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# Submission to the Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022

The Australian Conservation Foundation (ACF) welcomes the opportunity to provide a submission to the Senate Environment and Communications Legislation Committee's inquiry into the Environment Protection and Biodiversity Conservation Amendment (Climate Trigger) Bill 2022.

ACF is Australia's national environment organisation. We are over 700,000 people who speak out for the air we breathe, the water we drink, and the places and wildlife we love. We are proudly independent, non-partisan and funded by donations from our community.

## Introduction – The Need to Address Climate Change in the EPBC Act

The *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the primary national legislation in Australia to ensure the protection of nature. However, as the Samuel Review found, the EPBC Act has been failing to achieve its objectives and is in need of fundamental reform. Strong, legally enforceable National Environmental Standards, and a well-resourced, independent Environment Protection Agency, should be the cornerstone of these reforms and must provide the framework under which all other reforms are implemented. Another important component of these reforms will be to amend the EPBC Act to ensure that it clearly and explicitly considers and addresses climate impacts on nature in its decision-making processes. The significant risk that climate change poses to Australia's environment needs to be embedded throughout the Act, including in the Act's objects, planning provisions, and assessment and approval processes.

The EPBC Act currently does not clearly or explicitly address climate change, or explicitly require greenhouse gas (GHG) emissions to be considered in the assessment of proposed projects. Environmental assessment under the EPBC Act requires evaluation of a proposal's impact on 'matters of national environmental significance' (MNES). GHG emissions are relevant as the leading cause of climate change, which is seriously impacting many MNES. There is a need to ensure that the consequences of GHG emissions are considered by the Minister in decisions made under the EPBC Act, and that this is a clear requirement of the EPBC Act. A 'climate trigger' could help to provide clarity and certainty in this regard.

The Bill's proposed 'climate trigger' would require proponents of projects that will emit over 25,000 tonnes of carbon dioxide equivalent (tCO<sub>2</sub>e) emissions in any 12 month period to obtain approval under the EPBC Act from the Commonwealth Environment Minister. This will trigger an assessment of whether the emissions profile is consistent with Australia's carbon budget and achieving emissions reduction targets. If the project is approved, conditions could be attached to that approval to control emissions. The Bill further proposes to prevent the Minister from approving actions that would emit above 100,000 tCO<sub>2</sub>e emissions in any 12-month period.



## Recommendations

- 1. The EPBC Act needs fundamental and comprehensive reform, which should include the introduction of strong, legally enforceable National Environmental Standards and a well-resourced independent Environment Protection Agency.*
- 2. The EPBC Act should require all referrals to set out an action's emissions profile as part of the assessment process. The Act should require that the action, when undertaken, may not unreasonably exceed the emissions figures provided to the Minister in the assessment documentation (upon which the Minister relied when deciding whether to approve or refuse approval). This should occur regardless of whether a climate trigger is included in the EPBC Act.*
- 3. The EPBC Act should be amended to ensure that climate change is clearly and explicitly addressed in the Act, including in the objects, the listing and planning provisions, and the assessment and decision-making processes.*
- 4. ACF supports the Bill's proposed climate trigger threshold which would capture all projects emitting over 25,000 tonnes of CO<sub>2</sub>e emissions.*
- 5. ACF recommends that the EPBC Act and the proposed climate trigger be amended to explicitly and clearly require the impacts of scope 3 emissions to be assessed and addressed.*
- 6. ACF recommends that the Bill's proposed prohibition on projects emitting over 100,000 tonnes of CO<sub>2</sub>e emissions be restricted to new fossil fuel (coal, oil and gas) developments.*



## Overview of the Bill

Under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the federal government currently examines whether new projects<sup>1</sup> are likely to have a significant impact on “matters of national environmental significance” (MNES). If so, the environmental impact assessment and approval scheme is “triggered” in relation to that project. There are currently nine MNES:

- world heritage areas.
- national heritage places.
- wetlands of international importance (listed under the Ramsar Convention).
- listed threatened species and ecological communities.
- listed migratory species (protected under international agreements).
- Commonwealth marine areas.
- Great Barrier Reef Marine Park.
- nuclear actions (including uranium mines).
- water resources (that relate to coal seam gas development and large coal mining development).

The Explanatory Memorandum to the Bill states that there is a ‘clear policy gap in that emissions-producing activities are currently not considered a matter of national environmental significance under the EPBC Act’ The EPBC Act does not currently specifically mention climate change or greenhouse gas emissions, nor reference Australia’s obligations under the UNFCCC.

The Bill proposes to amend the EPBC Act to introduce a climate ‘trigger’ to contribute to Australia fulfilling its obligations under the Climate Change Conventions through environmental assessment of emissions-intensive activities. In summary, the Bill would:

- establish a new class of a ‘controlled action’ under the EPBC Act for actions that are likely to have a ‘significant impact on emissions’:
  - actions which would emit over 25,000 tonnes of carbon dioxide equivalent emissions<sup>2</sup> in any 12-month period would be assessed for approval under Part 9 of the Act. In deciding whether to approve such actions, the Environment Minister must consider Australia’s national carbon budget and greenhouse gas emissions reduction targets.

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<sup>1</sup> Or, more accurately, ‘actions’ which are generally defined as a project, development, undertaking, activity or a series of activities, or an alteration of any of these (sections 523–524A of the EPBC Act). Existing activities do not require approval, although a substantial change such as an enlargement, expansion or intensification of that activity may require approval (sections 43A and 43B).

<sup>2</sup> Proposed clause 527F of the Bill provides that ‘emission’ means the release of greenhouse gas into the atmosphere as a direct result of the action, including any activities (such as land clearing) preparatory to the action; and any activities ancillary to the action. The Explanatory Memorandum suggests that this is limited to scope 1 emissions (see p. 2).



- The Minister must not approve actions that would emit above 100,000 tonnes of carbon dioxide equivalent emissions in any 12-month period (which would be a ‘prohibited impact on emissions’).
- prohibit the Minister, subject to certain exceptions, from using alternative approval processes (such as bilateral agreements or bioregional plans) for certain emissions intensive actions.
- require the Climate Change Authority to develop a national carbon budget to 2050 and to annually assess the budget
- require the Minister to take the national carbon budget and achieving Australia’s nationally determined contribution into account when deciding whether to enter into a conservation agreement, and for these considerations to inform the development of regional plans.

## Broader EPBC Reforms and Samuel Review

### Need for fundamental reform of the EPBC Act

***Recommendation 1: The EPBC Act needs fundamental and comprehensive reform, which should include the introduction of strong, legally enforceable National Environmental Standards and a well-resourced independent Environment Protection Agency.***

There are several reforms needed to ensure the EPBC Act is fit for purpose, of which the introduction of a climate trigger is just one. The EPBC Act is Australia’s key national legislation for protecting the environment and biodiversity. However, multiple recent reviews, including the Samuel Review (2021), have found that it is not effective in delivering improved outcomes for biodiversity, or in arresting biodiversity declines. The Samuel Review concluded that the EPBC Act needs fundamental reform as it is ‘outdated’, ‘ineffective’ and ‘not fit to address current or future environmental challenges’, and that ‘Australians do not trust that the EPBC Act is delivering for the environment, for business or for the community’.

ACF welcomes the government’s commitment to respond to the Samuel Review by the end of this year, and to introduce an Environment Protection Agency. There is no doubt that the Australian Government needs to fundamentally reform the EPBC Act. Strong environment laws should genuinely protect and restore nature, including by preventing habitat destruction. Strong, legally enforceable National Environmental Standards should be the cornerstone of the reforms required to deliver environmental outcomes under the EPBC Act and must provide the framework under which all other reforms are implemented. Institutional reforms, including a well-resourced independent regulator, are also essential to ensure that the EPBC Act can be trusted to deliver the environmental outcomes required.

As outlined below, another important component of reforms of the EPBC Act would be to ensure that climate change is clearly and explicitly considered and addressed in the Act.

### Impacts of climate change

One of the biggest threats facing Australia’s environment is the impact of climate change. As outlined in the recent *State of the Environment Report 2021* (Australian Government 2022), our biodiversity is declining, the number of species listed as “threatened” is increasing and many Australian ecosystems are experiencing cumulative and compounding pressures, leading to collapse. At least 19 Australian ecosystems have been reported to show signs of collapse or near-collapse as a result of multiple pressures, including habitat destruction, climate change, and



invasive species. Many of the pressures outlined in previous State of the Environment reports – climate change, habitat destruction and invasive species – are becoming worse and creating cumulative impacts that amplify threats to species and ecosystems. Climate change and extreme weather events are becoming increasingly important as direct drivers of changes in biodiversity.

The Samuel Review recognised that key threats to the environment are not effectively addressed under the EPBC Act. There is very limited use of comprehensive plans to adaptively manage the environment on a landscape or regional scale. Samuel (2020) also points out that there is no avenue for quickly listing newly threatened species in response to natural disasters, that addressing the challenge of adapting to climate change is an implied, rather than a central consideration, and that fundamental reform of national environmental laws is required. At the same time, the *State of the Environment Report 2021* states that “the timelag between a change in global emissions and resultant changes in the climate means that the climate change that will occur over the next 20–30 years is responding to greenhouse gas emissions that have already taken place”. Climate science further demands we front-end our emission reductions to reach Paris targets and reduce the need for adaptation. Having a climate trigger in the Act will reduce future adaptation costs.

The Royal Commission into National Natural Disaster Arrangements (Commonwealth of Australia 2020) noted that natural areas, habitat and species are affected by natural disasters, and that climate change is exacerbating such disasters. The inquiry report notes (in reference to the 2019-20 bushfires) “fires affected tens of millions of hectares of land, covering native forests and grasslands that serve as wildlife habitat and house ecosystems”, that “no bushfires on record have burnt more forest and woodland habitats within a season”, and that “the affected areas include sites that are recognised and protected under the EPBC Act for their significant ecological and heritage value”. The report also states “wildlife and ecology experts have predicted serious, long-term, adverse effects on biodiversity”, notes “climate change has already increased the frequency and intensity of extreme weather and climate systems that influence natural hazards”, that “natural disasters have changed, and it has become clear to us that the nation’s disaster management arrangements must also change”, that “further global warming over the next 20 to 30 years is inevitable”, and that “floods and bushfires are expected to become more frequent and more intense”. It is clear that increased emissions are causing impacts on MNES and that these are becoming harder to manage. Not only will prohibiting high emission projects contribute to reducing impacts on natural areas, but it will also reduce climate risk, adaptation and management costs.

Despite the evident threat, the EPBC Act currently fails to effectively and clearly address these climate change impacts.

### How is climate change currently addressed in the EPBC Act?

The EPBC Act in its current form also does not clearly or explicitly address climate change, or explicitly require greenhouse gas (GHG) emissions to be considered in the assessment of proposed projects. Environmental assessment under the EPBC Act requires evaluation of a proposal’s impact on MNES. The GHG emissions of a project are relevant to the assessment because human produced GHG emissions are the leading cause of climate change, which is seriously impacting many MNES.

### Disclosure of greenhouse gas emissions

***Recommendation 2: The EPBC Act should require all referrals to set out the action’s emissions profile as part of the assessment process. The Act should require that the action, when undertaken, may not unreasonably exceed the emissions figures provided to the Minister in the assessment documentation (upon which the Minister***



***relied when deciding whether to approve or refuse approval). This should occur regardless of whether a climate trigger is included in the EPBC Act.***

The Samuel Review recognised that climate change is a ‘significant and increasing threat to Australia’s environment’ and considered that:

*... there is merit in mandating proposals required to be assessed and approved under the EPBC Act or by an accredited party (due to their impacts on nationally protected matters), to transparently disclose the full emissions profile of the development. The Act should also require that development proposals explicitly consider the effectiveness of their actions to avoid, mitigate or offset impacts on nationally protected matters under specified climate change scenarios. (Samuel Review, p. 5).*

The Samuel Review recommended that National Environmental Standards should be introduced under the EPBC Act to provide clear rules and improved decision-making (Samuel Review, recommendation 3). The Samuel Review also recommended that those Standards should require proposals to:

- explicitly consider the likely effectiveness of avoidance or mitigation measures on nationally protected matters under specified climate change scenarios (recommendation (2)(a))
- fully disclose all potential emissions as part of the assessment process under the EPBC Act (recommendation (2)(b)).

In addition to this, ACF considers that climate change needs to be systematically considered and strongly integrated in all decision-making and planning functions of the EPBC Act, as outlined below.

#### **Key climate-related amendments to the EPBC Act**

***Recommendation 3: The EPBC Act should be amended to ensure that climate change is clearly and explicitly addressed in the Act, including in the objects, the listing and planning provisions, and the assessment and decision-making processes.***

ACF welcomes the Bill’s proposed amendments to require the Climate Change Authority to develop a national carbon budget to 2050 and to assess the remaining budget annually. Similarly, we support the Bill’s proposed amendments to require the national carbon budget and emissions reduction target considerations to be taken into account by the Minister when deciding whether to enter into a conservation agreement, and for these considerations to inform the development of regional plans. According to the Explanatory Memorandum, this is ‘designed to provide for the impacts of greenhouse gas emissions to be factored into planning considerations more broadly’ (see p. 3).

ACF considers that there are also other important amendments which could be made to the EPBC Act to ensure that climate change is systematically considered and strongly integrated in all decision-making and adequately addressed in the planning functions of the Act. These include

- amending the objects of the EPBC Act to specifically recognise:
  - the impact of climate change on MNES
  - the need to reduce emissions to protected threatened species and ecological communities, World Heritage sites, and other MNES



- the need to promote and support adaptation and resilience in the face of climate change and of the important contribution of biodiversity to climate change mitigation and adaptation
- ensuring that climate change considerations are incorporated into the proposed National Environmental Standards
- ensuring that listing and planning mechanisms under the EPBC Act account for climate change including:
  - specifically requiring climate change impacts to be addressed in recovery and threat abatement plans
  - providing for emergency or provisional listing of threatened species and communities to ensure the Act is more responsive to climate driven extreme weather events
  - adopting planning reforms recommended by the Samuel Review and ensuring that those planning reforms build resilience in a changing climate
  - requiring all relevant management plans and principles to address climate change impacts, including the Australian World Heritage Management Principles, World Heritage Area Management Plans, Australian Ramsar management principles and National Heritage management principles.

Finally, a comprehensive federal land-clearing trigger would ensure that Commonwealth efforts to preserve national biodiversity, reduce greenhouse gas emissions and achieve landscape-scale conservation are not undermined by a constantly changing patchwork of state land-clearing laws and policies. This would also help to address another important driver of climate change.

#### *Data, information and systems*

The Australian Government should also fully respond to the Samuel Review recommendations in relation to environmental monitoring, evaluation and reporting, and data, information and systems. If climate change is to be clearly addressed in the EPBC Act as outlined in this submission, then adequate data and information will be needed to support robust assessments and related decision-making under the Act. Another important component of improvements to environmental data, information and systems would be to develop a nationally consistent, timely and accurate vegetation monitoring program, such as a national equivalent of the Queensland Statewide Landcover and Tree Study (SLATS).

### **The Climate Trigger**

There is a long history of proposals for ‘greenhouse gas’ or climate triggers in the EPBC Act. The broad aim of any ‘climate trigger’ would be to ensure that the climate impacts of proposed projects are clearly assessed. There are many options for the design of such a trigger, which could be defined in terms of an emissions threshold (e.g. between 20,000 and 100,000 tonnes of carbon dioxide), or by reference to emissions intensive activities, or by a hybrid of these.

In this case, the Bill’s proposed ‘climate trigger’ would require proponents of projects that will emit over 25,000 tonnes of carbon dioxide equivalent emissions in any 12-month period to obtain approval under the EPBC Act from the Commonwealth Environment Minister. Proposed clause 527F provides that ‘emission’ means the release of greenhouse gas into the atmosphere as a direct result of the action, including any activities (such as land clearing) preparatory to the action; and any activities ancillary to the action. The Explanatory Memorandum suggests that this is limited to scope 1 emissions (p. 2).



This will trigger an assessment of the project's climate impacts, including whether the emissions profile is consistent with Australia's carbon budget and achieving emissions reduction targets. If the project is approved, conditions could be attached to that approval to control emissions.

ACF supports this proposal on the basis that the significant risk that climate change poses to Australia's environment, as demonstrated in the recent *State of the Environment Report*, needs to be explicitly embedded in the Act's assessment and decision-making processes. Both the *State of the Environment Report* and the Samuel Review make it clear Australia's natural environment is suffering under climate change, either directly or compounded, and that the EPBC Act is failing to achieve its objectives. This is in part because of climate change impacts and the Act's inability to clearly address climate risks on natural environments. For example, the Samuel Review concluded that '*The Australian environment faces significant future pressures, including land-use change, pollution, habitat fragmentation and degradation, and invasive species. Climate change will continue to exacerbate these impacts and contribute to ongoing decline*'. The Samuel Review further observes that "*reserves and protected areas alone are unlikely to provide adequate protection for species and communities in the face of future pressures such as climate change*", and that "*our oceans face significant current and future threats from climate change and human activity*" (p. 41).

The Samuel Review did not support a climate trigger on the basis that reducing emissions is best left to other specific Commonwealth policy mechanisms, and that these specific mechanisms, not the EPBC Act, are the appropriate way to place limits on greenhouse gas emissions.<sup>3</sup> However, ACF's view is that there is a significant gap in the EPBC Act itself because it does not clearly or explicitly address climate change. There is currently no other Commonwealth policy mechanism which ensures that the climate impacts of new or expanded projects are clearly considered and addressed prior to their construction and operation.

ACF considers that ensuring climate change is clearly addressed in the EPBC Act via a climate trigger is a sensible complement to existing Commonwealth policy.

### Thresholds

***Recommendation 4: ACF supports the Bill's proposed climate trigger threshold which would capture all projects emitting over 25,000 tonnes of CO<sub>2</sub>e emissions.***

The Safeguard Mechanism, which is currently under review, regulates facilities emitting over 100,000 tonnes of scope 1 (direct) CO<sub>2</sub>e emissions each year. The Safeguard Mechanism does not aim to assess the environmental impact of projects over 100,000 tonnes. Rather, it regulates the scope 1 emissions of around 215 facilities through use of CO<sub>2</sub>e emission baselines and only represents 28% of Australia's domestic emissions. ACF has recommended that the safeguard mechanism threshold be reduced to 25,000 tonnes of scope 1 (direct) CO<sub>2</sub>e emissions to enhance the reach and impact of the safeguard mechanism, and to cover industrial emissions that are currently unregulated.

The Safeguard Mechanism has historically been an ineffective policy mechanism that has not been used to drive down the emissions of Australia's biggest industrial polluters. The current review is intended to enhance the Safeguard Mechanism and turn it into a more effective policy, but it will remain focused on CO<sub>2</sub>e emissions and will not take the place of a climate trigger under the EPBC Act.

As noted, the environmental impacts of new projects on MNES are not currently clearly required to be assessed before they are regulated under the current Safeguard Mechanism and will not be included in the enhanced Safeguard Mechanism despite potential special treatment for new projects under the scheme. ACF therefore

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<sup>3</sup> Samuel Review, p. 47.



supports the Bill’s proposed climate trigger threshold, which would capture projects emitting over 25,000 tonnes of CO2e emissions, and would ensure that the impacts of these projects are clearly required to be assessed and addressed under the EPBC Act.

### Scope 3 Emissions

**Recommendation 5:** *ACF recommends that the EPBC Act and the proposed climate trigger be amended to explicitly and clearly require the impacts of scope 3 emissions to be assessed and addressed.*

As noted earlier, the Explanatory Memorandum suggests that the Bill’s proposed climate trigger is limited to scope 1 (direct) emissions. ACF considers that the scope 3 emissions of projects also need to be considered and addressed. Scope 3 emissions, generated by products exported by Australia, lead to impacts in Australia and on Australia’s ecosystems and wildlife.

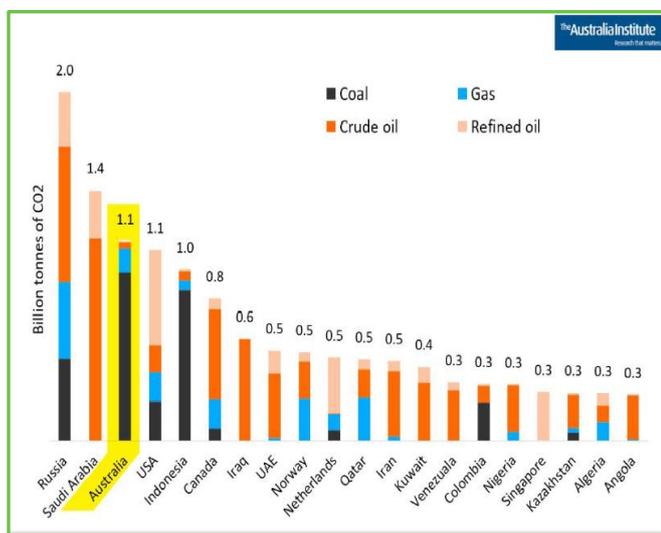


Figure 1: World’s biggest fossil fuel exporters, CO2 Gt potential of exports (Source TAI 2019)

The EPBC Act’s purpose is to protect Australia’s ecosystems and species of national importance. Climate change is known to be a major threat to MNES. No matter where in the world emissions from Australian products are accounted for, they will affect Australian MNES because climate change is global. Therefore scope 3 emissions should be assessed under the EPBC Act. As a globally significant exporter of coal and gas (see Figure 1), Australia must consider the impacts of our own proposed projects and their products on MNES.

For example, a proposal to export gas to be used and burnt in other nations will contribute to global climate change and impact places like the Great Barrier Reef and other MNES. This is a particularly important responsibility for Australia given our contribution to global emissions and warming through our coal and gas

exports. If the Environment Minister approves projects under the EPBC Act, which will increase global CO2 levels, this will have detrimental impacts on Australia’s ecosystems and will ultimately fail to uphold the objects of the EPBC Act.

### Prohibited impact on emissions

**Recommendation 6:** *ACF recommends that the Bill’s proposed prohibition on projects emitting over 100,000 tonnes of CO2e emissions be restricted to new fossil fuel (coal, oil and gas) developments.*

The Bill also provides that the Minister must not approve actions that would emit above 100,000 tonnes of carbon dioxide equivalent emissions in any 12-month period (which would be a ‘prohibited impact on emissions’). This would mean that high emitting projects are treated similarly to certain nuclear projects under the EPBC Act, such as nuclear power plants, where the Minister is forced to reject the project.

- ACF supports the intention behind this provision in the Bill, which is to prevent new or expanded coal, oil and gas projects. A similar approach to that relating to certain nuclear installations (s140A) could be adopted. We note that the International Energy Agency (IEA) has found that there is no room for new oil,



gas or coal projects to keep warming below 2 degrees (IEA 2021). However, ACF suggests that the full implications of this provision as drafted will need to be carefully considered to ensure there are no unintended consequences on projects needed to support the transition to a clean economy, such as green steel.

- Prohibiting developments projected to emit greater than 100,000 tonnes CO<sub>2</sub>e would also reduce the number of new entrants into the enhanced Safeguard Mechanism and help limit their share of the Safeguard Mechanism’s aggregate baseline. To the extent that new entrants are allowed a share of Safeguard Mechanism’s aggregate baseline, facilities currently captured under the Safeguard would need to be given higher baselines and faster decline rates to stay within the Safeguard’s aggregate baseline. Other options that could be built into policy architecture could include:
  - Applying options proposed for the Safeguard Mechanism: e.g., must meet best in class industry benchmark for projected emissions intensity (e.g. calculated as the average emissions intensity of the top 10% of Australian industry performance).
  - Require projects to be consistent with IEA net zero pathway (which says there is no room for new oil coal and gas).

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