

Submission on the Consultation Paper

for the possible Greenhouse Trigger

under the

Environment Protection and Biodiversity Conservation Act 1999

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National Environmental Defender's Office Network

The following comments constitute a brief submission by the Environmental Defenders Offices Network (EDO Network) on the establishment of a possible 'greenhouse' trigger under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The need for a climate change trigger

We welcome the development of such a trigger in principle. However, as currently proposed, it is clear that such a trigger will be much too narrow to be effective. If Australia, as a responsible actor on the international plane, is to meet its international obligations, the proposed trigger must comprehend all aspects of climate change, and not merely greenhouse gas emissions. As discussed in more detail below, the proposed trigger needs to include the regulation of not only greenhouse gas emissions, but also the preservation and development of greenhouse gas sinks.

We express our strong support for the creation of an effective "climate change trigger" under the EPBC Act. The omission of such a trigger from the original Act has been a serious defect in a law purporting to regulate matters of national environmental significance. As the Consultation Paper itself notes, the potential risks of climate change do not observe the political boundaries of the States and Territories, or indeed, even the boundaries of countries.

Accordingly, if Australia is to meet its international obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol (which having signed, Australia should ratify), it is essential that regulation of all significant climate change actions be regulated at a Commonwealth level. Preferably, the new greenhouse trigger would be created by a direct amendment of the EPBC Act. Less ideal, would be the use of section 25 to make a regulation proscribing defined "greenhouse actions" without an approval under Part 9 of the Act.

The narrow application of the proposed trigger

We are deeply concerned that the Consultation Paper only anticipates a very narrow and limited greenhouse trigger.

The "new projects" limitation

The Consultation Paper indicates that the new trigger will only apply "in relation to **new** projects that would be major emitters or greenhouse gases". If the new trigger is to be effective, its coverage must be much more inclusive.

At a minimum, the major expansion of existing greenhouse gas emitting projects needs to be included within the ambit of the trigger. Failure to do so will result in an obviously incomplete regulatory framework. More importantly from an economic perspective, failure to include the major expansion of existing projects will result in an unfair competitive advantage for unlimited expansion of greenhouse gas emissions for existing industry. Surely new industry is entitled to have the major modification or expansion of existing greenhouse gas emitting projects subject to the same approvals requirements.

The exclusion of sinks

It is deeply disturbing that significant climate change contributions caused by land use change and vegetation clearance are not even considered by the Consultation Paper. Indeed, Exhibits 1 and 2 of the Consultation Paper explicitly omit the statistical climate change contributions of these activities from consideration. This is despite that fact that the Consultation Paper concedes that emissions resulting from land clearing in Australia "are believed to contribute significantly to the amount of carbon in the atmosphere".

Clearly, effective regulation to combat climate change must include land use change and forestry, ***including land clearing***, within the compass of the proposed trigger. It is no excuse that "these [emissions] are currently difficult to quantify". To accept such an excuse - when the significant emissions caused by land clearing is explicitly recognised in the same breath - offends the dictates of the precautionary principle, which not only forms part of the National Strategy for Ecologically Sustainable Development, but has also been enshrined in Commonwealth environmental law under the EPBC Act. Indeed, Australia has recently argued in the Southern Bluefin Tuna cases before the International Tribunal for the Law of the Sea that the precautionary principle is binding on all countries as a norm of customary international law.

Carbon trading

The Consultation Paper is silent with respect to linkages that any prospective carbon-trading regime may have with the proposed trigger. We believe that any such linkages would be inappropriate. In particular, we strongly oppose the allowance of any carbon credits to be used in calculating the emissions threshold(s) to be used in activating the proposed trigger. For instance, it would be entirely contrary to the proposed regime to allow a "major emitter" to purchase or otherwise obtain carbon credits in pre-existing forests and plantations and then use those credits to reduce the emissions threshold in determining whether an approval under Part 9 of the Act is necessary.

Support for a hybrid trigger scheme

Provided that major greenhouse gas emission expansion of existing projects and significant land use change, including land clearing, are encompassed by the proposed trigger, the EDO Network generally believes that a hybrid approach is probably best suited for the trigger scheme.

The hybrid approach supported by the EDO Network would trigger EPBC Act Part 9 approvals for all projects on a designated development list (including expansion of existing projects and significant land use change, including land clearing), as well as any project that is captured by **any** metric threshold based on capacity, maximum annual emissions, cumulative emissions, or average annual emissions.

We believe that there is a potential for significant projects to "fall through the cracks" if reliance is placed on any single approach canvassed in the consultation paper. Accordingly, all methodologies should be employed in relation to any given project. If the project is captured by any of the approaches, an EPBC Act Part 9 approval must be obtained.