporate an emissions reduction objective into the national energy objectives](#)

Department of Climate Change, Energy, the Environment and Water

Via email to netp@industry.gov.au

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Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the consultation paper on proposed legislative changes to incorporate an emissions reduction objective into the national energy objectives, produced by Australian Energy Ministers. This submission incorporates comments on the *National Energy Laws Amendment (Emissions Reduction Objectives) Bill 2022 (the Bill)*.

The proposed changes will allow the Australian Energy Market Commission (**AEMC**), the Australian Energy Market Operator (**AEMO**) and the Australian Energy Regulator (**AER**) to consider emissions reduction targets when exercising their respective powers and functions. The energy objectives, as set out in the National Electricity Objective (**NEO**), the National Gas Objective (**NGO**) and the National Energy Retail Objective (**NERO**) guide the exercise of these functions, and currently do not refer to emissions reduction either directly or indirectly.¹

In 2022, EDO produced the [Roadmap for Climate Reform \(Climate Roadmap\)](#), which identifies a suite reforms for implementing climate action across government, and recommends that the Federal Government should take the step of:

[R]eviewing 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.

This recommendation acknowledges that rapidly addressing climate change requires a whole-of-government approach, not simply piecemeal policies. Climate informed decision making should be incorporated as a mandatory consideration for decision makers at all levels, to provide for a consistent approach across government and regulatory bodies, and ensure reliability for companies and consumers. And with energy production a key driver of emissions, incorporating emissions reduction targets into energy market functions is an important step towards this necessary whole of government approach. It no longer makes sense for energy market policy to be separate from climate policy.

EDO supports the integration of emissions reductions targets into energy policy and decision making. This submission makes the following recommendations to ensure that the method by which emissions reduction targets are integrated into Australia's national energy laws is equitable and effective.

Recommendation 1: The Bill should make clear that priority should be given to those targets or policies which will achieve the greatest emissions abatement, without removing the ability for different targets to be considered where relevant.

Recommendation 2: Emissions reduction targets should be a mandatory consideration with the same legal standing as the economic efficiency objective.

Recommendation 3: Government should rapidly progress consultation on including social equity and energy affordability in the national energy objectives in tandem with the inclusion of emissions reduction targets.

¹ The national energy objectives are set out in the National Electricity Law (NEL), the National Gas Law (NGL) and the National Energy Retail Law (NERL) respectively.

Introduction

Genuine and rapid emissions reductions are necessary for meeting Australia’s legislated emissions reduction targets, and ultimately the Paris Agreement goal of limiting global temperature rise to 1.5 degrees Celsius. A large-scale energy transition from fossil fuels to renewable energy must be a priority in this effort, with energy production currently the largest contributor to Australia’s carbon emissions.² The speed of this transition is crucial to prevent worsening of climate impacts, and avoid the catastrophic impacts of increased global heating. The energy sector also has a distinct advantage compared to other sectors in terms of capacity for mitigation, with the technology required to reduce emissions already available, accessible, and cheap. As such, integrating emissions reduction targets into energy sector decision making is a critical aspect of the overall emissions reduction task. As stated in the EDO’s Climate Roadmap:

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

The three energy market objectives (the NEO, NGO and NERO) govern activities of the energy market bodies (the AER, AEMC and AEMO), including the exercise of rule-making powers and regulatory functions. The objectives are also used in interpretation of the energy market legislation as a whole, with the Acts taken to be read in accordance with the legislated objectives.³ As currently framed, the energy market objectives focus on promoting the long-term interests of consumers through efficient investment, operation and use of energy services.⁴ Inclusion of emissions reduction considerations is a necessary addition to the current text. This submission considers how the objective can best be framed to achieve the overall policy goal driving this amendment – reduction of greenhouse gas emissions.

EDO notes the proposed amendments additionally synchronise the definition of ‘energy’ in the NEO and NGO to apply to both electricity and gas, in line with the existing approach in the NERO. EDO rejects the conception of gas as a transition fuel as referred to in the consultation paper,⁵ and considers that any provision allowing for linkage across the NEL and NGL must be duly constrained by clear and effective emission reduction considerations.

Which emissions reduction targets are included

The draft legislation provides for several different forms of emissions target to be included as a consideration under the national energy objectives. The draft text presents these options within

² Department of Climate Change, Energy, the Environment and Water, [Quarterly Update of Australia’s National Greenhouse Gas Inventory: June 2022](#)

³ E.g. *National Electricity (South Australia) Act 1996* sch 2, s 7(1).

⁴ [AEMC, How the national energy objectives shape our decisions \(Guide, October 2022\)](#).

⁵ Gas is a fossil fuel which, when burned, contributes to dangerous climate change. See e.g. [EDO submission on Draft Future Gas Strategy for Iutruwita/Tasmania](#).

the overarching concept of targets for reducing Australia's greenhouse gas emissions to which the Commonwealth, a State or a Territory has made a 'public commitment',⁶ allowing for some flexibility in choice of considered target or policy.

First, the Bill provides for consideration of Australia's greenhouse gas emissions reduction targets contained in the *Climate Change Act 2022* (Cth).⁷ In addition to the legislated target at the Commonwealth level, a decision maker may consider other targets for reducing, or which are likely to contribute to reducing, Australia's greenhouse gas emissions.⁸ The inclusion of targets 'likely to reduce' emissions would allow consideration of relevant policies not directly framed as emissions reduction policies, for example the Federal Government's 82% national renewable electricity target by 2030.⁹ Further, both State and Territory targets,¹⁰ as well as those stated in or made under international agreements like the Paris Agreement,¹¹ are included as potential options. Finally, the legislation makes provision for non-legislated targets to be included as part of the consideration process, by allowing for decision makers to consider emissions targets which have been stated publicly as a matter of policy by the Commonwealth, State or Territory.¹²

EDO supports the range of options presented in the text, as this gives decision makers flexibility to include the emissions reductions considerations most relevant in the circumstances. The inclusion of non-legislated policies, and targets 'likely' to result in emissions reductions, is supported, as it will allow energy market bodies to draw on broader climate and energy policy options. For example, EDO notes that the legislated Commonwealth emissions targets, of 43% below 2005 emissions levels by 2030 and net zero by 2050,¹³ present a minimum standard for reducing greenhouse gasses, and that to limit global heating to 1.5C a much greater effort is required.¹⁴ With the time for this to be achieved rapidly dwindling as the emissions budget available is being depleted, it is important to take into account much stronger and more ambitious targets – such as many States and Territory goals, which surpass Commonwealth commitments.¹⁵

Moreover, the inclusion of non-legislated targets allows for greater flexibility in considering commitments by governments which have been announced but not yet legislated, and which may be more ambitious than the legislated target in that jurisdiction.¹⁶ Similarly, this gives decision-makers flexibility and the possibility of considering more ambitious targets and goals as they arise.

⁶ See e.g. *National Energy Laws Amendment (Emissions Reduction Objectives) Bill 2022* part 2, s 4 [proposed s 7(c)].

⁷ Proposed s 7(c)(i).

⁸ Proposed s 7(c)(ii).

⁹ Department of Climate Change, Energy, the Environment and Water, Annual Climate Change Statement 2022.

¹⁰ Proposed s 7(c)(ii)(A).

¹¹ Proposed s 7(c)(ii)(B).

¹² Proposed s 7(c)(ii)(C).

¹³ *Climate Change Act 2022* (Cth) s 10.

¹⁴ The current advice of Australian scientists is a reduction of 74% below 2005 levels by 2030 and net-zero emissions by 2035. Climate Targets Panel, Australia's Paris Agreement Pathways: Updating the Climate Change Authority's 2014 Emissions Reduction Targets (Report, January 2021).

¹⁵ For example, Tasmania has adopted a target of net zero emissions or lower from 2030; Victoria has a target of 50% by 2030 below 2005 levels; New South Wales currently has a target of 70% by 2035.

¹⁶ See e.g. <https://www.theguardian.com/australia-news/2022/dec/23/matt-kean-announces-nsw-target-to-cut-carbon-emissions-by-70-by-2035>

However, there is no guidance on which of the several options provided in the Bill must be considered or prioritised, with the exclusion of the legislated Commonwealth target, the various other options are presented as a non-exhaustive list. Given the urgency of the need to address climate change, and increasing ambition of emissions targets around the country, EDO recommends the legislation clarify which emissions targets should be given priority in decision making processes. To maintain flexibility, this should be done in a manner which gives priority to ambitious targets, without removing the ability for decision makers to take into account numerous relevant policies.

Recommendation 1: The Bill should make clear that priority should be given to those targets or policies which will achieve the greatest emissions abatement, without removing the ability for different targets to be considered where relevant.

How emissions reduction targets are considered

Each of the national energy objectives is framed in similar terms, with each primary objective to promote efficient investment in, and efficient operation and use of, energy services for the long term interests of consumers. The factors of price, quality, safety, reliability and security are listed as the component factors for consideration in determining this. All objectives are thus framed in terms of efficiency, with supporting materials confirming that ‘efficiency’ should be understood primarily in economic terms. This legislative premise of efficiency assumes that the long-term interest of consumers of the relevant form of energy will be maximised where these factors are balanced in the pursuit of *economic* efficiency.¹⁷

In the draft legislation, the addition of emissions reduction targets into the energy market objectives adds to the efficiency calculation, below which the factors of price, quality, safety, reliability, and security of supply sit. The emissions reduction component therefore is one of several that decision makers under the national energy laws will be obliged to consider and have discretion to balance, in making decisions. This means that the new emissions reduction target objective is not only one of a number of considerations including price, but that calculation takes place within the ‘economic-efficiency’ framework – meaning emissions reductions considerations may risk being watered down in decision making.

It is clear that climate change policy cannot, and should not, be divorced from energy market policy. This is both in terms of the massive and immediate changes that are required to transition the energy system to reach net zero,¹⁸ but also the very real climate impacts that affect the security and reliability of the system.¹⁹ The speed of the transition to renewable energy is critical, as the longer emissions reductions are delayed, the more pronounced and severe the effects of climate change will become. Emissions reductions made now will directly affect climate impacts in the future, and indeed every degree of avoided heating counts.²⁰ EDO is of the view that climate

¹⁷ Energy Ministers, Incorporating an emissions reduction objective into the national energy objectives (Consultation Paper, 20 December 2022) 5.

¹⁸ [International Energy Agency, Net Zero by 2050: a Roadmap for the Global Energy Sector \(May 2021\).](#)

¹⁹ [AEMC, How the national energy objectives shape our decisions \(Guide, October 2022\).](#)

²⁰ [Climate Council, Aim High, Go Fast: Why Emissions Need To Plummet This Decade \(Report, 2021\).](#)

relevant decision making should be integrated into regulatory and government decision making at all levels, and this is especially so for a priority area like energy market regulation.

Emissions reduction should therefore not be a secondary consideration, which, as currently drafted, sits within an economic efficiency framework. To address the urgency of the need for climate action, and reflect the priority role that the energy market has in the net zero transition, the emissions reduction objective should be elevated as a primary consideration, alongside the efficiency objective. This does not mean that it will always outweigh the efficiency concerns, as in some circumstances emissions reduction will not be a relevant factor. However in those circumstances where it is relevant, the emissions reduction objective should be an independent consideration that has the same legal weight as the economic-efficiency framework.

Recommendation 2: Emissions reduction targets should be a mandatory consideration with the same legal standing as the economic efficiency objective.

Social equity considerations

The energy market is undergoing a necessary and inevitable transition, which will be accelerated through inclusion of emissions reduction targets in the national energy objectives. While climate change impacts disproportionately affect overburdened communities including First Nations communities and people experiencing financial and social disadvantage, so too do the effects of the energy transition.²¹ People experiencing poverty or who are under financial stress often miss out on the benefits of the energy transition due to the associated cost of implementing renewable technologies or energy efficiency measures.²² Moreover, the uptake of transitional measures by other parts of the community may actually raise energy costs, with people experiencing financial disadvantage paying disproportionately more for the energy transition.²³

Transition policy must leave no sector or community behind. This includes in relation to energy systems, and the provision of energy as an essential service to overburdened communities. While acknowledging that inclusion of social equity concerns have been flagged as a matter for future consideration,²⁴ EDO emphasises the importance of integrating fair and equitable transition measures into climate and energy policy at all stages. This is especially so where the above recommendations have been adopted, which would serve to prioritise emissions reduction targets across the energy market objectives. To reflect the need for an energy system which is not only decarbonised, but which equitably shares the benefits of the energy transition with all communities, EDO supports continued discussion on how social equity and demand-side objectives can be included in the national energy objectives.

²¹ See [EDO, Implementing effective independent Environmental Protection Agencies in Australia \(Report, 2022\)](#) report for further discussion of environmental impacts on overburdened communities.

²² [University of Melbourne and Roy Morgan, Taking the Pulse of the Nation \(2023\)](#).

²³ See e.g. <https://www.afr.com/companies/energy/energy-affordability-exposes-brutal-divide-between-rich-and-poor-20230202-p5chex>

²⁴ Energy Ministers, Incorporating an emissions reduction objective into the national energy objectives (Consultation Paper, 20 December 2022) 1.

Recommendation 3: Government should rapidly progress consultation on including social equity and energy affordability in the national energy objectives in tandem with the inclusion of emissions reduction targets.

Thank you for the opportunity to make this submission.

Please do not hesitate to contact our office should you have further enquiries.

We note that EDO has made 58 recommendations for comprehensive climate reform in our Roadmap for Climate Reform available at:

[A Roadmap for Climate Reform - Environmental Defenders Office \(edo.org.au\)](https://edo.org.au)