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Climate Change & Consequential Amendments Bills 2022

Submission

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Introduction

The Australia Institute welcomes the opportunity to comment on the Climate Change Bill 2022 and Consequential Amendments Bill 2022 (hereafter 'the Bills'). The Bills are a valuable framework to ensure transparency and accountability of Australia's greenhouse gas emissions reduction targets, including by ensuring the provision of evidence-based advice from the Climate Change Authority to inform future targets and increased ambition.

While enshrining an emissions reduction target in legislation may assist in achieving the target, ultimately meeting those goals will depend on other legislation and policy governing Australia's most high-emitting sectors.

Ongoing and unfettered fossil fuel expansion is incompatible with a net zero emissions strategy and could jeopardise Australia's 2030 emissions reduction target.

FOSSIL FUELS

Australia's emissions in most sectors of the economy (with the exception of agriculture, waste and land use) have increased by a combined 35 per cent since 1990.[1] Emissions reductions claimed by the former Australian Government were largely a result of historical changes confined to the land use sector, as well as two major exogenous shocks – drought and the COVID-19 pandemic. Neither of these changes were the result of government policy and the former government failed to implement policies to prevent rebounding emissions – transport and agriculture emissions both increased approximately 4 per cent in 2021 while recovering from these shocks.[2]

Minister for Climate Change and Energy Chris Bowen has acknowledged this, saying "Good climate and energy policy is good economic policy. It doesn't rely on recession and drought for short-term and temporary emissions reduction."[3] The Australia Institute would add that good climate and energy policy must also address Australia's sizeable pipeline of new fossil fuel mining projects.

[1] Australian Government (2021) *National Greenhouse Gas Inventory: December 2021*, https://www.dcceew.gov.au/climate-change/publications/national-greenhouse-gas-inventory-quarterly-update-december-2021

[2] Ibid.

[3] AAP (2022) *Chris Bowen blames Australia's rise in greenhouse gas emissions on Coalition climate policy 'failure'*, https://www.sbs.com.au/news/article/australias-greenhouse-gas-emissions-increased-in-the-past-year-new-data-shows/mtpcoe03u

The International Energy Agency (IEA) Executive Director Fatih Birol warned in 2021 that "If governments are serious about the climate crisis, there can be no new investments in oil, gas and coal, from now – from this year".[4]

In 2019, Australia Institute research revealed Australia as the third largest supplier of fossil fuels and a major contributor to global greenhouse gas emissions.[5] Currently, Australia has 114 new coal and gas projects in the pipeline.[6] This fossil fuel pipeline poses two major problems for Australia.

The first is a moral challenge - how can Australia be a credible climate actor if it continues to be a major supplier of the problem.

The second is a legal challenge – how can Australia meet its proposed legislated target if it opens up new fossil fuel projects that increase onshore emissions.

The moral challenge

The new fossil fuel projects in the pipeline have significant embedded Scope 3 emissions – that is when the fossil fuels are consumed overseas this will result in billions of tonnes of emissions. While these offshore emissions do not count towards Australia's domestic targets under UN Framework Convention on Climate Change accounting rules, they will make it harder for other countries to reach the Paris Agreement goal of limiting global warming to 1.5 degrees.

If all new gas and coal projects on the Australian Government's major projects list were developed, it could result in 1.7 billion tonnes of greenhouse gas emissions annually – the equivalent of over 200 coal-fired power stations.[7] To date, the global climate change impact of Australia's gas and coal exports has not factored into Australian government decision making.

While it is welcome that Minister for Environment Tanya Plibersek recently rejected Clive Palmer's Central Queensland Coal mine due to possible impacts on the Great Barrier Reef,

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[4] Harvey (2021) *No new oil, gas or coal development if world is to reach net zero by 2050, says world energy body*, https://www.theguardian.com/environment/2021/may/18/no-new-investment-in-fossil-fuels-demands-top-energy-economist

[5] Swann (2019) *High Carbon from a Land Down Under*, https://australiainstitute.org.au/post/new-analysis-australia-ranks-third-for-fossil-fuel-export/

[6] Department of Industry, Science, Energy and Resource (2021) *Quarterly Update of Australia's National Greenhouse Gas Inventory: December 2020*, https://www.industry.gov.au/data-and-publications/nationalgreenhouse-gas-inventory-quarterly-update-december-2020

[7] Ogge, Quicke, & Campbell (2021) *Undermining Climate Action: The Australian Way*, https://australiainstitute.org.au/wp-content/uploads/2021/11/P1163-Undermining-climate-action-the-Australian-way-WEB.pdf

the decision was not made due to its climate impact. The Minister previously stated that the idea of no new gas or coal is “not a sustainable or reasonable” proposition.[8]

The legal challenge

New fossil fuel export projects still have sizeable greenhouse gas emissions onshore, that is Scope 1 emissions, that Australia is responsible for.

Labor’s 2030 target is not an aspirational target but a forecast outcome from policy implementation. Minister Bowen has stated: “43 per cent is the modelled aggregate impact of all our policies, not just an ambition or an objective or goal...we will deliver a 43 per cent emissions reduction...with the policies we have announced”.[9]

The Explanatory Memorandum names policies and programs that the Labor Government intends to use to meet the emissions reduction targets, including the Rewiring the Nation plan, an updated Safeguard Mechanism and an Electric Vehicle Strategy. What is unclear is how these policies will compensate for additional emissions from fossil fuel projects that have not yet been approved.

If new fossil fuel export projects and their Scope 1 emissions are not factored into the modelled 43 per cent outcome, will they jeopardise this forecast?

Alternatively, will existing high-polluting projects or sectors have to undertake *more* emissions reductions to compensate for the introduction of new high-polluting fossil fuel projects.

This idea was considered by the Australia Institute during the debate around the National Energy Guarantee. The Guarantee proposed that the electricity sector would reduce emissions by 26 per cent, the same as the national target for 2030 at the time.[10] Allowing the electricity sector, the largest polluting sector with the greatest opportunity to decarbonise, to only reduce emissions 26 per cent would have put greater pressure on other areas of the economy. Applying a 26 per cent target on a hard-to-abate sector like agriculture would have resulted in harsh, unsustainable policies (like culling) and shows the folly of this approach.[11]

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[8] Clarke (2022) *‘Unreasonable’: Plibersek hits back at calls for no new coal mines*, https://www.skynews.com.au/australia-news/politics/tanya-plibersek-slams-greens-calls-for-no-new-coal-mines-as-an-unreasonable-proposition-amid-climate-change-debate/news-story/6329b3a2a771e35e45a425d84a8e4f3c

[9] The Australia Institute (2022) *Federal Climate Ministers Debate*, https://australiainstitute.org.au/event/federal-climate-ministers-debate/

[10] Grudnoff (2018) *Harming Farming*, https://australiainstitute.org.au/wp-content/uploads/2020/12/P572-Harming-Farming-Web.pdf

[11] Ibid.

Looking closely at a just a handful of the proposed new fossil fuel projects shows why this is a serious risk. Large fossil fuel projects for approval by the current government include the Scarborough-Pluto LNG project, the North West Shelf (NWS) LNG extension, Whitehaven Coal's Narrabri coal mine extension and the Narrabri coal seam gas (CSG) project.

Collectively, these projects could emit up to 114 million tonnes (Mt) of greenhouse gas emissions between now and 2030.[12]

Table 1: Emissions from operation to 2030

	Emissions Scope	Tonnes CO2-e
North West Shelf extension	Scope 1	53,515,000
Scarborough-Pluto	Scope 1	18,900,000
Narrabri underground coal mine stage 3	Scope 1	12,843,000
Narrabri coal seam gas	Scope 1, 2, 3	29,250,000
Total emissions		**114,508,000**

Source: Author's analysis of project approval documents & Hare et al. (2021)

This includes Scope 1 emissions from Scarborough-Pluto, NSW and Narrabri coal extension, and Scope 1, 2 and 3 emissions from Narrabri Coal Seam Gas, which is proposed for domestic use and therefore Australia's legal responsibility.

[12] NSW Department of Planning, Industry and Environment (2020) *Narrabri Gas Project: Assessment Report | State Significant Development SSD 6367*, https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2020/03/narrabri-gas-project/referral-from-the-department-of-planning-industry-and-environment/dpie-final-assessment-report.pdf
Whitehaven Coal (2022) *Response to Matters from the Narrabri Underground Mine State 3 Extension Project IPC Hearing*, https://www.ipcn.nsw.gov.au/resources/pac/media/files/pac/projects/2021/12/narrabri-underground-mine-stage-3-extension-project-ssd-10269/additional-material/220225-in-applicant-submission-to-the-commission.pdf
Hare, Maxwell, & Chapman (2021) *Warming Western Australia: How Woodside's Scarborough and Pluto Project undermines the Paris Agreement*, https://climateanalytics.org/media/climateanalytics_scarboroughpluto_dec2021.pdf
Woodside (2019) *NWS Project Extension - Appendix B - Greenhouse Gas Management Plan - Revision 1 G2000RF1401194400*, https://www.epa.wa.gov.au/sites/default/files/PER_documentation2/NWS%20Project%20Extension%20-%20Appendix%20B%20-%20Greenhouse%20Gas%20Management%20Plan.pdf

The Australian Labor Party's modelling of the Powering Australia Plan, conducted by Reputex, shows an abatement task of 440 Mt of emissions 2023-2030. The modelling says changes to the Safeguard Mechanism will be responsible for 213 Mt of abatement between 2023-2030.[13]

The Safeguard Mechanism has been ineffective at reducing emissions. Since 2016, emissions from facilities covered by the scheme have grown by 7 per cent and are projected to overtake the electricity sector as the largest emissions source by 2030. Emissions growth of safeguard facilities has cancelled out the modest abatement contracted under the Emissions Reduction Fund.[14]

The modelling by Reputex appears to not indicate how trade-exposed industries and new projects will be captured under the amended safeguard mechanism or how this will impact the assumed emissions reduction trajectory. The Bill's inclusion in the National Greenhouse and Energy Reporting Act 2007 via the Consequential Amendments does not fundamentally change the operation of the Safeguard Mechanism. Therefore, the Bill in its current form does not address the challenge of new emissions intensive fossil fuel projects.

Integrity and effectiveness

The Bill creates an opportunity to review the performance of Australia's emissions reductions, but it should also include in its scope the integrity of Australia's efforts.

During the last nine years, Australia's only emission reduction policy under the former Coalition government was the Emissions Reduction Fund (ERF). The ERF also forms the basis of Australia's carbon market. The scheme awards Australian Carbon Credit Units (ACCUs) to projects carrying out abatement (emissions reduction) activities across the economy, which can be sold to the government or private sector.

The integrity of ACCUs is currently under investigation, as is the integrity of the governance structures of the ERF.[15] This review of the $4.5 billion ERF is long overdue.

The ERF was never designed to carry the full weight of Australia's climate policy. As a result of being placed under such pressure, it is unsurprising that – despite its name – the scheme has not only failed to reduced emissions, its foundations have begun to crumble. This pressure will only intensify as emissions from fossil fuel production increase in Australia, and the ERF is pushed to deliver increasingly more 'abatement' to offset this growth.

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[13] Australian Labor Party (2021) *Powering Australia,* https://www.alp.org.au/policies/powering-australia

[14] Swann (2020) *Submission: Climate Change Authority Review of Emissions Reduction Fund*, https://australiainstitute.org.au/wp-content/uploads/2021/01/P928-CCA-review-of-ERF-submission.pdf

[15] Australian Government (2022) *Independent Review of ACCUs,* https://minister.dcceew.gov.au/bowen/media-releases/independent-review-accus

Recently, the former chair of the government's Emissions Reduction Assurance Committee, along with a number of independent academics, have released research demonstrating that up to 80 per cent of ACCUs issued in Australia do not represent real or additional abatement.[16] [17] [18] Similarly, climate scientist, and current member of the United Nations High-Level Expert Group on the Net-Zero Emissions Commitments of Non-State Entities Dr Bill Hare has stated that "every single [ERF] method we've looked at has serious problems".[19]

Concerns have also been raised regarding the independent government bodies tasked with method development and regulation of ACCUs, casting doubt over the integrity of every component of the ERF.[20]

Purchased by government, the outcome is that hundreds of millions of dollars of public money are wasted, and Australia is no closer to meeting its climate targets. Beyond the biophysical risks associated with climate change if emissions are not curbed, Australia will come under even more scrutiny by the international community to demonstrate that it is acting on climate change.

Purchased by the private sector, and subsequently used to 'offset' emissions, means that emissions are not in fact being offset, increasing private sector costs of production and enabling polluting activities to continue.

Currently it is unclear on the extent to which the current 43 per cent emission reduction modelling relies on ACCUs and this is a major concern. The reliance on carbon credits should form part of the annual statements given by the Minister and informed by the Climate Change Authority.

Review of the targets

The sixth and most recent iteration of the Intergovernmental Panel on Climate Change (IPCC) assessment report confirmed that Australia has already warmed by 1.4 degrees

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[16] Macintosh et al. (2022) *The ERF's Human-induced Regeneration (HIR): What the Beare and Chambers Report Really Found and a Critique of its Method*, https://law.anu.edu.au/research/publications?nid=51424

[17] Macintosh, Butler & Ansell (2022) *Measurement Error in the Emissions Reduction Fund's Human-induced Regeneration (HIR) Method*, https://law.anu.edu.au/research/publications?nid=51434

[18] Macintosh (2022) *The Emissions Reduction Fund's Landfill Gas Method: An Assessment of its Integrity*, https://law.anu.edu.au/research/publications?nid=51444

[19] RN Breakfast (2022) *UN probes business climate plans*, https://www.abc.net.au/radionational/programs/breakfast/un-probes-business-climate-plans/13858214

[20] Hemming, Campbell, Ogge & Armistead (2022) *Come clean: How the Emissions Reduction Fund came to include carbon capture and storage*, https://australiainstitute.org.au/report/come-clean-how-the-emissionsreduction-fund-came-to-include-carbon-capture-and-storage/

Celsius.[21] This is despite Australia's Paris Agreement commitment to limit global warming to 1.5 degrees Celsius this century.

The IPCC report also found that net zero targets by 2050 will not limit warming to 1.5 degrees Celsius and that more ambitious emissions reductions are needed by 2030. The Australian Government's 43 per cent emissions reduction target by 2030 falls short of what is required to limit warming to "well below" 2 degrees Celsius and the commitment made under the Paris Agreement to pursue 1.5 degrees.[22]

The target should be revised to reflect the ambition required to meet the Paris Agreement goals.

CONSEQUENTIAL AMENDMENTS

The Explanatory Memorandum states that the Consequential Amendments "are not intended to limit or constrain the exercise of powers or performance of the existing functions of the relevant entities and schemes."[23]

By not limiting the functions of entities to, for example, restrict or prevent investment in fossil fuels, the Bills have reduced effectiveness to contribute towards Australia's emissions reduction targets. Despite this, the Consequential Amendments could be strengthened to ensure that Commonwealth entities and agencies not only contribute towards achieving emissions reduction targets, but do not jeopardise those targets, and align decisions and investments with the objectives of the Paris Agreement.

Additionally, the Bill will not be able to retrospectively amend decisions or financing commitments made over the last decade and by the previous government shortly before the election. In the 2020-21 Federal budget, $9.1 billion was committed to fossil fuels.[24] This increased to $10.5 billion in the 2021-22 Federal budget.[25]

Only months before the 2022 May Federal election, the previous government gave priority status, along with $1.5 billion investment, to projects connected to the Middle Arm fossil

[21] IPCC (2022) *Sixth Assessment Report*, https://www.ipcc.ch/assessment-report/ar6/

[22] Hare and Maxwell (2022) *Australian election 2022 political party and independent climate goals: analysis https://climateanalytics.org/publications/2022/australian-election-2022-political-party-and-independent-climate-goals-analysis/*

[23] Parliament of the Commonwealth of Australia (2022) *Climate Change (Consequential Amendments) Bill 2022: Explanatory Memorandum*, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6886_ems_4b360c39-7256-4789-8e9e-8aa77f3fc2f2/upload_pdf/JC006983.pdf;fileType=application%2Fpdf p. 2

[24] Campbell, Littleton, & Armistead (2021) *Fossil fuel subsidies in Australia*, https://australiainstitute.org.au/wp-content/uploads/2021/04/P1021-Fossil-fuel-subsidies-2020-21-Web.pdf

[25] Armistead, Campbell, Littleton, & Parrott (2022) *Fossil fuel subsidies in Australia*, https://australiainstitute.org.au/wp-content/uploads/2022/03/P1198-Fossil-fuel-subsidies-2022-WEB.pdf

fuel development.[26] It is unclear if the Federal Government will follow through with these commitments.

EFA/NAIF

Export Finance Australia (EFA) and the Northern Australia Infrastructure Facility (NAIF) have both been significant financial supporters of fossil fuel industries.

Between 2009 and 2020, EFA provided financing (including refinancing) of up to $1.69 billion to the coal, oil and gas industry. Similarly, NAIF provided $91.3 million to fossil fuel projects and a further $522 million to projects with a fossil fuel component.[27]

Subsidies for fossil fuels obscure the true cost of polluting industries and enable them to continue exploring for, extracting and burning coal, oil and gas. As the world works towards mitigating climate change, international pressure is mounting for countries to stop subsidising fossil fuels so that competitively priced, clean sources of energy can be scaled up and fossil fuels use can be phased out.[28]

Article 2 of the Paris Agreement aims to strengthen the global response to climate change by "Making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development."[29]

The Consequential Amendments Bill does not go far enough to align the investment remits of these agencies with emissions reduction goals of the Australian Government and the Paris Agreement.

In its current form, the requirement for EFA to 'have regard to' an emissions reduction target and the Paris Agreement are unlikely to prevent financing of fossil fuels, given the export-oriented nature of EFA. The Consequential Amendments could ensure EFA's operations are more consistent with reducing emissions and the Paris Agreement if EFA's legislation were required to 'align its investment decisions with the Paris Agreement and Australia's greenhouse emissions reduction targets'.

Similarly, proposed amendments to NAIF's legislation do not alter NAIF's funding to states and territories. The amendments give NAIF the power to invest in projects that can reduce Australia's emissions, but given NAIF already has this capability, the amendment is unlikely to change NAIF's funding practices. Inserting a requirement to align financing with the Paris

[26] Nationals Party of Australia (2022) *Transforming Middle Arm Into An Export Powerhouse*, https://nationals.org.au/transforming-middle-arm-into-an-export-powerhouse/

[27] Hopstad Rui & Stachan (2021) *Hot Money: Australian Taxpayers Financing Fossil Fuels*, https://jubileeaustralia.org/resources/publications/hot-money-2021

[28] Armistead, Campbell, Littleton, & Parrott (2022) *Fossil fuel subsidies in Australia*, https://australiainstitute.org.au/wp-content/uploads/2022/03/P1198-Fossil-fuel-subsidies-2022-WEB.pdf

[29] UNFCCC (2015) *Paris Agreement*, https://unfccc.int/sites/default/files/english_paris_agreement.pdf

Agreement and emissions targets would strengthen NAIF's ability to facilitate emissions reductions.

Industry Research and Development Act

The *Industry Research and Development Act 1986* relates to industry, innovation and science activities that could either contribute to or jeopardise Australia's greenhouse emissions reduction targets.

The Consequential Amendments Explanatory Memorandum states: "This bill has focused on those schemes and entities with the greatest connection to activities that contribute to the targets."[30] The *Industry Research and Development Act 1986* has previously been used to funnel money to fossil fuel projects and therefore should be included in the Consequential Amendments Bill.

In 2021, new legislative instruments were registered 35 times under the *Industry Research and Development Act 1986*, including for:

- Refinery Upgrades Program
- Underwriting New Generation Investments Program
- Port Kembla Gas Generator Investment Development Grant Program
- Beetaloo Cooperative Drilling Program[31]
- Boosting Australia's Diesel Storage Program
- CCS Development Program
- CCUS Hubs and Technologies Program

If programs like these continue to be registered under the *Industry Research and Development Act 1986*, Australia's greenhouse gas emissions reduction targets would be jeopardised.

The Consequential Amendments could ensure that industry, innovation and science activities are aligned with reducing emissions and the Paris Agreement if the Industry Research and Development Act 1986 was amended.

[30] Parliament of the Commonwealth of Australia (2022) *Climate Change (Consequential Amendments) Bill 2022: Explanatory Memorandum*, https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6886_ems_4b360c39-7256-4789-8e9e-8aa77f3fc2f2/upload_pdf/JC006983.pdf;fileType=application%2Fpdf p. 3

[31] Thompson (2021) *Legal challenge to $21 million Beetaloo Basin grant program hears Resources Minister not required to consider climate risks*, https://www.abc.net.au/news/2021-11-03/nt-federal-court-hearing-climate-change-beetaloo-fracking-grants/100590504

The Act could be amended by:

At the end of section 3

(c) Omit "; and"

Add:

"that align with the Paris Agreement and Australia's greenhouse emissions reduction targets; and"

Recommendations

The Australia Institute expects that this is the first of many iterations in improving Australia's climate ambition.

Notwithstanding the following recommendations, the Australia Institute recommends that the Climate Change Bill 2022 and Consequential Amendments Bill 2022 be passed.

1. Place a moratorium on all new coal and gas projects.
2. In the annual assessment of progress towards Australia's emission reduction target, include consideration of the integrity of emissions reduction policies, in particular the reliance on carbon credits (Australian Carbon Credit Units) for abatement noting the current review into the lack of integrity in the market.
3. Australia's 2030 emissions reduction target should be revised to reflect the ambition required to meet the Paris Agreement goals of limiting warming to 1.5 degrees.
4. Further amend the legislation of the Northern Australia Infrastructure Fund and Export Finance Australia by inserting a requirement to align financing with goals of the Paris Agreement and Australia's emissions reduction targets.
5. Include the *Industry Research and Development Act 1986* in the Consequential Amendments Bill 2022, as detailed in this submission.