



EDOs of Australia

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23 August 2019

Climate Change Authority  
By email: [submissions@climatechangeauthority.gov.au](mailto:submissions@climatechangeauthority.gov.au)

Dear Sir/Madam,

**Re: Consultation Paper - Updating the Authority's Previous Advice on Meeting the Paris Agreement**

EDOs of Australia welcome the opportunity to provide comments on the Climate Change Authority's consultation paper about updating advice on policies to meet the *Paris Agreement*. We note that this review is an update of a special review conducted under Part 3 of the *Climate Change Authority Act 2011*<sup>i</sup> and of related reviews.

The EDOs of Australia is a network of community legal centres specialising in public interest environmental law with a long history of involvement in climate policy at both the State and Commonwealth level<sup>ii</sup> and involvement in significant climate change litigation.<sup>iii</sup>

We support the decision to update the Authority's recommendations on a policy toolkit to meet Australia's international obligations to limit climate change to well below 2°C above pre-industrial levels and to pursue efforts to limit temperature increase to 1.5°C above pre-industrial levels.<sup>iv</sup>

Our **recommendations** largely focus on section 5 of the report (key areas of investigation) and can be summarised as follows. The review should:

1. Provide input into the upcoming statutory review of the *Environment Protection and Biodiversity Conservation Act 1999*, in relation to the need for a greenhouse gas trigger and related policies or statutory rules;
2. Address the need to consider a just transition for communities affected by climate mitigation and for communities which will have particular challenges with adaptation;
3. Include a review of State and Federal policies and laws which currently incentivise or subsidise increased emissions, entrench fossil fuel technologies or delay a just transition;
4. Emphasise the need for complementary policies at the State and Commonwealth level including, for example, recycling of batteries associated with the energy transition and managing risks such as abandoned mines associated with the structural decline of coal; and
5. Include an express strategy to address the unique challenges of mitigating agricultural emissions.

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This submission addresses the following issues:

- 1. EPBC Act review – CCA input**
- 2. Assistance in transition**
- 3. Review of policies/programs creating perverse incentives**
- 4. Complementary policies**
- 5. A strategy for agriculture**

### **1. EPBC Act review - Climate Change Authority input**

The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) will shortly have been in effect for 20 years and so the second 10-year review of the Act is scheduled to commence this year.

The first 10-year review of the EPBC Act (known as the ‘Hawke Review’) recommended that a ‘climate trigger’ be inserted into the EPBC Act on an interim basis, on the expectation that a comprehensive suite of climate policies (including a carbon price) would come into effect shortly thereafter.<sup>v</sup> Unfortunately the interim trigger was never introduced and the Hawke Review’s assumptions about establishment of longer term climate policy have not proved to be accurate. Consequently, there is still an open question about whether the EPBC Act should include a climate trigger.

We recommend that the Authority’s current review be prepared in the expectation that it could provide input into the second 10-year review of the EPBC Act and that it:

- include consideration of whether a permanent climate trigger could be an effective tool to add to the current, limited, suite of climate policies and laws; and
- provide guidance on the matters which should be incorporated into related policy or statutory rules in relation to the circumstances in which controlled actions should be refused on climate grounds and the types of offset or mitigation requirements which can and should be imposed.

### **2. Assistance in the transition**

We note that the scope of the review includes the question of whether particular regions or communities should be assisted in the transition to a net zero emission economy.

We agree that any comprehensive suite of climate policies must include a just transition process (and funding) for communities which will be affected by the transition away from fossil fuels - in particular coal mining communities and communities in which coal-fired power generation is a significant employer. However, a just transition may *also* be necessary for communities adapting to the impacts of climate change, for example:

- Agricultural communities (such as in the Murray-Darling Basin) for which the impacts of climate change on factors like the availability of water may mean a shift in the types of agriculture which are viable; and
- Communities in north and central Queensland which are dependent upon Great Barrier Reef for tourism jobs, given that a significant loss of coral reefs (and

therefore the tourism value of the region) is expected even at the more ambitious end of the *Paris Agreement* targets.<sup>vi</sup>

### **3. Review of policies/programs creating perverse incentives**

As well as reviewing policies which are necessary to achieve the *Paris Agreement* goals, the Authority should consider government policies and programs which are creating incentives or changing behaviour in a way that may increase emissions, entrench technologies or industries which are incompatible with the necessary economic transition, or delay a just transition.

This may, for example, include programs such as the *Underwriting New Generation Investment Program*<sup>vii</sup> which create the potential for funding new coal-fired power generation.

Further examples of actions which both increase global emissions and delay a just transition, include where state governments are continuing to release exploration tenements for coal which may serve both domestic and international markets. Given that the Authority is required by section 12(a)(vi) of the *Climate Change Authority Act 2011* to have regard to supporting the development of an effective *global* response to climate change, we think that the coal export industry (and the scope 3 emissions generated by exported Australian coal) are relevant to the Authority's role and should be considered as part of a review to identify policies which increase emissions.

### **4. Complementary policies**

We recommend that the Authority's review include consideration and identification of the need for new or updated policies (or the adequacy of existing policies) which are complementary to climate policies.

As an example, the decarbonisation of transport systems is likely to generate a waste stream of batteries from electric vehicles. Similarly, the transition to low carbon technologies in our electricity infrastructure will generate new waste streams of both household and grid scale batteries and solar panels. Australia's reliance on exporting existing recyclable waste streams, and failure to establish an adequate domestic recycling industry, has recently seen huge volumes of waste either stockpiled or diverted to landfill as other countries have started to decline to take the waste.<sup>viii</sup> The forthcoming energy transition should be accompanied by policies to ensure that new waste streams can be reliably recycled and used as a source of jobs and economic activity.

Another example may be in relation to the capacity of the states to take on the risk flowing from abandoned mines driven by the transition away from coal mining. The Authority's supporting paper *Industry Action on Climate Change Mitigation and Low-emission Technologies* notes that some larger mining companies are transitioning away from the production of thermal coal. While this is a positive step, it ignores the fact that these large companies are unlikely to close and rehabilitate their existing mines and will instead sell them on to smaller companies which will continue production and may not have the financial resources to undertake proper rehabilitation.

## 5. A strategy for agriculture

The agricultural sector is a significant source of greenhouse gas emissions. It is also a sector that many politicians are reluctant to regulate, and in which the uptake of voluntary programs is generally limited. It is also a sector in which behaviour change will need to be fostered across a huge number of individual operators. It therefore represents a unique challenge in terms of climate mitigation.

While the Emission Reduction Fund provides incentives for farmers to earn income through mitigation projects, the funding available to that program is unlikely to be adequate to create change in the sector at the necessary scale.

In that regard, we recommend that the Authority's review include a particular focus on developing a strategy for the agricultural sector.

We note that the Authority's draft questions include whether the Emissions Reduction Fund should be changed to explicitly target multiple benefits as well as abatement outcomes. We would support changes to the fund to encourage biodiversity outcomes and suggest that any strategy for abatement more broadly in the agricultural sector should also have a focus on co-benefits for biodiversity.

We note that the 'International context' of the review scope includes asking whether the import of international carbon credit units could play a role in Australia's response to climate change (ie. the purchase of greenhouse gas abatement generated in other countries to satisfy Australia's emission reduction obligations). Given that land management in Australia has significant potential to generate greenhouse gas abatement<sup>ix</sup>, a more ambitious approach, and one which could benefit the agricultural sector, might be to ask whether Australian Carbon Credit Units (ie. carbon credits generated through emission abatement in Australia) could become an export industry through links to international emissions trading schemes (including China's forthcoming emissions trading scheme).

Thank you for the opportunity to provide input into the development of the Authority's review program. For further information, please contact Rachel Walmsley or Deborah Brennan (02) 9262 6989, [deborah.brennan@edonsw.org.au](mailto:deborah.brennan@edonsw.org.au) or [rachel.walmsley@edonsw.org.au](mailto:rachel.walmsley@edonsw.org.au).

Yours sincerely

**On behalf of EDOs of Australia**

Rachel Walmsley  
**Director - Policy and Law Reform EDO NSW**

## References

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i. The initial special review report is available at:  
<http://climatechangeauthority.gov.au/sites/prod.climatechangeauthority.gov.au/files/files/Special%2>

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0review%20Report%203/Climate%20Change%20Authority%20Special%20Review%20Report%20Three.pdf

ii. As a recent example, see our report on *Climate Ready Planning Laws for NSW* available at: [https://www.edonsw.org.au/climate\\_ready\\_planning\\_laws](https://www.edonsw.org.au/climate_ready_planning_laws)

iii. See, for example, the decision in *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7.

iv. See *Paris Agreement*, Article 2(1)(a): [https://unfccc.int/sites/default/files/english\\_paris\\_agreement.pdf](https://unfccc.int/sites/default/files/english_paris_agreement.pdf)

v. See recommendation 10: <https://www.environment.gov.au/system/files/resources/5f3fdad6-30ba-48f7-ab17-c99e8bcc8d78/files/final-report.pdf>

vi. See Box 1 of CCA supporting report entitled *International Action on Climate Change: A Stocktake*, which records the IPCC prediction that 70 - 90% of coral reefs will be lost at 1.5°C warming and greater than 99% at 2°C.

vii. See: <https://www.energy.gov.au/government-priorities/energy-supply/underwriting-new-generation-investments-program>

viii. See, for example: <https://www.packagingnews.com.au/latest/fears-skm-waste-could-head-for-landfill> <https://www.ft.com/content/360e2524-d71a-11e8-a854-33d6f82e62f8> and <https://www.theguardian.com/environment/2018/jun/26/waste-crisis-wheres-your-recycling-going-now>

ix. Bryan BA, Hatfield-Dodds S, Nolan M, McKellar L, Grundy MJ, McCallum R (2015) *Potential for Australian land-sector carbon sequestration and implications for land use, food, water, and biodiversity: Report for the Australian National Outlook 2015*. CSIRO, Australia.