



Environmental  
Defenders Office

## **Submission on the NSW EPA Draft Climate Change Policy & Action Plan**

**3 November 2022**

## About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

***Successful environmental outcomes using the law.*** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

***Broad environmental expertise.*** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

***Independent and accessible services.*** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

**[www.edo.org.au](http://www.edo.org.au)**

### Submitted to:

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## Executive Summary

In August 2021, a group of survivors of the horrific Black Summer bushfires took a landmark climate case to the NSW Land & Environment Court and won. For the first time, an Australian court allowed evidence on climate change to be heard in a case involving an alleged failure by a government agency – the NSW Environment Protection Authority (**EPA**) – to perform a statutory duty. And for the first time, an Australian Court ordered a government to take meaningful action on climate change.

A year later, in response to the historic ruling, the NSW EPA has released a draft Climate Change Policy and draft Climate Change Action Plan. This is a huge and important step in recognising and clarifying the duty of the EPA to address climate change and regulate greenhouse gas pollution, in this critical decade for action on climate change. The Environmental Defenders Office (**EDO**) welcomes the opportunity to provide comment on the *Draft EPA Climate Change Policy* and *Climate Change Action Plan 2022-2025*.

What the Bushfire Survivors for Climate Action – and the broader community – want to see is real action on climate change. Unlike other forms of pollution in Australia, greenhouse gases are currently not directly regulated by our Environment Protection Agencies as pollutants. Critically, the EPA's Draft Climate Change Policy, developed in response to the Court orders, confirms that the EPA will start regulating greenhouse gas emissions as pollutants. This is a huge cultural shift, as NSW becomes the first jurisdiction to regulate greenhouse gases as a form of pollution. EDO congratulates the EPA on taking this first step, and we encourage the EPA to build on this leadership and platform to drive the rapid decrease in emissions that is urgently needed to address the climate challenge.

This submission provides our analysis of the Draft Policy & Action Plan and identifies key issues to **support and strengthen** in the proposed framework:

a) **NSW EPA Draft Climate Change Policy – Key elements**

b) **Draft Climate Change Action Plan 2022-25**

Pillar 1: Inform and Plan

Pillar 2: Mitigate

Pillar 3: Adapt

c) **Key issues to support and strengthen in the proposed framework**

Enforceable targets and licence requirements

Timeframes for action

Comprehensive coverage of existing and new licensees

Ensuring a whole of government approach

Ecologically sustainable renewable energy pathways

Limited use of carbon offsets

Leadership and vision

## A: Draft EPA Climate Change Policy

The *Draft EPA Climate Change Policy* (**Draft Policy**) is a high level policy document that sets out the context for making the policy; summarises NSW State of the Environment information on causes and consequences of climate change; provides the overarching EPA policy context including decision-making principles and factors; and identifies a number of stakeholders and partners.

The Draft Policy refers to a number of related NSW policies and frameworks including the: *NSW Climate Change Policy Framework* (OEH 2016), *Net zero plan stage 1: 2020-2030* (DPIE 2020), *Net zero plan stage 1: 2020-2030: Implementation Update* (DPIE 2021), *NSW Climate Change Adaptation Strategy* (NSW Government 2022), the *NSW Waste and Sustainable Materials Strategy* (DPIE 2021), and the *EPA Strategic Plan 2021-24*. The Draft Policy notes EPA's expanding role as an 'active government partner' in regulating the causes and consequences of climate change in NSW within their regulatory remit, and acknowledges that the current legislation provides the necessary regulatory tools. A range of information on emissions, causes, impacts, definitions and decision-making principles and factors are provided in a glossary and appendices.

### **Statement of statutory duty**

EDO welcomes the inclusion of an **explicit acknowledgement that the NSW Government has a statutory duty to address climate change**.

The very first sentence of Foreword states: "The EPA has a legal duty to protect the community and environment from harm, including that caused by Climate Change" (Acting EPA Chair, p5). In clarifying the role of the EPA, the Draft Policy clearly identifies:

- **EPA statutory objectives** – The Draft Policy states that the key elements of the statutory objectives – ie, to protect, restore and enhance the quality of the environment in NSW, having regard to the need to maintain ecologically sustainable development; and to reduce the risk to human health and prevent the degradation of the environment – "*extend to protecting the environment and human health from climate change.*" (emphasis added)
- **EPA statutory duty** – The Draft Policy explicitly states: "Section 9 of the POEA Act imposes a statutory duty on the EPA to develop environmental quality objectives, guidelines and policies to ensure environmental protection. *This includes protection of the environment from climate change.* This policy addresses the duty under section 9 of the POEA Act." (p14) (emphasis added).

We strongly support the clear statement that the explicit purpose of the policy is to address the statutory objectives and the statutory duty.

It is important to recognise that the proposed policy is a significant step and reflects an important cultural shift in confirming and discharging the duty to act on climate change. When the Bushfire Survivors commenced the case against the EPA there was some resistance to the idea that the EPA had a specific duty to discharge in relation to climate change, beyond existing regulatory activities. The acknowledgement of this clear duty in the Draft Policy (and Draft Action Plan) represents a significant leap forward and is strongly supported.

### ***Proposed framework for the Draft Policy***

The key framework for the Draft Policy is set out on p15-16: “Strengthening our Climate Change Response.”

The Draft Policy notes ‘general policies’ including those listed above, and also refers to general EPA policies/principles on partnerships, co-benefits, supporting the regulated community, and refers to consistency with environmental justice principles (p15).

The crux of the Draft Policy is a 2-page summary of the proposed **three key pillar** framework:

- 1. **Inform and plan:** continually improving as we listen, provide support and report*
- 2. **Mitigate:** reducing greenhouse gas emissions*
- 3. **Adapt:** adapting and building resilience to a changing climate*

The brief summaries of the three key pillars in the Draft Policy use very positive language about encouraging, assisting, listening, supporting, considering, analysing, and progressively evolving the EPA’s regulatory response to climate change.

In addition to the explicit recognition of the duty to address climate change and publishing a proposed approach, there are other positive elements to support in the Draft Policy – for example, the reference to the science and the need to keep temperature increase to 1.5 degrees (p6), recognition of the role of First Nations Peoples (p17); and recognition of intergenerational equity and young people (p17).

EDO supports the proposed approach of the three pillars, however, the Draft Policy is high level and much of the content is a collation of existing frameworks, principles and information. There is no clear statement or indication that the final Policy will be a mandatory consideration for decision-makers – it is not drafted in the style of a policy with clear and specific requirements/objectives that are to be met. To determine whether the policy will effectively address climate change in NSW, it is necessary to look at the detail of how the three key pillars will be implemented in the Draft Action Plan.

### **B: Climate Change Action Plan 2022-25 (Draft Action Plan)**

The *Climate Change Action Plan 2022-2025 (Draft Action Plan)*:

- sets the context of how the EPA’s Climate Change Policy will be delivered;
- explains how to read the actions – in terms of co-benefits, regulatory approach, timing and measuring success;
- identifies continuing and new actions for the three key pillars; and,
- notes potential for stronger regulatory responses in the future.

We provide feedback on these sections in turn.

## **1. “Setting the Scene: delivering on our climate change policy”**

This section refers directly to the EPA’s Climate Change Policy, purpose of the Action Plan, EPA objectives, and the overall approach for implementation, reporting and review (see p6-7). We welcome the clear objective to “respond to the community’s increasing expectation that the EPA provides a strong regulatory response to climate change” (p6). However, as discussed below, the soft wording and unclear future timeframes for when enforceable regulatory requirements will be actually imposed beyond the initial three years of evolving policy development, may not provide the necessary certainty to industry or the community.

We note that the Draft Action Plan is due to be reviewed in 2025, but may be reviewed earlier “if required” (p7).

This section of the Draft Action Plan also refers to **partnership** with other agencies. This will be critically important as a whole of government approach is required for targets to be met. We strongly support increased partnership with the NSW Department of Planning and Environment (**DPE**) to embed climate change considerations into NSW planning laws. EDO has consistently recommended this approach – see: [Climate-ready planning laws for NSW: Rocky Hill and beyond - Environmental Defenders Office \(edo.org.au\)](https://www.edo.org.au/climate-ready-planning-laws-for-nsw-rocky-hill-and-beyond). The partnership with DPE is essential to achieving both the objectives of the Draft Climate Change Policy and agreed state-wide targets. Embedding mandatory climate change considerations into planning laws is essential to ensure the transition away from fossil fuels to renewable energy. It has also become very clear that approving new coal or gas projects will be incompatible with policy objectives and achieving targets, and relevant laws must reflect this.

In addition, we **recommend** the list of partner agencies be expanded – for example, including agencies for high emitting sectors such as industry and agriculture. We note that while the EPA generally does not regulate agricultural land, NSW Government policy must ensure relevant agencies are involved in climate policy, and there is a clear role for EPA leadership in convening and coordinating all agencies that regulate or manage high emitting sectors.

## **2. “Reading our Action Plan”**

In this section (p8-11), the Draft Action Plan identifies **co-benefits** of climate change action – including: protection of Country and First Nations cultural values, air quality and health, water and soil quality, biodiversity and ecosystem services, availability of natural resources and hazard reduction. We support recognition of co-benefits.

This section also identifies the **8 elements of the EPA’s regulatory approach**, namely: listen, educate, enable, act, enforce, monitor, require and influence. While we acknowledge the EPA does have a role as leading climate action as an influencer and educator, given the urgency of the climate crisis, we would like to see a more consistent and regular use of ‘require’ and ‘enforce’ approaches (this is discussed further below in relation to the pillars).

In terms of **timeframes and the staged approach**, the actions are intended to be staged over 3 years 2022-2025, with potential for progressive escalation of regulatory approaches. There is heavy emphasis on listening, consulting and gathering data for consideration in the first year, as a

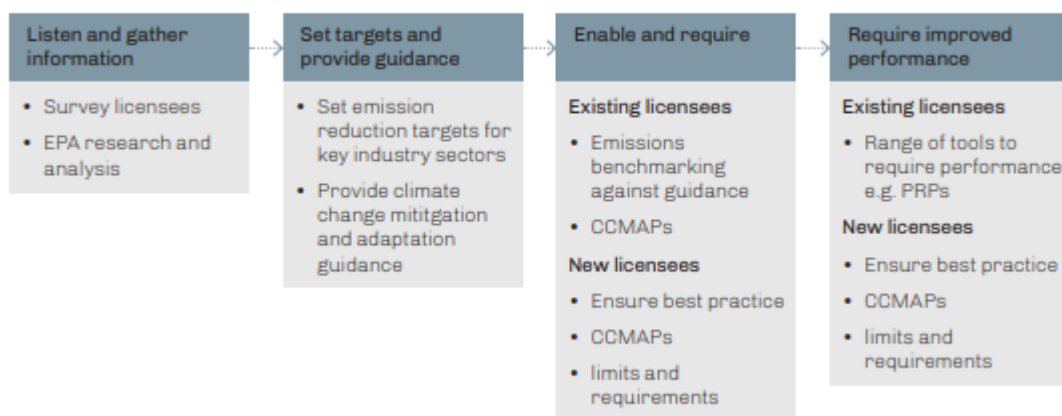
necessary precursor to any implementation of emissions reduction targets through licence conditions. We understand that gathering data and ensuring a methodical and comprehensive approach is important, but this focus means the Draft Policy & Action Plan do not reflect the urgency of the climate challenge.

We are in the critical decade for climate action. It is understood that achieving 2030 emissions reduction targets is crucial, and delaying action will make costs of addressing climate change impacts astronomical. The 3-year plan in the Draft Action Plan takes us to 2025 – half way through the critical decade, and many of the actions undertaken during this time may have contributed to knowledge, but may not have actually resulted in reduced emissions. We **recommend** the Draft Policy and Draft Action Plan set clearer timeframes and triggers for implementing enforceable requirements. We **recommend** bringing forward tangible actions to rapidly improve priority areas – for example, clear enforceable requirements to rapidly reduce coal mine methane.<sup>1</sup>

We support the reference to tracking progress against key performance indicators (KPIs) in the EPA annual report, but suggest the KPIs need to be more specific. For example, KPIs should set clearer progress targets in relation to achieving actions – for example indicating a specific percentage of industries engaged or plans made.

The staged approach also indicates different approaches to **new and existing licensees** – ie, some of the largest emitters.

**Figure 2. The EPA's climate change actions will be staged, progressive and iterative – allowing time for licensees to adjust and for data to inform what actions must be taken and where**



**Note:** CCMAPs = climate change mitigation and adaptation plans; PRPs = pollution reduction programs

We **recommend** that the final Policy & Action Plan clearly set out that there will be comprehensive coverage of *all* key emitters, with clear and enforceable limits and requirements for both existing and any new licensees. **The outcome/KPI should be that all regulated entities have a CCMA and appropriate limits and requirements in place by the end of 2025.**

<sup>1</sup> See also: International Energy Agency: Curtailing Methane Emissions From Fossil Fuel Operations, (2021), <https://www.iea.org/reports/curtailing-methane-emissions-from-fossil-fuel-operations/executivesummary>

### 3. “Action plan pillar 1: Inform and plan”

This section of the Draft Action Plan identifies 3 continuing actions and 10 new actions (p12-24). We provide EDO’s view on each in turn.

EPA’s proposed action	EDO’s view
<b>Continuing Actions:</b>	
1. Monitor and report on the impacts of climate change, greenhouse gas emissions and the implementation and effectiveness of the NSW Net Zero Plan, in NSW State of the Environment reports.	<b>Support and strengthen.</b> EDO supports publishing of robust data on sources and impacts of climate change, and the effectiveness of actions taken. However, as the EPA is the agency responsible for delivering the policy & actions, it would be appropriate to ensure independent expertise and review in State of the Environment ( <b>SoE</b> ) Reporting – rather than self-analysis. We recommend that the federal process of independent expert involvement in SoE chapters and the explicit incorporation of First Nations perspectives in SoE reporting should be adopted in NSW. <sup>2</sup>
2. Engage and collaborate with climate change experts across the NSW Government, and with other jurisdictions, as the EPA develops and implements its climate change actions.	<b>Support and strengthen.</b> In addition to consulting with government experts, the expertise of external independent climate experts should be harnessed too, particularly with respect to design, review and evaluation of actions.
3. Monitor emerging issues, trends, risks and opportunities surrounding the issue of climate change and the transition to a decarbonised economy.	<b>Support.</b> It is essential that the EPA (as well as key industries and communities) observe and process the changes in their environment. Known and emerging climate hazard risks should be regularly updated, reported and released to the public. Rather than an annual process as proposed, horizon scanning should be an ongoing process with regular public updates – for example, 6 monthly. Horizon scanning for opportunities should also include opportunities for First Nations leadership in working on climate solutions.

<sup>2</sup> See: State of the Environment Report 2021 available at: [Australia state of the environment 2021 \(dcceew.gov.au\)](https://www.dcceew.gov.au/state-of-the-environment/2021)

<b>New Actions:</b>	
1. Support EPA officers to make climate-change-related decisions.	<b>Support and strengthen.</b> It is critical for climate change to be embedded in decision-making across the full breadth of regulatory activities. It must be clear that the considerations are mandatory. Guidance and training on setting emissions limits and requirements should be linked to targets and clear objective criteria (ie, not subjective discretion/negotiation by individual officers). As previously noted, EDO recommends embedding climate considerations and criteria for decision-makers in legislation – this may be required if policy guidance does not deliver certainty and consistency.
2. Require and support our regulated community to develop and implement plans to minimise emissions and exposure to climate risks.	<b>Support and strengthen.</b> Provide further clarity by establishing objective criteria to determine ‘reasonable’ and ‘feasible’ measures. This is necessary to ensure an evidence-based, consistent and effective approach. EDO has concerns about the potential for variable negotiated standards based on differing interpretations of ‘reasonable’ and ‘feasible.’
2a. Focus our regulatory effort by first listening to our regulated community, so we understand the climate change actions already being taken.	<b>Support</b> a mandatory survey. This stage should be done expediently so the next stages can be implemented in a timely manner. We hope that this stage is already well underway.
2b. Progressively require and support our licensees to prepare, implement and report on climate change mitigation and adaptation plans ( <b>CCMAPs</b> ).	<b>Support</b> a clear requirement to develop and implement CCMAPs. <b>Strengthen</b> to require full CCMAPs be published, and develop standard conditions to ensure CCMAPs are implemented. Clarify when/how the CCMAP process will be reviewed (eg: in terms of outcomes of plans, not just number of plans made). Clarify the timeframe for when EPA will achieve 100% of licensees having plans, ie, by end of 2025.
2c. Partner with DPE to seek to ensure climate change is being adequately addressed by proponents of activities we’ll	<b>Support and strengthen.</b> It is critical that climate change considerations be comprehensively embedded in planning

regulate, and that approvals contain appropriate conditions.	assessments, approvals and decisions, see recommendations in <a href="#">Climate-ready planning laws for NSW: Rocky Hill and beyond – Environmental Defenders Office (edo.org.au)</a>
2d. Require and support all our licensees to specifically consider how a changing climate might increase their risk of pollution incidents, and require them to update their pollution incident response management plans accordingly.	<b>Support.</b>
3. Listen to and learn from Aboriginal people; create opportunities to meaningfully engage and receive feedback on our climate change response.	<b>Support.</b> Also enable First Nations to benefit from opportunities as part of the energy transition, for example in partnership with the <a href="#">First Nations Clean Energy Network</a> .
4. Regularly discuss our climate change approach with the EPA’s Youth Advisory Council, to ensure we’re putting intergenerational equity into practice.	<b>Support.</b>
5. Prepare an annual EPA statement on climate change impacts, risks and adaptation to better understand and prepare for the impacts of climate change on our operations.	<b>Support.</b> We support EPA leadership and also support broader requirements for risk disclosure reporting across the public and private sector. <sup>3</sup>
6. Report on the progress of our action plan in our Annual Report.	<b>Support.</b> We recommend that KPIs be strengthened with specific outcomes identified to be achieved by end of 2025.

#### 4. “Action plan pillar 2: Mitigate”

For EDO, this is the most important pillar in the Draft Action Plan as the primary and immediate climate challenge is to reduce actual emissions as soon as possible to avoid catastrophic impacts and keep temperature increase to 1.5 degrees. A critical part of discharging the EPA’s statutory duty is effectively regulating greenhouse gas pollutants in order to reduce greenhouse gas emissions. This section identifies 6 continuing actions and 4 new actions (p25-40).

This section notes existing programs including: the *Electricity Infrastructure Roadmap*, the *NSW Waste and Sustainable Material Strategy*, and the *Hydrogen Strategy*. In relation to supporting

<sup>3</sup> See recommendations in: [Submission on the APRA Draft Prudential Guide CPG 229 Climate Change Financial Risks \(April 2021\) – Environmental Defenders Office \(edo.org.au\)](#)

‘emerging technologies needed to decarbonize hard-to-abate sectors’ the Draft Action Plan notes: the Net Zero Industry and Innovation Program, Coal Innovation NSW, the Decarbonisation Innovation Hub, and Sustainability Advantage (p27). We **recommend** that investment in emerging technologies should prioritise renewable technologies and not technologies that prop up the continued use of fossil fuels – for example, carbon capture and storage.<sup>4</sup> The targets and objectives of the policy will be undermined if actions include programs that facilitate the continued use of coal.

EPA’s proposed action	EDO’s view
<b>Continuing Actions:</b>	
4. Develop and implement programs to reduce greenhouse gas emissions from the waste sector, including our target of net zero emissions from organic waste from landfills by 2030.	<b>Support.</b>
5. Support the whole-of-government approach to streamlining project approvals in renewable energy zones.	<b>Support and strengthen.</b> The rapid transition to renewables is essential and should be guided by clear principles. Any streamlined process for renewable energy projects must provide a clear pathway for assessment and approval of ecologically sustainable renewable energy projects and associated transmission infrastructure – by establishing clear ecologically sustainable development standards for renewable energy projects. This includes, for example, frameworks to ensure that renewable energy projects are appropriately located, sited, designed and operated to ensure development avoids, minimises and mitigates adverse impacts on the natural environment (fauna and flora), water resources, First Nations heritage, cultures and access to Country, and associated ecological processes. This must include clear mandatory requirements for free prior informed consent and extensive consultation with impacted First Nations communities. We recommend the NSW government develop a clear statement of these principles and make appropriate amendments under planning laws and policies.

<sup>4</sup> See: [Coal innovation | Department of Regional NSW](#)

6. Develop and implement tailored behavioural change programs to encourage and enable greenhouse gas emission reduction.	<b>Support and strengthen.</b> Behavioural change programs are important, but further detail could be provided about what kinds of behaviours these will address beyond existing waste programs. It is also unclear how many emissions will be mitigated by these programs?
7. Ensure methane emissions from EPA licensed onshore gas operators are minimised; review existing leak detection and repair programs.	<b>Support and strengthen.</b> Requiring and enforcing improved leak detection and repair is supported, and should be extended to explicitly include <b>methane from coal mines</b> . This could be addressed in a separate action for putting conditions/requirements on licensed coal mines in relation to emissions reduction, monitoring and rehabilitation to mitigate and prevent methane leakage. This should be linked to a broader overarching policy to reduce reliance on gas and coal overall in order to meet state emissions reduction targets, not just fix methane leaks.
8. Regulate short-lived climate pollutants from our licensees.	<b>Support and strengthen.</b> Actions should include any necessary reform to ensure NSW emissions exceedance limits and standards are best practice. See recommendations in: <a href="#">210630-Inquiry-into-the-POEO-Amendment-Clean-Air-Bill-EDO-submission-NSW.pdf</a> .
9. Lead by example, maintaining efforts to become a carbon-neutral organisation by 2030.	<b>Support and strengthen.</b> EPA should clarify to what extent achieving carbon-neutral status by 2030 will rely on carbon offsets, and how the EPA will ensure the veracity and integrity of any offsets used. See concerns about carbon offsetting in <a href="#">EDO submission to the Independent review of Australian Carbon Credit Units (ACCUs) - Environmental Defenders Office</a>
<b>New Actions:</b>	
7. Develop a series of greenhouse gas emission reduction targets and related pathways for key industry sectors we license, to help guide our regulatory effort.	<b>Support and strengthen.</b> This is a <b>critically important</b> part of the plan and should be strengthened to ensure targets are <b>science-based, comprehensive in coverage and legally</b>

	<b>enforceable.</b> This action needs ‘require’ and ‘enforce’ options (*see commentary below).
8. Prepare or adopt climate change mitigation guidance for key industry sectors we license, including the performance outcomes we seek.	<b>Support.</b> Guidance should be designed to help the regulated community comply with clear mandatory requirements.
9. Progressively place greenhouse gas emission limits and other requirements on licences for key industry sectors.	<b>Support and strengthen.</b> This is the critical action for the mitigation pillar – the Action Plan needs to galvanise clear enforceable requirements for emissions reduction being part of licences (note – monitoring and reporting conditions can be met but that does not mean emissions are actually reduced, just tracked). Under the Draft Action Plan, this may not happen until year 3 – this type of concrete action should be brought forward in the plan to year 1. The science of climate change, including the causes and the solutions, has been widely known for decades. Industry has had ample time to prepare for regulation of emissions. We are in the critical decade for climate action – there is no more time to lose. In considering costs and benefits of imposing requirements (p37) there needs to be consideration of the costs of inaction and the social costs of carbon pollution – rather than a focus on what is ‘reasonable’ and ‘feasible’ as negotiated by industry. <sup>5</sup> Potential use of offsets should be clearly limited (p37). As noted, the action outcome/KPI should be that all regulated entities have appropriate limits and requirements in place by the end of 2025.
10. Encourage and support our regulated community to innovate	<b>Support</b> innovation. However, it is unclear how the actions listed (p39) eg: roadshows and showcases will actually translate to tangible emissions reduction during the life of the plan? Again, we note technological innovation investments and programs should support

<sup>5</sup> For further analysis of the social costs of carbon – see: [EDO Submission in response to the Safeguard Mechanism Reform Consultation Paper - Environmental Defenders Office](#) - Recommendation 2(d) – penalise exceedances by recognising the social cost of carbon. See also: [A Social Cost of Carbon for the ACT](#).

	transition to renewables and <i>not</i> continued use of fossil fuels.
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### 5. “Action plan pillar 3: Adapt”

The third pillar identifies 2 continuing actions and 4 new actions to implement the adapt pillar of the policy (p41-49). We note that there are many agencies involved in disaster response and management and the NSW EPA has a specific remit within the emergency management sector. The EPA has a primary focus on managing impacts of pollution incidents, but can also have a strong role in preparedness, and ensuring environmental justice for impacted and overburdened communities.

EPA’s proposed action	EDO’s view
<b>Continuing Actions:</b>	
10. Protect the environment during emergency response and recovery, and strengthen our approach by being better prepared for the impacts of climate change.	<b>Support.</b> The key action here is to review the EnviroPlan <sup>6</sup> to ensure climate readiness – further detail could be provided on how the review will ‘incorporate the concept of building environmental resilience’ (p45).
11. Ensure climate risks are considered in native forestry via the Forest Monitoring and Improvement Program.	<b>Support and strengthen.</b> This is a very specific action relating to EPA’s compliance and enforcement role in native forestry operations. In addition to the ongoing monitoring program, there should be broader policy and planning for a transition out of native forestry and to enhance the role of native forests as sinks to support mitigation (and co-benefits) under pillar 2.
<b>New Actions:</b>	
11. Develop an adaptation and resilience delivery plan for the EPA.	<b>Support.</b>
12. Develop and implement environmental resilience programs and initiatives.	<b>Support.</b> There are references to ongoing waste initiatives, but further detail could be given on what kinds of programs will be developed under this action. In addition to consultation with industry, councils, Aboriginal and public land managers, initiatives under this action should be

<sup>6</sup> The NSW Environmental Services Functional Area Supporting Plan sets out the emergency management arrangements for protection of the environment before during and after an emergency.

	developed in partnership with local communities – for example, survivors of bushfire and flood events. Specific actions including community led consultation and co-design processes should be identified. Actions should be designed to ensure delivery of environmental justice to overburdened communities as a critical function of EPAs – see: <a href="https://www.edo.org.au/Implementing-effective-independent-Environmental-Protection-Agencies-in-Australia-Environmental-Defenders-Office">Implementing effective independent Environmental Protection Agencies in Australia - Environmental Defenders Office (edo.org.au)</a>
13. Prepare or adopt climate change adaptation guidance for key industry sectors we license, including the performance outcomes we seek.	<b>Support.</b> It is essential that key industries and communities observe and process the changes in their environment. In addition, known data, information and mapping of climate hazard risks should be regularly updated, reported and released to the public to complement guidance information.
14. Develop a climate change citizen-science strategy and community education program to encourage and support young people to make observations about changes in their local environment.	<b>Support.</b> As above, it is essential that known climate hazard risk data, information and mapping be regularly updated, reported and released to the public to complement the targeted citizen-science and guidance information.

## 6. “Stronger regulatory responses we’ll consider in the future”

The last page of the action plan before the Glossary is half a page flagging that the EPA may consider the use of stronger regulatory responses in the future. As set out in the EDO Report [Empowering the NSW EPA to Prevent Climate Pollution – Environmental Defenders Office \(edo.org.au\)](https://www.edo.org.au/Empowering-the-NSW-EPA-to-Prevent-Climate-Pollution-Environmental-Defenders-Office), NSW legislation already contains a range of powers and tools that can and should be used to regulate climate pollution. These include market-based approaches such as the load-based licensing scheme, or charging a fee for emissions, or developing an emissions trading scheme.

We welcome the acknowledgement that the EPA has these tools and that they can be used to regulate greenhouse gas emissions, but **there needs to a clear point in time that the EPA will escalate the regulatory approach**. There is no clear rationale for the decision not to use these tools now.

If we get to 2025 and it appears that the consultative and softer approach of many of the actions in the Draft Action Plan have not in fact reduced emissions in line with the necessary targets, is it only then that the EPA will consider consulting on the use of other tools? We are in the critical decade

for action on climate change – ie, rapid actual emissions reduction. The Draft Policy and Draft Action Plan take us half-way through the critical decade. **The processes for developing stronger approaches should commence now, concurrently with the softer approaches.**

The KPIs suggested in the Draft Action Plan tend to identify the ‘proportion’ of the action that is achieved to be reported annually (for example, proportion of CCMAPs made etc), but it is not clear what proportion the EPA is aiming for. Is 10% enough? The Draft Action Plan should be strengthened by clarifying at what point will there be a clear trigger saying stronger regulatory measures need to be implemented. This would provide greater certainty to regulated industry and the community, and set a clearer trajectory for emissions targets to be met and greenhouse gas pollutions to be effectively regulated under the statutory duty.

Our key **recommendations** are reiterated here:

#### Recommendation 1:

The EPA adopts an **environmental protection goal** of reducing greenhouse gas (GHG) emissions consistent with limiting global average temperature rise to 1.5°C above pre-industrial levels.

In order to achieve this environmental protection goal, we recommend that:

#### Recommendation 2:

Consistent with the polluter pays principle, the EPA facilitates the reduction of GHG emissions by putting a **price on carbon**. This could be achieved by:

- Introducing schemes for economic measures (such as an emissions trading scheme) that set an appropriate price signal for reducing GHG emissions in NSW.
- The EPA immediately finalising the review of its load-based licensing (LBL) scheme and recommending that the LBL scheme be expanded to:
  - Include mining for coal and other related activities (which are currently not regulated by the LBL scheme);
  - Include carbon dioxide and methane (as well as other GHG pollutants not currently captured by the LBL scheme) as assessable pollutants (particularly for electricity generation, petroleum exploration, assessment and production, and mining for coal);
  - Increase fees to be more reflective of the costs of GHG pollution on society and drive cleaner production; and
  - Allow revenue from the LBL scheme to be used to fund GHG emissions reduction initiatives.

#### Recommendation 3:

The EPA adopts **other mechanisms** to reduce GHG emissions in recognition of their impacts as an environmental pollutant, including:

- The development of guidelines and policies for the reduction of GHG emissions, including standards or limits on GHG emissions;

- Placing conditions on environment protection licences (EPLs), including GHG limit conditions (consistent with relevant EPA guidelines or policies developed in relation to the reduction of GHG emissions);
- Implementing Pollution Reduction Programs via EPL licence conditions that require holders of EPLs to reduce GHG emissions; and/or
- The reduction of GHG emissions through emissions standards under the *Protection of the Environment Operations Act 1997* and *Protection of Environment Operations (Clean Air) Regulation 2010*.

#### Recommendation 4:

The EPA prepares and recommends the making of a **Protection of the Environment Policy (PEP)** in accordance with Chapter 2 of the *Protection of the Environment Operations Act 1997* to address the transition to a zero-emissions economy and the prevention of climate change impacts on human health and the environment of NSW.

Consistent with Recommendation 1, the PEP should contain an overarching environmental protection goal of reducing GHG emissions consistent with efforts to limit global average temperature rise to 1.5°C above pre-industrial levels.

The PEP should also:

- Identify mechanisms for the EPA to reduce GHG emissions via an appropriate regulatory scheme (consistent with Recommendation 2 and 3);
- Include guidelines for the reduction of GHG emissions across various sectors in NSW; and
- Include protocols to guide NSW government agencies to assess and respond to the impacts of climate change in decision-making.

## **C: Summary of key issues and themes**

In summary, as discussed above, there are some key issues to support and strengthen within the Draft Climate Change Policy and Draft Action Plan.

### **Support**

It is important to recognise that the Draft Climate Change Policy is a significant step forward and reflects an important cultural shift in confirming and discharging the duty to regulate greenhouse gas pollutants and to act on climate change. This explicit recognition of the EPA's role is strongly supported. In this context, in our view, some of the most important elements of the policy and action plan are the commitments to:

- Develop a series of greenhouse gas emissions reduction targets and related pathways for regulated industry sectors (Pillar 2: new action 7);
- Progressively place greenhouse gas emissions limits and other requirements on licences for key industry sectors (New Action 9);
- Embed climate change considerations into EPA decision-making (Pillar 1: new action 1); and,
- Identifying the stronger regulatory responses that are on the table for future application.

There are a range of other elements of the policy and action plan that should be supported. These include:

- New requirements for Climate Change Mitigation & Adaptation Plans (Pillar 1; New Action 2B);
- Partnering with DPE to ensure climate change is adequately considered in approval processes (Pillar 1: new action 2C), including developing guidance for proponents;
- Annual reporting of progress against the Action Plan;
- Reference to consistency with environmental justice principles (p15 and 17 Draft Policy);
- Engagement, consultation, knowledge recognition and benefit-sharing with First Nations people (p17 Draft Policy; Pillar 1: new action 3 Action Plan);
- Consultation with young people, consistent with the principle of intergenerational equity (Pillar 1: new action 4, and Pillar 3: new action 14);
- Intent to deliver environmental, cultural and health co-benefits from climate action (p9 Action Plan);
- Disclosing exposure to climate related risks; and,
- Inter-agency engagement to further a whole-of-government approach.

### **Strengthen**

Noting that the Draft Policy is intended to provide a foundation for evolving climate action by the EPA, we note there are a number of areas where the Draft Policy and Action Plan should be clarified and strengthened.

- **Enforceability of targets and licence requirements**

The language throughout the Draft Climate Change Policy and Draft Action Plan heavily emphasises a collaborative role of the EPA in ‘supporting’ ‘consulting’ ‘listening’ ‘guiding’ ‘signalling’ and ‘encouraging’ climate action (ie, ‘support’ and ‘encourage’ rather than ‘require’ or ‘direct’). References to imposing and enforcing clear requirements and limits in terms of direct regulation are noted as a potential future action. For example, there may be a requirement to make a plan (CCMAP), but it is a discretionary consideration as to whether there will be any conditions requiring implementation of the plan (p18 Draft Action Plan).

The Draft Action Plan sets out a staged approach to setting sectoral or sub-sectoral targets (p10-11), heavily based on what industry tells the EPA is ‘feasible.’ While consultation and feasibility are valid considerations, there needs to be a clear commitment that targets will be based on scientific evidence of what emissions reduction is needed. If a sector or individual emitter argues that a target is not ‘feasible’ or ‘cost effective’ for them, does that mean the target will be reduced?

A key issue of concern is a lack of clarity on enforceability of targets. Despite Action 9 noted above, the Draft Action Plan states: “The targets themselves will not be enforceable, as they will apply to the industry sector as a whole (not to an individual licensee). However, our targets will provide tailored and transparent signals for the industry sectors in question, as we work with them to influence and require greenhouse gas emission reductions.” Similarly, p35 states: “Sector targets will inform (not dictate) licence requirements. We don’t intend for sector targets to be translated directly into consent or licence conditions. However, the sector targets, along with any relevant best-practice guidance developed for that sector, are likely to guide and inform planning and licensing decisions.” It is of significant concern that sector targets will not be enforceable. Monitoring and reporting is required to show how achievement of targets is tracking, and enforcement mechanisms are needed where the reporting shows targets are not on track to be met.

We **recommend** that the Draft Policy and Action Plan be strengthened to set a clearer signal that targets will be **comprehensive, science-based and enforceable within the next 3 years**. Negotiable targets imposed in 3 years time for certain industry sub-sectors only may achieve some reductions in the second half of this decade. The Draft Climate Change Policy and Draft Action Plan must ensure enforceable requirements and limits are consistently applied to the full range of emitters.

- **Timeframes for action**

The Draft Action Plan sets out actions over the next 3 years. As noted, there is a heavy emphasis on actions relating to consultation, information, guidance, support and encouragement – in preference to direct or coercive regulation. We understand that gathering data and ensuring a methodical and comprehensive approach is important, but this focus means the policy does not reflect the urgency of the climate crisis.

As noted, we are in the critical decade for climate action. It is understood that achieving 2030 goals is crucial, and delaying action will make costs of addressing climate change astronomical. The 3-

year plan in the Draft Action Plan takes us to 2025 – half way through the critical decade, and many of the actions undertaken during this time may have contributed to knowledge, but may not have actually resulted in reduced emissions.

As noted, the very last page of the Action Plan before the Glossary (p50) refers to stronger regulatory tools that may be applied in the future - “medium to longer term if required.” These include “considering whether market-based approaches might be needed to encourage faster decarbonisation.” EDO pointed out to the EPA in 2020 that they already have a range of regulatory tools that can be used to regulate greenhouse gas pollution – see: [Empowering the NSW EPA to Prevent Climate Pollution - Environmental Defenders Office \(edo.org.au\)](https://edo.org.au/publications/empowering-the-nsw-epa-to-prevent-climate-pollution/). It is concerning to think that consideration of using these available tools will only start to happen 5 years on, mid-way through this critical decade.

Industry has been on notice for decades about the need to reduce emissions. The NSW Government has a range of effective regulatory tools already. The arguments in favour of minimal interventions are inconsistent with the urgency of the task. A clear escalation timeframe and triggers are needed.

- **Comprehensive coverage of existing and new licensees**

The Draft Action Plan indicates that there will be different approaches for new as opposed to existing licensees. The Draft Climate Change Policy and Draft Action Plan clearly recognise the significant emissions from existing licensees, and yet the policy indicates that actual conditions and licence requirements will be used for new entrants, with existing licencees only required to make a CCMAP, with some emissions benchmarking. There needs to be more detail provided on this approach, with the most significant emitters being subject to appropriate requirements and limits. As noted, the contemplation of approving new fossil fuel projects and regulating new licensees is inconsistent with achieving the 2030 and 2050 targets. Planning law reforms and clear enforceable emissions reduction requirements for *all* licencees are required.

We also note the EPA intends to focus on industries that are not currently subject to requirements. It is not clear how the EPA will determine sectors to focus on, and how it will address high emitting sectors such as coal. This needs to be clarified as the Climate Change Policy and Climate Change Action Plan must address the biggest emitters if objectives and targets are to be met and the statutory duty to address climate change to be effectively discharged. To be credible, the final Policy & Action Plan must directly address coal and coal fired power stations.

- **Ensuring a whole-of-Government approach**

The Draft Climate Change Policy and Draft Action Plan both contain summary information about sources of emissions across a range of sectors, and the need for multi-agency coordination. In this context, the commitment to a cross-government technical knowledge group is supported.

As noted, we strongly support increased partnership with DPE to ensure climate considerations are embedded in assessments, approvals and conditions. However, it is unclear how this will be done in the absence of planning law reform as long identified by EDO: [Climate-ready planning laws for NSW: Rocky Hill and beyond - Environmental Defenders Office \(edo.org.au\)](https://edo.org.au/publications/climate-ready-planning-laws-for-nsw-rocky-hill-and-beyond/). Unless there

is a coordinated and enforceable approach, it is unclear how the policy will be implemented to achieve targets - particularly with statements such as: *“It is currently Government policy that the NSW 2030 target is not to be considered in the assessment or determination of development and infrastructure under the Environmental Planning and Assessment Act 1979 (DPIE 2021a)”* (Page 32 of the Draft Action Plan). This needs to be clarified, and an interagency group needs to identify related reforms that will be needed to ensure the policy objectives and broader state targets will be met. To achieve NSW’s stated goals and targets for addressing climate change it is critically important that planning and assessment processes and outcomes under the EP&A Act coordinate with the Climate Policy and Action Plan. Exemptions and inconsistencies across government agencies and policies need to be addressed. We **recommend** a specific action and taskforce to address this.

As noted, industry, transport and agriculture departments and agencies need to be at the table. There is a risk that conflicting agency objectives might undermine the Climate Change Policy and Action Plan. For example, predicted **carbon abatement from land use, land use change and forestry requires** strong law and policy regulating native vegetation clearing and forestry. Native vegetation clearing in NSW has been essentially deregulated with most clearing now under self-assessed codes. This regulatory setting is at odds with broader climate policy and targets. Forestry and Local Land Services agencies need to be included in a whole of government approach.

We also support EPA leadership and engagement with other jurisdictions on a range of climate actions. For example, there are opportunities to reduce **transport emissions** through engagement with the Commonwealth on establishing strong vehicle emissions standards.

- **Ecologically sustainable renewable energy pathways**

In relation to Pillar 2: continuing action 5, we note that any process for renewable energy projects must provide a clear pathway for assessment and approval of ecologically sustainable renewable energy projects and associated transmission infrastructure – by establishing clear ecologically sustainable development standards for renewable energy projects. This includes, for example, frameworks to ensure that renewable energy projects are appropriately located, sited, designed and operated to ensure development avoids, minimises and mitigates adverse impacts on the natural environment (fauna and flora), water resources, First Nations heritage, cultures and access to Country, and associated ecological processes. This must include clear mandatory requirements for free prior informed consent and extensive consultation with impacted First Nations communities.

- **Limited use of carbon offsets**

It is suggested on p37 of the Draft Action Plan that “Where licensees cannot meet an emission limit, we could consider allowing them to use offsets.” We note there are significant issues with the integrity of the carbon offsets market, including that offsets use under the Safeguard Mechanism has allowed net emissions to increase. Any use of offsets would need to be strictly capped so as to not undermine actual emissions reduction and to ensure actual abatement. See also: [EDO Submission in response to the Safeguard Mechanism Reform Consultation Paper - Environmental](#)

- **Leadership and vision**

We encourage the NSW EPA to be a leader and to present a bold and ambitious vision in its finalised Policy and Action Plan. We acknowledge that the EPA has a specific regulatory remit, but its objectives and role in protecting the environment and health are broad and the targets are statewide. The Draft Policy and Action Plan should be designed for the environment and climate disaster affected communities just as much as the regulated licensees. The EPA is not just a “service-oriented organisation” (P17 Draft Action Plan) for industry, but also has a broader remit in delivering environmental justice – particularly to overburdened communities.<sup>7</sup> Policy must be comprehensive in coverage – across sectors and address the biggest emitters - both new and existing, identify specific outcomes, have scale up triggers, have all relevant agencies at the table.

We welcome the Draft Policy and Action Plan as an important foundation, but encourage the EPA to commence the process of scaling up regulatory responses and visionary leadership now, to discharge its duty to regulate greenhouse gas pollution and ensure safe climate targets and goals are met in this critical decade for climate action.

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<sup>7</sup> See: [New report: Implementing effective independent Environmental Protection Agencies in Australia - Environmental Defenders Office \(edo.org.au\)](#)