

BRIEFING NOTE

BUILDING THE FUTURE, PROTECTING AUSTRALIANS AND OUR UNIQUE ENVIRONMENT FROM CLIMATE HARM: THE CASE FOR FIXING AUSTRALIA'S NATIONAL ENVIRONMENT LAW



BACKGROUND

Climate change is the greatest threat to Australia's natural environment. It puts at risk the complex ecosystems and unique biodiversity we depend on for healthy and prosperous lives, disrupts the habitats of important species from animals to insects and plants, and threatens iconic natural places like the Great Barrier Reef. At the same time, transforming our economy to address this threat by creating new, clean energy industries is a once-in-a-century opportunity Australia must not pass up.

Australia's main federal environment law - the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) - does not explicitly address climate change or the harmful greenhouse gas emissions which are fuelling it. In a time of rising threats to Australia's environment and communities from escalating global warming, we urgently need to fix this gap.

An effective EPBC Act can help protect Australians from harmful climate change and deliver the future-focused industries we need in a way that works in harmony with our natural environment. With a strong and effective national environment law we can say yes to job-creating projects in industries like clean energy, critical minerals and green manufacturing, and no to projects that will cause more climate harm and damage Australia's special natural places.

What does the *Environment Protection and Biodiversity Conservation Act* do?

The EPBC Act sets out a legal framework for protecting and managing some aspects of Australia's natural environment. This includes unique plants, animals and habitats, as well as heritage sites, marine areas and other environmental matters that are considered to need special protection.

The Act currently covers nine specific [Matters of National Environmental Significance](#), as well as governing Commonwealth land. Anyone who

wants to undertake a project, development or other activity that might impact one of these nine matters, or Commonwealth land, must apply for assessment and approval under the Act. This includes projects to develop new mines and fossil fuel extraction facilities, major infrastructure and industrial facilities. The Department of Climate Change, Energy, the Environment and Water administers this assessment process. The Federal Environment Minister is the final decision-maker under the Act: the Minister can give approval to proceed and set out any conditions that must be met, or reject a proposed project.



PRIORITY #1

SAYING NO TO PROJECTS THAT WILL WORSEN CLIMATE CHANGE AND DAMAGE THE ENVIRONMENT

This is the make or break decade for action to limit climate damage, and protect Australians - and our environment - from the worst impacts. The world has already warmed by around 1.2°C and Australia is suffering significant losses from climate change, with worse on the way.

Extreme weather events – such as bushfires, floods, heatwaves and droughts – are happening more often, and are more severe. Australia already has one of the highest rates of species extinction in the world due to land-clearing and other human activities; we have also been the first country to see the extinction of a mammal species directly due to climate change. Communities, species and natural habitats are in grave danger because of our warming climate.

We need stronger federal environment laws to ensure that projects cannot be approved if they would further risk a safe future for Australians, and the environment that sustains us.

How does the existing Act fall short when it comes to climate change?

The EPBC Act refers to projects and developments which might harm the environment as 'actions'. In the current formulation of the Act, actions contributing to harmful climate change are not explicitly dealt with at all. In fact, in the current Act's 1,000-plus pages, climate change is mentioned *just once*.

Maintaining a safe and liveable climate is not among the nine Matters of National Environmental Significance which currently require project proposals to be assessed under the Act. Nor does the

Act specifically require the Environment Minister to consider greenhouse gas emissions (either domestic or global) and their impact on maintaining a safe climate - or any other Matters of National Environmental Significance - when deciding whether to approve or reject project proposals.¹

The Act's scope focuses very narrowly on direct and close-by ("proximate") environmental impacts - like chemicals being released into groundwater or animal habitats being bulldozed. It does not explicitly consider the broader environmental harm linked to the release of greenhouse gas emissions, which cause dangerous climate change.

This means that highly polluting projects - like coal, oil and gas facilities - can be approved despite their specific role in fuelling harmful climate change. The [burning of coal, oil and gas is by far the largest contributor to climate change](#), accounting for more than 75 percent of global greenhouse gas emissions and nearly 90 percent of all carbon dioxide emissions. The [science is clear](#) that developing any new coal, oil or gas projects will put a safe climate out of reach, because existing fossil fuel supplies are more than enough to push the world well beyond 1.5 degrees Celsius of warming. This will lead to more extreme weather, floods and fires like those already harming Australians and damaging our environment.

Since the EPBC Act was passed in 1999, dozens of high polluting projects - including fossil fuels - have been approved around Australia. Only one coal mine has been [blocked](#) under its assessment process, and this was not rejected because of the climate harm it would have contributed to.

¹ Environmental legal experts have argued the current powers provided by the EPBC Act give the Minister scope to reject proposed projects on the basis that climate change will adversely impact existing Matters of National Environmental Significance. This is currently being tested in the courts via a range of active cases against proposed fossil fuel projects. Regardless of whether the courts find this power already exists within the scope of the Act through these cases, more strongly codifying a requirement to consider climate impacts would ensure this is not left to interpretation by the Department and the Minister of the day.

Will the Government's proposed reforms help?

The Australian Government has released a [Nature Positive Plan](#) which steps out proposed reforms to the EPBC Act. This Plan is a response to the [independent review of the Act](#) by Professor Graeme Samuel, which found that the law is outdated, ineffective, and requires a systemic overhaul.

As part of this Plan, the Government has proposed some modest changes to how the Act deals with climate change. Their key proposed changes are:

- › Projects assessed under the Act will be required to provide estimates of emissions expected across the life of the project, including their approach to managing emissions in line with the government's commitments.

This will require reporting emissions released and removed from the atmosphere, including those generated as a direct result of an activity (Scope 1 emissions), and those from the consumption of energy (Scope 2 emissions). However, this will

not capture the largest source of greenhouse gas emissions - those caused by the burning of our exported fossil fuels by others (Scope 3). It is also not clear whether, and how, decision-makers will be required to take all forms of emissions into account for project assessments.

- › Regional plans, strategic assessments and other strategic plans developed under the Act will be required to consider climate change and include environmental adaptation and resilience measures. This may help in guiding decisions about what types of projects are put forward for assessment. But unless projects can be rejected on the basis of unreasonable climate impacts, this is unlikely to stop high polluting ones being approved.
- › The Government will improve information and climate-impact modelling, including publishing information on climate-exposed habitats, species and places under different climate scenarios. This is intended to help inform project proponents and communities about the types of development that may be feasible in a changing climate.



Maintaining a safe and liveable climate should be at the centre of decision-making about all environmental approvals.

Australians are already experiencing the harmful impacts of climate change in turbocharged fires, floods and extreme weather. The environment that supports us all has been catastrophically damaged by these events as well, with billions of animals and insects killed and millions of hectares of habitat lost. This is threatening lives and livelihoods by wrecking the ecosystems we all depend on. The problem will only get worse if we don't act now to rapidly cut emissions this decade, so preventing more harmful climate change must be front and centre in decision-making about new projects.

The Government's proposals fall short of this, with critical gaps leaving far too much room for high polluting projects to continue to be approved.

In particular, the proposals do not capture the full lifetime emissions created by new projects. In the case of coal, oil and gas projects, emissions from

direct operations (Scope 1) and electricity use (Scope 2) are just a fraction of the emissions that result from their coal, oil or gas being used by others (Scope 3). No matter where they are burned in the world, these products cause dangerous climate change which damages our environment. So it makes sense that these emissions should also be reported and addressed when assessing projects under the EPBC Act.

The proposed changes to the Act also fail to establish a clear, proactive requirement for decision-makers to take greenhouse gas emissions into account when assessing proposals, and reject them if these are too high. Under the Paris Agreement, the Australian Government has committed to work to keep global temperature rise as close as possible to 1.5 degrees Celsius. It has also passed the *Climate Change Act 2022* which commits Australia to achieving a 43 percent reduction in emissions (on 2005 levels) by 2030, and reforms to the Safeguard Mechanism which have established a hard carbon budget for Australia's heavy industrial sector. Considering the impact of proposed projects against these carbon budgets should be a minimum requirement for an effective assessment process.



How should the EPBC Act be reformed to deal with climate harm?

As the most significant threat to our environment, climate needs to be embedded throughout an updated EPBC Act. The following improvements should be a priority:

- › **Make maintaining a safe and liveable climate an object of the Act:** The objects of the Act set out what it seeks to achieve and provide an overarching framework for actions taken under it. The objects should directly acknowledge the need to hold global warming as close as possible to 1.5 degrees Celsius to avoid catastrophic impacts on communities and all Matters of National Environmental Significance. All decisions taken under the Act should be explicitly required to be consistent with its objects.



- › **Make maintaining a safe and liveable climate a Matter of National Environmental Significance:** The current Act identifies [key environmental matters](#) in need of protection - such as nationally threatened species, protected wetlands and the Great Barrier Reef. A safe and liveable climate should be added to this list because it is an essential foundation for all life. In the same way that we protect habitats so that threatened species can survive, we must maintain a safe and liveable climate so that all of us can thrive - humans, animals and plants alike. At the moment, projects producing a large amount of greenhouse gases *may* be assessed because of their impact on other Matters of National Environmental Significance, but our climate is not a protected matter in its own right. A requirement to assess projects for their impact on maintaining a safe and liveable climate could be based on greenhouse gas emissions thresholds equivalent to those already used in other Commonwealth legislation, such as the [National Greenhouse and Energy Reporting Act 2007](#) or the [Safeguard Mechanism](#). Aligning thresholds would ensure that where projects will be subject to emissions-based requirements or restrictions under other Commonwealth legislation, this is identified and considered upfront in the EPBC assessment process.
- › **Require assessment of carbon budgets when considering emissions impacts:** Scientific analysis provides clear advice on the available carbon budget remaining to hold warming as close as possible to 1.5 degrees Celsius - in line with Australia's commitment under the Paris Agreement. Within Australia, the *Climate Change Act* and the Safeguard Mechanism reforms have both also established specific domestic carbon budgets for the years to 2030, with further updates to be provided for future years. Keeping greenhouse gas emissions within science-based global and domestic carbon budgets is now essential for maintaining a safe and liveable climate. The improved Act should

require all emissions from proposed projects to be assessed against these budgets - including expansions of existing projects. If a project cannot be accommodated within these budgets, this should provide grounds for rejecting it. This will be enabled by disclosure of full lifetime emissions and cumulative impacts, discussed below.

- › **Ensure disclosure of full lifetime emissions and cumulative climate impacts:** Proponents should be required to provide information on all Scope 1, 2 and 3 emissions - domestic and international - as part of proposals for new and expanded projects. This should form part of a thorough climate impact statement which addresses the cumulative project impact over its full expected lifespan. Importantly, this should be required to address impacts beyond those which are direct and proximate to the specific project location because climate change does not affect any single place or region alone. These emissions and climate impact assessments should be prepared according to a set methodology established in consultation with scientific experts, which include consideration of carbon budgets (see above). The company directors of any commercial entity proposing a development should be required to vouch for the accuracy and truthfulness of statements made within these assessments.
- › **Reject carbon offsetting and unproven technologies as an acceptable basis for Environmental Management Plans:** As part of the EPBC Act assessment process, project proponents must submit Environmental Management Plans explaining how they will address any environmental harm or damage caused by their

project. In recent years, some massive fossil fuel projects have been approved based on heroic promises to state and federal governments to capture carbon emissions through unproven technologies like carbon capture and storage (CCS). Chevron's massive Gorgon gas project is one example - the corporation promised to capture up to 80 percent of all emissions produced by Gorgon. It then took [three years](#) to even have the CCS facility operational, a time when the Gorgon plant was operating and polluting at full capacity. Since then it has consistently captured [less than half](#) the harmful pollution than was promised. Even if they worked perfectly, CCS projects are only designed to capture direct (Scope 1) emissions - they do nothing to address the much larger emissions created by the end use of fossil fuels.

Fossil fuel companies also frequently rely on the purchase of carbon offsets to claim that they are managing the environmental impact of their operations. Unfortunately, it's simply not possible to fully offset billions of tonnes of greenhouse gas emissions from burning coal, oil and gas by regrowing forests, increasing the amount of carbon in soils or other measures.²

High emitting projects should not be allowed to proceed where proposed Environmental Management Plans for addressing their climate impacts are based primarily on offsetting, or rely on technologies like carbon capture and storage. This is simply a recipe for more harmful greenhouse gas emissions, and unchecked climate damage.

² Read Climate Council's explainer on why offsets are not the answer to fossil fuel emissions here: <https://www.climatecouncil.org.au/why-offsets-cant-save-us/>



› **Put project approvals in the hands of an independent agency:** The Federal Government has committed to establish Australia's first independent Environment Protection Agency (EPA). This new agency should be tasked with assessing projects under the Act, removing the current requirement for the Environment Minister to approve or reject them. This is important for ensuring that assessment decisions are based on independent analysis, free of political considerations. Decisions by the independent EPA should be subject to third-party merits review, allowing community members and other affected people to challenge approval decisions on their substance - not just the process for making them.

Together, these changes would deliver a strong and effective national environmental law that properly addresses climate harm for the first time.

It is essential these proposals are implemented alongside positive changes to protect Australia's biodiversity and end the current extinction crisis. Only by addressing climate change and biodiversity together can we protect Australia's natural environment for future generations.

Climate Council supports the priority proposed reforms to protect biodiversity and nature developed by the Australian Conservation Foundation and the Places You Love Alliance. The Australian Government should pursue climate and nature reforms holistically through this once-in-a-generation update to national environmental law.



PRIORITY #2

SAYING YES TO PROJECTS THAT WILL GROW OUR CLEAN ECONOMY

Renewable energy, critical minerals and clean manufacturing can power the next era of Australia's prosperity as we move away from fossil fuels to tackle harmful climate change. These emerging industries will create new jobs and bright opportunities for communities around the country. Major projects in these sectors sometimes need approval under federal environment law, so the EPBC Act should be set up to efficiently facilitate them where these can be delivered without major harm to our environment or climate.

Where are the gaps in how the current Act deals with clean economy projects?

One of the major criticisms of the current EPBC Act is that its assessment processes take too long and provide too little certainty for project proponents. With the average time taken to assess some types of projects being [more than three years](#), this can leave businesses in limbo and facing significant costs.

Australia is racing to deliver new renewable energy generation capacity to decarbonise the energy system and enable the closure of high polluting fossil fuel power generators. Around an additional [57 GW](#) of renewable energy generation will be needed by 2030 to meet the Federal Government's target of sourcing 82% of Australia's electricity from renewables. Even more new generation will be needed to fully decarbonise our energy and transport systems at the same time as achieving a grid that is wholly powered by renewables.

Large-scale solar and wind projects, together with new transmission infrastructure, often require approval under the EPBC Act because they impact Matters of National Environmental Significance like animal habitats or Commonwealth land. Similarly, for Australia to achieve our potential in the production and export of renewable hydrogen, critical minerals and products like green steel and cement, an expansion of next-generation mining and manufacturing will be required.

It is important that our environment laws are set up to provide clear and efficient guidance to proponents about the status of proposed projects. The goal should be a quick rejection of projects that will clearly damage our environment and the climate, and an efficient assessment and approval for those which support our transition to a clean economy without harming our environment.

Will the Government's proposed reforms help?

A key reform proposed by the Government's Nature Positive Plan is the introduction of regional planning. This will classify areas according to their environmental significance, and provide clear guidance about what activity can take place on this basis. This will include establishing areas of:

- › High Environmental Value, where the government has indicated development will largely be prohibited;
- › Moderate Environmental Value, where development will be allowed subject to an approval process; and
- › Development Priority Areas, where development can proceed following state or territory government approval, without requiring a separate Commonwealth approval under the EPBC Act.

Regional planning has the potential to provide significantly more clarity about where projects can and cannot proceed, sending clear signals to proponents and speeding up assessments. But this approach is intended to apply across the board, and will not take account of the types of projects being proposed. There is an opportunity to go further to ensure that where clean economy projects are proposed in locations or with delivery methods which minimise environmental impact, these can be approved efficiently.

How should a reformed EPBC Act engage with clean economy projects?

It is essential that all proposed projects receive a level of scrutiny and assessment appropriate to the risk they pose to our environment.

Like any project, clean economy projects should not encroach on Australia's high-value ecosystems and habitats. Blanket carve-outs for certain types of projects are unlikely to deliver positive environmental outcomes or foster community trust in the EPBC Act assessment process.

A reformed EPBC Act and assessment processes could be updated in key ways to effectively recognise the urgency of transitioning Australia's economy and seizing the opportunities created by the world's drive towards net zero. We should aim to accelerate projects which can underpin decarbonisation and the sustainable growth of new essential industries wherever this can be done without compromising the core environmental, social and cultural values the Act should protect. The following changes should be pursued in consultation with communities and industry:

- › **Make better use of strategic assessments for future focused industries:** The current Act provides the ability for governments to assess a broad set of actions and developments under a single process. This differs from the project-specific process used to assess most EPBC actions. Strategic assessments allow for bigger picture planning of actions that may be taken over time and through multiple different projects within a broad location - like large scale housing developments or industrial precincts. By undertaking a strategic assessment, the government identifies areas that are protected from development and where it will be allowed, the type of development allowed, and any conditions for its approval. At the moment, strategic assessments must be applied for - usually by other levels of government or the proponents of major projects. The Federal Government could instead initiate strategic assessments across Australia, to



proactively put in place the approvals needed for renewable energy and clean industry projects in areas where such initiatives will not negatively impact the local environment.

- › **Designate renewable energy and clean industry zones:** Some states and territories have designated renewable energy zones to map priority areas for the coordinated delivery of new energy infrastructure - like large-scale wind and solar projects, batteries and transmission lines. In its [Integrated System Plan](#), the Australian Energy Market Operator has mapped out recommended zones for delivery of renewable energy across the National Electricity Market, based on ideal delivery of a renewable energy grid. [Renewable Energy Industry Precincts](#) (REIPs) have also been proposed as a way of consolidating low and zero emissions manufacturing in existing industrial communities - often in regional Australia. There is a strong opportunity to re-purpose areas and precincts where environmental damage has already occurred through earlier industrial activities, to avoid causing further harm elsewhere. For example, this could see critical minerals processing and green

manufacturing facilities co-located to benefit from access to cheap, renewable energy and shared infrastructure to minimise environmental impact.

These approaches could be integrated with the EPBC Act assessment process, through the identification of suitable areas for renewable energy and clean industry development within Development Priority Areas and Moderate Environmental Value areas. Projects proposed within these zones could then be subject to an expedited EPBC approval process where one is required. These zones could be more specific than areas covered by strategic assessments (see above) to encourage consolidation of new infrastructure and industries where it will have the least environmental impact.

- › **Designate national priority sectors for assessment:** When establishing the new independent Environmental Protection Agency, the Federal Government could identify national priority sectors, and provide dedicated resources to the Agency for assessment of projects within these sectors. This would ensure that renewable energy and fuels, critical minerals and clean

manufacturing projects can be assessed by a dedicated team which is resourced to ensure efficient processing of EPBC Act referrals. Statutory timeframes under the Act could also be revised for these priority sectors, so that proponents can get an answer on their projects sooner.

- › **Provide clear project design guidance for projects in priority sectors:** Project proponents should be encouraged and enabled to pursue projects which minimise environmental and climate impact through detailed design guidance. The Australian Government should work with industry to identify best practice in the avoidance and management of these impacts, and publish guidelines to inform project design for key industries like green hydrogen, steel and cement; different types of critical minerals mining; and renewable energy. Proponents could be encouraged to meet particular standards for the avoidance of environmental harm - for example through the deployment of particular technologies, building techniques or materials, energy sources and management of waste and pollutants. Where they can demonstrate that a project aligns with this best-practice design guidance and where the project will be delivered within areas of low or moderate environmental impact, approval could be expedited under the EPBC Act.

Growing Australia's clean economy is an urgent priority to power the next era of national prosperity beyond fossil fuels. This calls for efficient assessment processes which are geared towards protecting the environment while growing new jobs and economic opportunities wherever this can be done in a safe and sustainable way.

What are the next steps for fixing Australia's national environment law?

The Australian Government is currently developing draft legislation for an improved EPBC Act, based on the proposals in its *Nature Positive Plan*. The Climate Council recommends the Government go further by including the reforms outlined in this briefing note within its Bill. This will set Australia up to meet and go further than the Government's emissions reduction commitments, and tackle the interlinked climate and biodiversity crises we now face.

We have a once-in-a-decade opportunity to fix our national environment law, during this critical window for action to prevent the worst impacts of harmful climate change. This can be a reform that delivers a lasting legacy for Australia's environment and global action on harmful climate change, if we get it right.

MORE INFORMATION

For more information on the Climate Council's position on effective reform of the EPBC Act, please contact:



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