

Climate reforms needed in our national environmental law: Preventing climate harm (September 2023)

The *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) is Australia's national environmental law framework. It covers all environmental approvals and assessments for projects likely to have a significant impact on matters of national environmental significance (**MNES**), including World Heritage sites, internationally protected wetlands, threatened species, and the Great Barrier Reef.

Climate change compounds ongoing and past damage to our environment, and threatens every ecosystem across the country, including the MNES. However, the current EPBC Act fails to explicitly, clearly and comprehensively address the threat of climate change. **It is nonsensical that our national environmental law currently does not directly address the greatest challenge facing the Australian environment.**

In light of the reforms underway to the EPBC Act set out in the federal government's **Nature Positive Plan**, this briefing paper makes recommendations in 3 key areas to ensure our federal environmental laws will adequately address the interconnected climate and extinction crises: **strengthening critical elements of the Nature Positive Plan; preventing climate harm; and ensuring transparency and accountability.**

1. The Nature Positive Plan is a start, but the detail will be critical.

The federal government has set out some climate related reforms in the Plan, but much more is needed if our environmental laws are to be fit-for-purpose and climate ready.

Proponents must be required to disclose all emissions caused by a new or expanded project, including end use emissions.

Under the government's Plan, projects assessed under the Act will be required to disclose their scope 1 (direct) and scope 2 (indirect) emissions, and proponents will need to outline how these emissions will be managed over the life of the project. However, scope 3 emissions ('end use emissions', including the burning of fossil fuels exported overseas), which make up the bulk of Australia's contribution to global climate change, are not required to be disclosed. These emissions will continue to impact our environment no matter where they occur, and should be included in disclosure requirements, so we can have a clear picture of any new project's full contribution to climate change.

Regional planning and strategic assessments must take climate impacts, and future climate scenarios, into account.

The Nature Positive Plan outlines that regional plans, strategic assessments and other strategic planning will be required to consider climate change and include environmental adaptation and resilience measures. It is crucial these processes comprehensively consider cumulative impacts, such as how multiple developments might impact climate refugia, as well as climate adaptation needs and disaster risk resilience measures.

Regional planning will also play a critical role in enabling the energy transition and supporting the essential renewable energy rollout. See EDO's briefing paper, ***Climate reforms needed in our national environmental law for the renewable energy transition: delivering for nature, climate and communities (September 2023)***.

Improved information and climate-impact modelling must be utilised.

Under the government's proposed reforms, improved information and climate impact modelling will be published publicly, to improve understanding of future climate scenarios and impacts on species. Better public information is welcome, however this information must be directly used to prevent more climate-harming development from being approved under the Act. Climate data (including emissions disclosure as noted above) must feed directly into assessment and approval processes, including changes in approval conditions where updated information on climate risks or adaptation needs is available.

The water trigger must be urgently expanded to capture imminent projects.

Currently, coal seam gas and large coal mining projects are assessed under the Act when they have a significant impact on water resources, under the 'water trigger'. The Government has committed to expanding the water trigger to capture unconventional gas projects (e.g., fracking).

This was a key recommendation from the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory ('Pepper Inquiry'), and an important reform that urgently needs progress. This is especially so as the Northern Territory government continues to push ahead with fracking approvals, including in the Beetaloo Basin.

2. Australia's national nature laws must prevent climate harm.

Simply requiring transparency about emissions from new projects isn't sufficient – the laws should be strong enough to prevent new, highly polluting projects which will damage climate and biodiversity. Climate change considerations need to be embedded in all aspects of the new laws, including in decision-making.

The objects of the Act must recognise the connection between climate and nature.

Given the EPBC Act governs approvals of new fossil fuel projects, the objects of the new Act must recognise climate impacts on the environment and the urgent need to reduce emissions in line with the Paris Agreement 1.5°C temperature limit. The objects should also note the contribution of biodiversity to climate change mitigation, the importance of adaptation and resilience, and need to protect carbon sinks. This should be in addition to the principles of ecologically sustainable development already set out in the current EPBC Act.

High emitting projects should be assessed for their impact on the climate.

Under the current EPBC Act, the climate change impacts (in terms of greenhouse gases emitted) of a proposed development alone will not trigger the requirement for assessment and approval at the national level. EDO supports the addition of a 'climate trigger' to the list of MNES, to ensure that high emitting projects, or project extensions, could be assessed, approved or rejected, on the basis of their emissions contribution.

Projects likely to emit over 100,000 tonnes CO₂e per annum, including scope 3 end use emissions, should be captured by the trigger. This should be supplemented by provision for projects on a designated development list (including land use change, such as significant land clearing) to trigger the approval provisions.

The decision-maker (the new national Environment Protection Authority 'EPA') would then assess these projects based on their life-cycle emissions, reject unacceptable climate impacts, and apply conditions and limits on other assessable projects. This assessment and any approval must be aligned with our domestic emissions reduction commitments contained in the *Climate Change Act 2022*, as well as the carbon budget and caps newly inserted into the *National Greenhouse and Energy Reporting Act 2007*, and our commitments under the Paris Agreement. Clearly, all new fossil fuel projects must be prohibited.

Climate change must be incorporated into all relevant decision-making under the Act.

Similarly, climate change must be a mandatory consideration for all relevant decisions under the new Act. This should include when a decision-maker is deciding whether or not to approve a development, and what conditions may attach, but also in creating bilateral agreements with states, territories, and other regulatory bodies like NOPSEMA. This should be expressed as an enforceable duty on the decision maker to make decisions consistent with domestic emissions targets and the Paris Agreement temperature limits.

Where approval decisions are made about non-climate MNES, the impacts of climate change on the MNES must be a mandatory consideration, with the definition of 'impact' specifically accounting for *any* increased level of greenhouse gas emissions that will result from the proposal or extension. More broadly, climate change must be factored into all relevant National Environmental Standards, and as a key consideration in conservation planning.

The Act must prioritise and protect carbon sinks.

The reformed Act should increase protection of carbon-rich ecosystems, particularly those under threat (for example, native forests and grassland, and coastal and marine ecosystems such as mangroves, tidal marshes, kelp forests and seagrass meadows) and areas of climate refugia on both public and private land. Crucially, this means Regional Forest Agreement (RFA) areas must be subject to National Environmental Standards as soon as the new Standards are implemented, to prevent further destruction of these critical carbon sinks.

3. Transparency and accountability are crucial for climate-ready laws.

Assessment and decision-making processes for all decisions under the EPBC Act must be transparent and comprehensive – this includes for new renewable energy projects. Avenues for challenging decisions and clear methods of accountability are part of ensuring good decisions are made in the first place.

Merits review will ensure better decisions for nature and climate.

Merits review is the re-examining of an administrative decision made by the original decision-maker. This is different to judicial review, where a court can only examine whether procedural steps were followed as required by law and cannot re-examine the merits of an action or project. The prospect of merits review in itself encourages better decision-making, as well as providing a crucial accountability measure.

Merits review should apply to significant decisions made by the EPA or the Minister. All decisions should be published and accompanied by a statement of reasons, and broad standing implemented allowing for interested parties to apply for review.

Third party enforcement is an important measure for accountability.

Third party enforcement is the ability of community members to enforce breaches of the law or environmental conditions. It is an integral part of environmental law regimes around the country, as it gives communities a way to directly enforce nature laws. For third party enforcement measures to be an effective disincentive for non-compliance, these measures must be backed up by easily accessible and timely information on all projects, decisions, and conditions.

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