



Australian Network of Environmental
Defender's Offices Inc

Energy White Paper Taskforce
Australian Government Department of Industry
Canberra ACT

By email: EWP@industry.gov.au

Dear Taskforce,

ANEDO Submission on the Energy Green Paper 2014

The Australian Network of Environmental Defender's Offices Inc (**ANEDO**) welcomes the opportunity to comment on the Australian Government's *Energy Green Paper 2014*. Consistent with our role as public interest environmental lawyers across Australia, our comments focus on regulatory, environmental and climate change aspects of Australia's energy policy.

ANEDO made a detailed submission on the *Issues Paper to inform the development of a White Paper* in February 2014. The majority of the issues raised in ANEDO's prior submission remain unaddressed. Accordingly, we reiterate and **attach** those comments, including **20 recommendations** to integrate environmental factors into energy policy and decision-making.ⁱ An integrated approach acknowledges that 'the wellbeing of current and future generations of Australians depends on the continued availability of natural assets...'ⁱⁱ

In brief, the four main issues we believe the Energy White Paper must address are:

1. The goal to 'Streamline environmental and other approvals' (Green Paper, p 4) should instead aim to improve environmental, social and economic outcomes through appropriately robust regulation and public participation. As recent CSIRO research notes:ⁱⁱⁱ

... streamlining government approval processes may be perceived by the public as reducing the capacity of governments to hold the mining industry to account against its environmental impact commitments and conditions. Paradoxically, reducing the legislative and regulatory burden on industry... may simultaneously erode public confidence... [and] reduce the acceptance of mining more broadly...

2. Similarly, the goal to 'Bring on new gas supply as quickly as possible' should be reconsidered in light of the ANEDO recommendations, and the NSW Chief Scientist's review of coal seam gas (**CSG**) laws.^{iv} The Chief Scientist found CSG laws inadequate, and made 16 recommendations for a comprehensive overhaul. Restoring community trust requires robust laws in place before any expansion.
3. In line with Climate Change Authority findings, extend Australia's mitigation target beyond a 5% reduction by 2020, supported by appropriate regulatory measures.^v
4. Consistent with long-standing principles of ecologically sustainable development (**ESD**), environmental and health considerations must be fully integrated into energy regulation and policy-making (e.g. the National Energy Objective), funding allocations

(e.g. subsidies), legal decision-making processes (e.g. project approvals, conditions and monitoring), and research priorities (e.g. climate vulnerabilities, lifecycle emissions).^{vi} To improve decision-making and access to environmental information (Green Paper, p 4), governments should publish comprehensive data on energy subsidies (broadly defined), with a view to reducing those that are most environmentally harmful, and ensuring those responsible for pollution bear its costs.^{vii} This 'polluter pays' approach^{viii} is compatible with incentivising least-polluting technologies, including via the Australian Renewable Energy Agency (**ARENA**), Clean Energy Finance Corporation (**CEFC**) and Renewable Energy Target (**RET**). These mechanisms are essential components of the policy and regulatory framework.

From a community engagement perspective, the Green Paper notes that the 260 submissions on the Issues Paper 'helped to consolidate and prioritise concerns, and identify opportunities', and that 'four key themes emerged for this Green Paper.'^{ix} While there is no public summary of key issues raised in submissions, climate change risk is a priority that many stakeholders have raised consistently in a range of consultation processes. Climate change is not identified as a key theme, despite the significant challenges it presents for Australia's energy policy, regulatory framework, environment, economy and society.

This contrasts with the stated aim to develop 'An integrated approach to Australia's energy policy'. For example, the Green Paper (p ix) notes that it will integrate with other government policy such as the Direct Action Emissions Reduction Fund. In this context, we identify a range of other ways to integrate climate change risks and evidence into decision-making and regulatory frameworks.^x

The Green Paper (p vi) notes that the International Energy Agency (**IEA**) forecasts a one-fifth increase in demand for coal by 2035, and that 'Most energy analysts confirm that coal will continue to be a major source of global energy for decades to come.' However, under the IEA's central scenario for forecasting demand, greenhouse emissions 'correspond to a long-term average global temperature increase of 3.6°C.'^{xi} In 2013 the IEA made 4 key policy recommendations to limit warming to no more than 2°C.^{xii} This internationally-agreed limit would in itself have profound economic, social and environmental implications, which Australia's regulatory frameworks must plan for.

ANEDO's previous submission on the Energy Issues Paper is **attached**. A summary of our 20 recommendations is at page 1 of that submission. We trust that these recommendations are of assistance to the Department in finalising the Energy White Paper. If you require further information, please contact [nari.sahukar\[at\]edonsw.org.au](mailto:nari.sahukar[at]edonsw.org.au) or (02) 9262 6989.

Yours sincerely,
Australian Network of Environmental Defender's Offices



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References

- ⁱ The concept of *ecologically sustainable development* (ESD) requires the integration of environmental, social, economic and equitable factors in decision making. See for example, *Environment Protection and Biodiversity Conservation Act 1999* (Cth), ss 3-3A; and the *National Strategy for ESD* (1992).
- ⁱⁱ National Sustainability Council, *Sustainable Australia Report 2013*, 81.
- ⁱⁱⁱ Moffat et al. (CSIRO), *Australian attitudes toward mining: Citizen Survey – 2014 Results*, 14.
- ^{iv} See NSW Chief Scientist & Engineer, www.chiefscientist.nsw.gov.au/coal-seam-gas-review; ANEDO, *Submission on Draft Harmonised Regulatory Framework for CSG* (2013) available at: http://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/343/attachments/original/1380680356/130228CSG_draft_national_framework_ANEDO.pdf?1380680356.
- ^v *Reducing Australia's Greenhouse Gas Emissions: Targets and Progress Review—Final Report*. Climate Change Authority, February 2014.
- ^{vi} See, for example, *National Environment Policy Act 1969* (US) requirements for environmental impact assessment of *legislative proposals or policy actions* that may significantly affect the environment (*42 U.S. Code Ch 55 § 4332*); and US climate change guidelines/assessment protocols (see [Columbia University](http://www.columbia.edu/~c4/columbia-university)).
- ^{vii} Documenting and reducing fossil fuel subsidies is consistent with Australia's G20 and APEC commitments (see *Joint report by IEA, OPEC, OECD and World Bank on fossil-fuel and other energy subsidies*, 2011). Also, the US EPA uses a Social Cost of Carbon methodology to 'estimate the climate benefits of rulemakings': see www.epa.gov/climate/climatechange/EPAactivities/economics/scc.html; for discussions on the Australian context see The Climate Institute, *Counting all the costs* (2014).
- ^{viii} 'Polluter pays' is an element of ESD (*EPBC Act 1999*, s 3A(e), 'improved valuation').
- ^{ix} Green Paper, ix. Namely: 'Attracting energy resources investment' (Energy Green Paper, chapter 1); Electricity prices (ch. 2); Building gas supply and improving market operation (ch. 3); Security, innovation and energy productivity (ch. 4).
- ^x See ANEDO submission on the Energy Issues Paper (Feb. 2014) (**attached**), p 3. Relevant references include: '... *State of the Environment reports; the Productivity Commission report on Barriers to Effective Climate Change Adaptation; the World Bank's Turn Down the Heat report; the Climate Change Authority's reports on Reducing Australia's Greenhouse Gas Emissions; and the IPCC Fifth Assessment report.*' See also, *State of the Climate 2014*, 14 (CSIRO & Bureau of Meteorology).
- ^{xi} IEA, *World Energy Outlook 2013* (see: <http://www.iea.org/newsroomandevents/pressreleases/2013/november/name-44368-en.html>).
- ^{xii} IEA, *World Energy Outlook Special Report, Redrawing the Energy-Climate Map* (2013). In brief:
- *Targeted energy efficiency measures in buildings, industry and transport...*
 - *Limiting the construction and use of the least-efficient coal-fired power plants...* [significantly increasing the share of renewables (as well as gas) from 20% now to 27% by 2020]
 - *Actions to halve expected methane ... releases into the atmosphere from the upstream oil and gas industry in 2020...*
 - *Implementing a partial phase-out of fossil fuel consumption subsidies...*
- The report also finds that the energy sector is not immune from the physical impacts of climate change and must adapt.* (IEA, '[Four energy policies can keep the 2°C climate goal alive](http://www.iea.org/newsroomandevents/pressreleases/2013/november/name-44368-en.html)', 10 June 2013)

Australian Network of Environmental Defender's Offices



Australian Network of Environmental
Defender's Offices Inc

Submission on Australian Government Energy White Paper – stage 1 – Issues Paper

7 February 2014

The Australian Network of Environmental Defender's Offices Inc (**ANEDO**) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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Summary of recommendations

- The Energy White Paper must engage with the broader energy context of preparing for a climate changed world, and integrate data from recent climate change reports.
- The National Energy Objective should be amended to include environmental/climate change considerations, consistent with the Australian Energy Market Agreement.
- ANEDO has strong concerns about erosion of environmental regulation and oversight, including in relation to energy and resource projects. Environmental laws provide important checks and balances not unnecessary barriers, and therefore the Commonwealth must retain powers to protect the national environment.
- Land access policies must acknowledge that mining may not be compatible with other existing or preferred land uses.
- Any national harmonised regulatory framework for mining or CSG must require:
 - Mechanisms to ensure development is ecologically sustainable, and subject to objective decision-making criteria;
 - Thorough and independent assessment of all environmental impacts;
 - Better community engagement in land-use decision making;
 - Long-term strategic planning that achieves triple bottom line outcomes;
 - Increased monitoring and enforcement, and regular reporting and review.
- The White Paper should address the need for strong greenhouse reductions – to 2020 and beyond.
- The White Paper should examine opportunities to develop and export renewables technologies.
- The White Paper should provide transparent information and directions to reduce fossil fuel subsidies.
- Free trade agreements should avoid ‘investor state dispute settlement’ clauses.
- The Government should implement a National Energy Savings Initiative.
- Funding to implement Energy Efficiency Opportunities Act should continue.
- Governments should improve building sustainability requirements across Australia and across building sectors.
- The Renewable Energy Target should be maintained consistent with the 2012 review
- Governments should invest in alternative transport as well as transport fuel efficiency
- ANEDO recommendations on previous Energy White Paper remain relevant:¹
 - The externalities of non-renewable generation must be properly accounted for;
 - Mandatory emissions standards should be imposed on all new power generation in Australia;
 - The electricity transmission and distribution network must be reformed, in order to encourage renewable energy investment;
 - The mandate of the Independent Expert Scientific Committee should be expanded to consider environmental impacts of coal and CSG beyond water;
 - The Government should lead and encourage the reduction of regulatory barriers to the establishment of renewable generation sources;
 - The White Paper should avoid prioritising carbon capture and storage technology at the expense of more investment in renewable generation.

¹ Further details are provided in ANEDO, *Submission on the Draft Energy White Paper* (March 2012), http://edo.org.au/policy/120316draft_energy_white_paper.pdf

Introduction

The Australian Network of Environmental Defender's Offices Inc (**ANEDO**) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an expert role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

ANEDO welcomes the opportunity to comment on the Australian Government's *Issues Paper to inform the development of a White Paper*.² Consistent with our role as public interest environmental lawyers, our comments focus on regulatory, environmental and climate change aspects of Australia's energy policy. The Issues Paper includes limited coverage of these matters. However, this can be rectified at the Green and White Paper stages.

We understand the current Government's White Paper will be finalised in September 2014. With the change of government there has been a significant shift in approach to respond to climate change; and a resurgent aim to wind back environmental regulation of major projects such as energy and mining developments.

The Issues Paper continues the tradition of focussing heavily on the extraction and export of fossil fuels. However, we note the previous White Paper in October 2012 included four principal measures to assist the transformation to a clean energy economy:³ the carbon price mechanism in place from 2012; the mandatory renewable energy target (**RET**) first established in 2001; government-funded institutions and initiatives such as the Australian Renewable Energy Agency (**ARENA**), the Clean Energy Finance Corporation (**CEFC**) and the Clean Technology Innovation Program; and regulatory reforms to the energy market.

Two of these four planks – the carbon price and clean energy institutions – are now to be removed under current Government policies. Since 2012 the introduction of a carbon price was used to justify the review or repeal of many state and federal climate change programs and policies that were seen to be unnecessary once a carbon price was established. The imminent repeal of carbon pricing in the absence of comprehensive policies and programs will leave a significant regulatory gap. ANEDO strongly supports the need to price carbon pollution, and complementary measures, consistent with the polluter-pays principle and other principles of ecologically sustainable development.⁴

The comments below relate to specific parts of the current Government's Issues Paper. ANEDO's recommendations on the previous Government's Draft Energy White Paper remain relevant, and are summarised and reiterated in response to Issues Paper Part 8.

² Available at <http://ewp.industry.gov.au/documents/issues-paper>, accessed January 2014.

³ See Graeme Dennis, 'Energy White Paper 2012 – what does it mean for the environment?' (June 2013), *Australian Environment Review* Vol 28 No 4, at 532.

⁴ See National Strategy for Ecologically Sustainable Development (1992), at: www.environment.gov.au/node/13029 accessed February 2014.

This submission addresses:

Terms of reference and process (Issues Paper, part 1)

Regulatory Reform & Role of Government (Issues Paper, part 3)

*National Energy Objective should include environmental and climate change considerations
Erosion of environmental regulation and oversight*

Growth and Investment (Issues Paper, part 4)

*Environmental laws provide important checks and balances, not unnecessary barriers
The Commonwealth must retain powers to protect the national environment
Land access policies must acknowledge that mining may not be compatible*

Trade and International Relations (Issues Paper, part 5)

*The White Paper should address the need for strong greenhouse reductions to 2020 and beyond
The White Paper should examine opportunities to develop and export renewables technologies
The White Paper should provide transparent information and directions to reduce fossil fuel subsidies
Free trade agreements should avoid 'investor state dispute settlement' (ISDS) clauses*

Driving energy productivity (Issues Paper, part 7)

*The Australian Government should implement a national Energy Savings Initiative
Funding to implement the Energy Efficiency Opportunities Act should continue
Improve building sustainability requirements across Australia and across building sectors*

Alternative and Emerging Energy Sources and technology (Issues Paper, part 8)

*Renewable Energy Target (RET) should be maintained, consistent with the 2012 review findings
Invest in alternative transport options as well as transport fuel efficiency
ANEDO recommendations on Previous Energy White Paper*

Terms of Reference and Process (Issues Paper, Part 1)

The Issues Paper aims to 'launch a dialogue' for an Energy White Paper that will set out an integrated, coherent national energy policy.⁵ While part 1 refers to the need for 'the uptake of lower emissions energy technology and sources' and energy efficiency, the most notable absence is detail addressing climate change and greenhouse gas emissions, and Australia's mitigation and adaptation responses. The indirect references in the Issues Paper seem to relegate climate change to a second-tier energy policy issue at best. This limited emphasis, and intentions to roll back environmental laws through 'streamlined' assessments and approvals, will make it difficult to build 'community confidence in environmental safeguards' (p 5).

The Government's Green and White Papers should elucidate the broader energy context of preparing for a climate changed world. Noting the commitment to 'deliver robust, evidence-based policies' (p 3), this could be assisted by the integration of data and findings from recent and forthcoming *State of the Environment* reports; the Productivity Commission report on *Barriers to Effective Climate Change Adaptation*; the World Bank's *Turn Down the Heat* report; the Climate Change Authority's reports on *Reducing Australia's Greenhouse Gas Emissions*; and the *IPCC Fifth Assessment report*.⁶

Regulatory Reform & Role of Government (Issues Paper, Part 3)

National Energy Objective should include environmental and climate change considerations

The Issues Paper seeks comments on priority issues, barriers or gaps within the COAG energy market reform agenda (p 15).

ANEDO submits that the National Electricity Objective (**NEO**) should be amended to formally consider matters of environmental sustainability, including greenhouse gas emissions.⁷ This would be consistent with the intergovernmental Australian Energy Market (**AEM**) Agreement, which includes the object (at 2.1(b)(vi)):

to address greenhouse emissions from the energy sector in light of the concerns about climate change and the need for a stable long-term framework for investment in energy supplies.

⁵ It notes Australia's abundant primary energy resources (coal, gas, nuclear and renewable) and their national economic contribution; challenges in 'extraction, product creation and distribution'; a need for policy settings to support ongoing investment in the energy sector; and appropriate policy settings for 'the uptake of lower emissions energy technology and sources' and energy efficiency.

⁶ See Australian Government, <http://www.environment.gov.au/topics/science-and-research/state-environment-reporting>; Productivity Commission, <http://www.pc.gov.au/projects/inquiry/climate-change-adaptation> (2012); World Bank, <http://documents.worldbank.org/curated/en/2012/11/17097815/turn-down-heat-4%C2%B0c-warmer-world-must-avoided> (2013); Climate Change Authority, (Draft Report, October 2013 – final report due early 2014): <http://climatechangeauthority.gov.au/sites/climatechangeauthority.gov.au/files/files/Target-Progress-Review/cca-targets-and-progress-report.pdf>. And the IPCC Fifth Assessment Report available at: <http://www.ipcc.ch/>.

⁷ The National Electricity Objective (**NEO**) is set out under s 7 of the National Electricity Law (**NEL**). The NEO states:

The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—
(a) price, quality, safety, reliability and security of supply of electricity; and
(b) the reliability, safety and security of the national electricity system.

Environmental considerations and effective responses to climate change are clearly ‘in the long term interests of consumers’ (consistent with the NEO) – considering the likelihood of increasing climate change stresses placed on human settlements, our environment and natural resources, and on energy infrastructure itself.

There are also sound economic reasons for our electricity market to consider environmental and climate change impacts. For example, upfront mitigation efforts will deliver long-term savings;⁸ and appropriate policy levers can stimulate competition and environmentally-friendly innovation as fossil fuel prices rise.⁹ Accordingly, we recommend that environmental objects be incorporated in the NEO, consistent with the AEM Agreement.

Erosion of environmental regulation and oversight

ANEDO is concerned at the Issues Paper’s focus on ‘streamlined environmental approvals and creation of a one-stop-shop approach’ to approval and licensing requirements. We remain sceptical of the evidence in favour of ‘streamlining’ environmental laws, and claims that removing regulatory oversight is consistent with maintaining environmental safeguards and outcomes.¹⁰

There will always be pressure to reduce environmental regulation and reduce upfront costs to industry, and nobody is arguing for an inefficient system. Rather, we believe there are very sound policy reasons to maintain environmental protections for the long-term public interest in a healthy environment and natural resources – such as water, biodiversity, conservation and agriculture lands. This requires robust environmental laws.

We are also concerned that the Issues Paper focuses unduly on a ‘low regulatory regime’ rather than the most effective ways of achieving desirable policy outcomes, such as energy security, reduced greenhouse emissions, energy conservation and environmental protection. This approach is not conducive to ‘building community confidence in environmental safeguards...’. The Issues Paper itself notes a range of examples where government energy regulation has stimulated positive outcomes. The White Paper should consider the best options to achieve public interest outcomes, rather than asking what can be achieved within the confines of minimal regulation.

For example, ANEDO supports the need for the Government to maintain evidence-based data and analytic capability (Issues Paper, p 3), and promote market transparency (p 16). However, government policies to ‘cut red tape’ may reduce agency regulatory capacity to fulfil these important roles.

⁸ See for example, Garnaut Climate Change Review 2008, Chapter 11, at: <http://www.garnautreview.org.au/>; *State of the Environment Report 2011*, ‘Headlines’, at <http://www.environment.gov.au/soe/2011/summary/headlines.html>; Maria van der Hoeven, Executive Director, International Energy Agency, ‘Energy security: looking towards uncertainty’ (8 March 2012), *OECD Observer*.

⁹ See, for example, Ernst & Young, *Business opportunities in a low-carbon economy* (2010), report for Industry and Investment NSW on behalf of the NSW Innovation Council, <http://www.business.nsw.gov.au/innovation-and-research/innovation-in-nsw/innovation-resources-and-publications/cross-sectoral-analyses>.

¹⁰ These concerns are detailed in ANEDO submissions to the Productivity Commission inquiries into Major Projects and Mineral Exploration in 2013, at www.pc.gov.au and www.edo.org.au.

Growth and Investment (Issues Paper, Part 4; Green Paper, Chapter 1)

Environmental laws provide important checks and balances, not unnecessary barriers

ANEDO reiterates its concern at the general characterisation of important environmental regulation and oversight as ‘unnecessary barriers to continued investment...’ or ‘duplication’ (Issues Paper p 19-20). This inaccurately simplifies the complex interactions of large-scale projects, competing land uses, affected communities, and legal systems that are often ‘outpaced’ (Issues Paper, p 20) by rushed resource development.

Characterising environmental checks and balances as ‘unnecessary barriers’, whether explicitly or inadvertently, runs contrary to the Government’s desire to meaningfully engage the community (Issues Paper, pp 8 and 21).

Much of our offices’ mining law work has arisen from increased public concern about the impacts of mining and CSG on people’s property, water, environment and local community.¹¹ The majority of legal queries and workshop requests to ANEDO offices are from rural and regional communities. They include a very broad range of community members, most prominently farmers seeking to understand the legal framework and their rights to be informed and participate in decision-making. In our experience, these legal frameworks must be strengthened, not weakened. Many community members agree.¹²

The Commonwealth must retain powers to protect the national environment

We note that ‘The Government is seeking to streamline regulation through cross-accreditation processes.’ (p 20) However, despite the advance of these reforms, community assurances such as ‘The Government will maintain appropriate environmental safeguards’ (Issues Paper, p 20), are not backed by detail or performance indicators.

More specifically, ANEDO does not support the proposal to relax baseline data requirements in resource projects’ environmental impact assessments (Issues Paper, p 20). This proposal runs contrary to expert recommendations at global, federal and state level.¹³ Increased use of strategic assessment must not weaken project

¹¹ In the last three years ANEDO offices have advised hundreds of clients who are concerned about the impact of mining in their local area, and have provided workshops to thousands of concerned community members across Australia. For example, in 2011-2013, at local communities’ request, EDO Victoria conducted over 30 community legal education workshops on mining and coal seam gas (CSG) with almost 3000 attendees. In the same period, EDO NSW conducted 24 workshops at the request of rural communities; and public queries to EDO NSW regarding mining and CSG development quadrupled from previous years.

¹² For example, 49% of respondents to a NSW Office of Environment and Heritage (OEH) statewide survey, *Who Cares About the Environment? 2012*, believed that mining regulation is ‘too lax’ (more than any other sector). Only 10% of respondents thought mining regulation was ‘too strict’ (OEH, 2013, full report, p 41-42).

¹³ See Senate Standing Committee on Rural and Regional Affairs and Transport, *Management of the Murray Darling Basin Interim report: the impact of mining coal seam gas on the management of the Murray Darling Basin*; NSW Legislative Council, *Inquiry into Coal Seam Gas* (2012), recommendations 1-4; John Williams Scientific Services Ltd, *An analysis of coal seam gas production and natural resource management in Australia* (2012), 104. On the need for both strategic assessment and project assessment, see: UNEP, *Environmental Impact Assessment and Strategic Environmental Assessment: Towards and Integrated Approach*, 2004, 147. Marsden, *An International Overview Of Strategic Environmental Assessment, With Reference To World Heritage Areas Globally And In Australian Coastal Zones*, 2002, 35.

assessments. As the *State of the Environment 2011* report notes, 'Effective environmental management requires adequate information':

*Long-term collection of national data on trends of many aspects of the environment is currently limited, which severely constrains the ability of Australian governments to develop and enact evidence-based environmental policy. A new national initiative—the National Plan for Environmental Information—offers the opportunity to address this serious deficiency.*¹⁴

ANEDO has consistently opposed the delegation of federal powers to the States, to protect matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).¹⁵ The Senate Standing Committee on Environment and Communications also concluded that the Commonwealth should retain its EPBC approval powers in a 2013 inquiry. In particular:

- [T]he committee was presented with no empirical evidence to substantiate claims that Commonwealth involvement was hampering approval processes¹⁶
- The committee rejects the claims made by business interests that Commonwealth powers of approval are the cause of inefficiencies, delays, and loss of income to project proponents.¹⁷

The Committee also found no evidence that existing arrangements were imposing unreasonable cost on industry, or that approval bilateral agreements would improve business efficiency.

ANEDO addressed these matters in submissions to the Productivity Commission.¹⁸ Importantly, the Productivity Commission's *Major Projects* report noted the need for improvement in state assessment and approval standards, rather than rushed accreditation.¹⁹

Relatedly, with regard to proposals to accelerate offshore petroleum development, ANEDO has noted problems with the delegation of Commonwealth environmental assessment functions to NOPSEMA, on the basis of weaker standards and processes.²⁰

Land access policies must acknowledge that mining may not be compatible

The Issues Paper seeks comment on 'the impacts of variable land access policy and ways the community could be better informed and engaged on development in the energy sector.' (p 21)²¹ In formulating a cohesive energy policy, the Government must observe and address the need for robust environmental regulation of energy projects,

¹⁴ Australian Government, *State of the Environment Report 2011*, 'Summary', at:

<http://www.environment.gov.au/topics/science-and-research/state-environment-reporting/soe-2011>.

¹⁵ For an overview of concerns see ANEDO, *Objections to the proposal for an environmental 'one stop shop'* (2013), at: <http://www.edovic.org.au/objections-proposal-environmental-one-stop-shop>.

¹⁶ Senate Environment and Communications Legislation Committee, *Report on Environment Protection and Biodiversity Conservation Amendment (Retaining Federal Approval Powers) Bill 2012*, March 2013, p. 26

¹⁷ *Ibid.*

¹⁸ http://www.pc.gov.au/__data/assets/pdf_file/0019/122581/sub014-major-projects.pdf and http://www.pc.gov.au/__data/assets/pdf_file/0005/128246/subdr092-major-projects.pdf.

¹⁹ See Productivity Commission Inquiry Report, *Major Project Development Assessment Processes* (2013), for example, recommendations 6.1, 6.5 and 7.2. See further p 166 regarding ['strong "in principle" rationale for'] independent project assessment; and p 193 on the need to strengthen State/Territory processes.

²⁰ ANEDO, *Submission on Strategic assessment by NOPSEMA terms of reference* (September 2013), at: <http://edo.org.au/2013-2014-documents/130913-Submission-on-Strategic-assessment-by-NOPSEMA-terms-of-reference.pdf>.

²¹ The Issues Paper (p 13) also seeks comment on 'ways to increase new gas sources to meet demand...', and notes, *inter alia*: 'Untapped CSG reserves in NSW could partially ease medium-term east coast gas pressures if current planning impediments are addressed urgently.'

including community engagement and land access issues. This requires regulatory systems that:²²

- are comprehensive, but not unnecessarily complicated or inconsistent;
- fully account for all economic, social and environmental impacts of CSG on the site, region and State (both positive and negative);
- are science-based and evidence-driven;
- respect and engage communities in land use and project decision-making; and
- integrate with natural resource management (**NRM**) laws, principles and targets.

Unfortunately, both COAG's Draft National CSG Framework and Multiple Land Use Framework (**MLUF**) adopt an underlying presumption that CSG can occur in any landscape, provided impacts are properly 'managed'.²³ This may be a desirable goal, however it ignores a fundamental need for evidence-based land use planning and NRM objectives. Leading practice would be to identify environmental baselines and limits to the environment's carrying capacity (a catchment-based approach), and ensure that mining and other development will not occur if it would compromise these limits.²⁴

The MLUF's guiding principles focus on high-level, ambiguous terms like 'coexistence' and 'multiple and sequential land use'. This assumes that economic and social benefits from mining can always be maximised whilst environmental values are respected and protected. A 'multiple land use framework' that fails to consider or adopt 'mining exclusion areas' effectively prioritises mining over other land uses, including biodiversity conservation.

Policymakers and governments must acknowledge that in some cases, CSG and mining will be incompatible with existing or preferred land uses, because one land use erodes the values of the other land use – as planning experts and NRM scientists have noted elsewhere.²⁵ For example, exploration and mining should be permanently excluded from recognised national parks and conservation areas; sensitive cultural areas; as well as residential areas and important agricultural areas.

ANEDO's broad recommendations on the Draft CSG Framework therefore remain relevant, and should be considered further in the context of a cohesive Government energy policy. ANEDO submitted that any national harmonised regulatory framework must require:

1. *Mechanisms to ensure development is ecologically sustainable, and subject to objective decision-making criteria;*
2. *Thorough and independent assessment of all environmental impacts;*
3. *Better community engagement in land-use decision making;*
4. *Long-term strategic planning that achieves triple bottom line outcomes;*
5. *Increased monitoring and enforcement, and regular reporting and review.*

²² ANEDO Submission on Draft National Harmonised Regulatory Framework for CSG, under COAG's then Standing Committee on Energy and Resources. See: <http://www.scer.gov.au/workstreams/land-access/coal-seam-gas/>, accessed January 2014.

²³ See, for example, the 'desired outcome' of *Merit based land use decisions*; See also the *Coexistence* principle. Available at <http://www.scer.gov.au/workstreams/land-access/mluf/>

²⁴ See John Williams Scientific Services Pty Ltd, *An analysis of coal seam gas production and natural resource management in Australia - Issues and ways forward* (October 2012), recommendations 1-2.

²⁵ See, for example, The Hon R. Dyer and The Hon T. Moore, *The Way Ahead for Planning in NSW: Recommendations of the NSW Planning Review*, recommendation 8 – that strategic planning should 'Identify sensitive areas containing (or likely to contain) factors that will limit or prevent development taking place, such as: [among other things] biodiversity and other ecological constraints...'. See also John Williams Scientific Services, *An analysis of coal seam gas production and natural resource management in Australia* (2012), p 106, which notes that in some circumstances, 'coexistence is not possible'.

Details, including on community engagement, are in our full submission on the Draft CSG Framework.²⁶ The Productivity Commission has subsequently made some similar recommendations to improve governance and public trust in its *Major Projects* report.

Trade and International Relations (Issues Paper, Part 5; Green Paper, Chapters 1, 3 and 4)

The White Paper should address the need for strong greenhouse reductions – to 2020 and beyond

The Issues Paper identifies certain challenges facing Australia's energy sector, including '...international and national commitments to reduce greenhouse gas emissions and improve energy efficiency.' (p 23)

ANEDO submits that the more fundamental challenge to Australian and global energy policy is the rapid warming of the climate due to excess fossil fuel burning – and the 'conflicts inherent in Australia's principal energy exports'²⁷ – rather than the global and domestic commitments aimed at *addressing* this problem.

As the *State of Environment 2011* notes:

*Climate change will profoundly change the Australian environment, presenting widespread and significant risks to our ecosystems, native vegetation, water security, agricultural production systems and coastal communities. Early action by Australia to reduce emissions and to deploy targeted adaptation strategies will be less costly than delayed action. Major reductions in greenhouse gas emissions are urgently needed, both nationally and internationally, to minimise the level of climate change.*²⁸

ANEDO reiterates that a cohesive, evidence-based energy policy must be contextualised within the landscape of climate change. It is also important that Australia plays a positive and constructive role in global negotiations to maximise reductions of atmospheric greenhouse emissions, to remain within safe levels:

*Recent research suggests that to have any reasonable prospect of meeting this [2° warming target agreed in the Copenhagen Accord], carbon dioxide emissions will have to stop rising within this decade, then fall below 90% of 2010 levels by 2020...*²⁹

As a key challenge, the Energy White Paper will need to confront the disjuncture between promoting long-term increases in Australia's fossil fuel exports and this rapid reduction of emissions agreed by Australia and other nations in the Copenhagen Accord (and forthcoming agreements).³⁰ While the Issues Paper notes Australia's heavy reliance on fossil fuels (p 35), the White Paper must deal with the risks this poses. For example:

²⁶ *Submission on the Draft National Harmonised Regulatory Framework for Coal Seam Gas 2012* (February 2013) at <http://edo.org.au/policy/130228%20CSG%20draft%20national%20framework%20-%20ANEDO%20submission.docx>.

²⁷ Graeme Dennis, 'Energy White Paper 2012 – what does it mean for the environment?' (June 2013), *Australian Environment Review* Vol 28 No 4, at 532.

²⁸ Report to Australian Government, *State of the Environment 2011*, 'Summary including Headlines', at: <http://www.environment.gov.au/topics/science-and-research/state-environment-reporting/soe-2011/soe-2011-report/summary-including>.

²⁹ NSW Environment Protection Authority, *NSW State of the Environment 2012*, section 1.2, p 27.

³⁰ A similar challenge confronted the previous Government's 2012 Energy White Paper. See Graeme Dennis, 'Energy White Paper 2012 – what does it mean for the environment?' (June 2013), *Australian Environment Review* Vol 28 No 4, at 532.

*This poses at least two major threats: first, a threat to energy security from a heavy reliance on finite and depleting resources; and second, a broader climate change threat from a heavy reliance on sources that are major contributors to carbon emissions.*³¹

While this challenge is large, on the flipside, as the Garnaut Climate Change Review noted: 'Australia has an abundance of high-quality resources of virtually all of the low-emissions alternative sources of energy', and significant 'opportunities for the development of alternatives at costs that are absolutely low by international standards.'³²

To foster this transition, the White Paper should include strengthened greenhouse emission reduction targets to 2020 and beyond. This should draw on recent and forthcoming reports from the Climate Change Authority, which has proposed targets of 15-25% reduction by 2020 and 35-50% reduction by 2030.³³

The White Paper should examine opportunities to develop and export renewables technologies

The Issues Paper seeks comment on 'ways to grow the export of value added energy products and services.' (pp 22-23) While this passage focuses on mining equipment, technology and services, the White Paper should examine Australia's diverse opportunities for renewable energy technologies and innovation.³⁴ The aim to 'develop and commercialise new technologies' could be strongly supported by the ongoing funding of existing clean energy development initiatives like the CEFC, ARENA and the Energy Efficiency Opportunities program.

The White Paper should provide transparent information and directions to reduce fossil fuel subsidies

The Issues Paper states that 'Global resources and energy security is best served through open, transparent and effective markets and investment frameworks, with minimal government intervention.' While we would submit that markets must be well-regulated, this statement does raise the pertinent issue of fossil fuel subsidies in Australia and overseas.

According to the OECD, measures to support fossil-fuel production or use in the 34 OECD countries alone 'had an overall value of \$55 to \$90 billion a year in 2005-2011'. Furthermore, 'According to the IEA's 2012 World Energy Outlook, fossil fuel subsidies amounted to \$523 billion in 2011, up almost 30% on 2010 and six times more than subsidies to renewables.'³⁵

Given the current scrutiny of budget expenditures by the Australian Government, the Energy Green Paper should closely examine fossil fuel subsidies in areas such as fuel tax exceptions and accelerated depreciation of fossil fuel producing assets, and make proposals for phasing-out such subsidies, to be finalised in the White Paper.

³¹ Australian Government, *Our Cities – The challenge of change* (2010), 'Sustainable cities', p 63.

³² R. Garnaut et al., *The Garnaut Review 2011*, Chapter 11, 'Electricity Transformation', p 164.

³³ Climate Change Authority, *Reducing Australia's Greenhouse Gas Emissions*. (Draft Report, October 2013 – final report due early 2014):

<http://climatechangeauthority.gov.au/sites/climatechangeauthority.gov.au/files/files/Target-Progress-Review/cca-targets-and-progress-report.pdf>.

³⁴ See, for example, Ernst & Young, *Business opportunities in a low carbon economy* (September 2010), report for Industry and Investment NSW on behalf of the NSW Innovation Council, <http://www.business.nsw.gov.au/innovation-and-research/innovation-in-nsw/innovation-resources-and-publications/cross-sectoral-analyses>.

³⁵ P. Love, 'Fossil fuel subsidies: billions up in smoke?' OECD Insights, at: <http://oecdinsights.org/2013/02/11/fossil-fuel-subsidies-billions-up-in-smoke/>.

Free trade agreements should avoid ‘investor state dispute settlement’ (ISDS) clauses

The Issues Paper notes that Australia is currently negotiating and finalising a number of free trade agreements (**FTAs**) (p 24). ANEDO submits that FTAs must not include ISDS provisions which would allow foreign companies to sue Australian governments over regulatory measures, such as environmental protections, that may affect company investments.³⁶

Driving Energy Productivity (Issues Paper, Part 7; Green Paper, Chapter 4)

The Issues Paper seeks comment on how to ‘enhance the current suite of energy efficiency measures’, or new measures, ‘to provide greater energy efficiency...’ (p 33.)

The Australian Government should implement a National Energy Savings Initiative

In 2012, ANEDO made a submission in support of a National Energy Savings Initiative (**NESI**). We noted that a NESI is a proven mechanism for reducing greenhouse gas emissions and reducing rising energy costs; and would consolidate and expand the energy efficiency obligations in Victoria, NSW and South Australia. Subject to objectives and design considerations, we recommended a NESI be implemented without delay.³⁷ ANEDO reiterates its support for implementing a national energy savings initiative.

Funding to implement Energy Efficiency Opportunities Act should continue

The Issues Paper notes the success of regulations requiring Australia’s largest industrial energy users to improve their energy efficiency via the *Energy Efficiency Opportunities Act 2006* (p 31). However, recent Government budgetary announcements have cut funding to implement this legislated program after 30 June 2014.³⁸ Given the EEO program’s demonstrated success in increasing efficiency and innovation, and reducing carbon pollution from large businesses, ANEDO supports its continued funding.

Improve building sustainability requirements across Australia and across building sectors

As the Issues Paper notes, Australia’s built environment contributes significantly to energy use and greenhouse pollution. For example, residential and commercial buildings together account for 20% of energy consumption.³⁹

The Issues Paper notes ‘opportunities to raise performance standards utilising existing legislation...’ (p 32) ANEDO supports a range of measures noted in the *Our Cities* report:

³⁶ See T. Warne-Smith, ‘The environment would pay for “free trade”’, 9 January 2014, at:

<http://www.abc.net.au/news/2014-01-09/warne-smith-the-environment-will-pay-for-free-trade/5192156>

³⁷ ANEDO, *Submission on the Issues Paper for a National Energy Savings Incentive* (February 2012), at: http://edo.org.au/policy/120227national_energy_savings_incentive.pdf.

³⁸ Australian Government, *EEO Program funding savings*, at: <http://energyefficiencyopportunities.gov.au/>, ‘accessed January 2014.

³⁹ Australian Government, *Our Cities – The challenge of change* (2010), ‘Sustainable cities’, p 65.

There is scope to improve the energy efficiency of the building sector through, for example, reforming building standards, retrofitting existing buildings and regulating higher energy efficiency standards for appliances.⁴⁰

For example, EDO NSW recently submitted to the Review of the NSW Building Sustainability Index (**BASIX**). That submission recommended:

- stronger increases in mandatory energy and water efficiency targets;
- expanding mandatory standards beyond the housing sector (for example, to commercial buildings and retrofits); and
- adopting additional sustainability indicators (such as lifecycle building material analysis, standards and reporting).⁴¹

ANEDO reiterates the need for improved mandatory building sustainability standards across Australia. To progress such standards, an intergovernmental taskforce could be established to develop more consistent sustainable built design standards across Australia, with a commitment to leading practices, innovation and continual improvement.

Alternative and Emerging Energy Sources and Technology (Issues Paper, Part 8; Green Paper, Chapter 4)

The Issues Paper seeks comment on ways to encourage lower emissions energy supply; development and integration of renewable and alternative energy sources; low emissions intensity electricity generation; and barriers to uptake of alternative fuels in the transport sector (pp 37-38).

Renewable Energy Target (RET) should be maintained, consistent with 2012 review findings

The Issues Paper terms of reference note that ‘Ongoing investment in the energy sector is essential and will be obtained under clear energy policy settings conducive to that end.’ (p 3) It is therefore perplexing that the Government is proposing to conduct a further internal review of the RET scheme – only a year after the Climate Change Authority delivered its own consultative review report, which recommended retaining the RET’s existing major policy settings (and shifting to a four-year review cycle).

ANEDO supports the RET’s continuation,⁴² given the limited inroads Australia and other nations have made to address climate change, and noting the proposed removal of a carbon price. ANEDO does not support lowering the RET in response to easing demand.

Invest in alternative transport options as well as transport fuel efficiency

ANEDO welcomes the Issues Paper’s call for comments on transport efficiency and alternative fuels uptake (pp 33, 38). ANEDO would also support much greater investment in the development of active transport (walking and cycling) and public transport infrastructure. In turn this would encourage a reduction in the use of private

⁴⁰ Ibid.

⁴¹ That is, with regard to embodied energy, greenhouse emissions and recycling. See EDO NSW, Submission on the Building Sustainability Index (BASIX) Target Review (January 2014) at: http://d3n8a8pro7vhm.cloudfront.net/edonsw/pages/1283/attachments/original/1391138033/140131_Submission_to_the_BASIX_Review.pdf?1391138033.

⁴² See ANEDO *Submission on Renewable Energy Target Review – Issues Paper* (2012).

motor vehicles in urban areas, with a range of co-benefits.⁴³ Active and public transport would reduce fuel consumption and traffic congestion, decrease greenhouse emissions and air pollution; and encourage physical activity; all of which are positive outcomes.⁴⁴

ANEDO recommendations on previous Energy White Paper remain relevant

ANEDO made a range of recommendations on the previous Government's Draft Energy White Paper. In summary we recommended:

- The externalities of non-renewable generation must be properly accounted for;
- Mandatory emissions standards should be imposed on all new power generation in Australia;
- The electricity transmission and distribution network must be reformed, in order to encourage renewable energy investment;
- The mandate of the Independent Expert Scientific Committee should be expanded to consider environmental impacts of coal and CSG beyond water;
- The Government should lead and encourage the reduction of regulatory barriers to the establishment of renewable generation sources;
- The White Paper should avoid prioritising carbon capture and storage technology at the expense of more investment in renewable generation.

ANEDO reiterates these recommendations for the purposes of the Government's forthcoming Green and White Papers. Further details are provided in ANEDO's full submission from 2012.⁴⁵

⁴³ See P. Newman, 'Pipe Dreams and Ideologues: Values and Planning' (2005), *People and Places*, vol. 13, no. 3; Australian Government *Our Cities* (2010), 6.2.2 'Reducing car dependency'

⁴⁴ ANEDO, *Submission on Our Cities – building a productive, sustainable and liveable future Discussion Paper* (2011), at: http://edo.org.au/policy/110304our_cities.pdf.

⁴⁵ ANEDO, *Submission on the Draft Energy White Paper* (March 2012), http://edo.org.au/policy/120316draft_energy_white_paper.pdf