

**Submission to the Independent review of the
*Environment Protection and Biodiversity Conservation Act 1999***

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Climate Action Network Australia

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Date:

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Secretariat
Independent review of the EPBC Act 1999
GPO Box 787
Canberra ACT 2601
Australia

**Submission to the
Environment Protection and Biodiversity Conservation Act
Independent Review**

from the Climate Action Network Australia
www.cana.net.au

December 4, 2008

The Climate Action Network Australia (CANA) is the peak non-government body working on climate change in Australia.

CANA welcomes this independent review of the Environment Protection and Biodiversity Conservation Act as an opportunity to extend this Act to include consideration of climate change. To this extent, CANA recommends that a 'greenhouse trigger' is inserted into the Act. This trigger will ensure that large scale greenhouse polluting projects are assessed by the Federal Government; and that decision-making processes should consider and minimise where possible the adverse effects of climate change on Australia. Such a trigger was proposed by the Australian Labor Party in 2006 (see ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2006 in Hansard transcripts).

Below is recommended text to amend the EPBC Act to incorporate such a greenhouse trigger. This trigger will prevent:

- the construction or expansion of a nuclear power reactor.
- the construction or expansion of a coal fired power station.
- the construction of a new coal mine.
- the expansion of an existing coal mine.
- a change in land use or land clearing, likely to result in the emission of more than 125,000 tonnes of carbon dioxide equivalent into the atmosphere in any 12 month period.
- logging activities in any forest that is ecologically mature and / or where the upper stratum or overstorey is in the late mature growth phase.

CANA thanks the Department of Environment for the opportunity to make this submission.

For further information, please contact me directly.

Yours sincerely,

Nina Hall

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Suggested amendments to the Environment Protection and Biodiversity Conservation Act 1999

Schedule 1 – Amendment of the Environment Protection and Biodiversity Conservation Act 1999

1 Section 3 Objects of Act

Insert after section 3(1)(e)

(ea) reduce greenhouse gas emissions from Australia and to assist with global efforts to stabilise and reduce human derived greenhouse gas concentrations in the atmosphere.

Insert after section 3(2)(e)(i)

(ia) includes provisions to ensure that projects having an adverse impact on the climate system are assessed and approved by the Commonwealth.

2 Section 3A Principles of ecologically sustainable development

Insert after section 3A(a)

(aa) Decision making processes should consider and where possible minimise the adverse impact of climate change on the environment.

3 After section 22A in Subdivision E of Division 1 of Part 3

22A offenses relating to nuclear power reactors

(1) A person is guilty of an offense if the person constructs or expands a nuclear power reactor.

(2) An offense against subsection (1) is punishable on conviction by imprisonment for a term not more than 30 years, a fine not more than 20,000 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum

amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offense against this section may also be guilty of

an offense against section 495.

4 After Subdivision E of Division 1 of Part 3

Insert:

Subdivision EA – Protection of the environment from greenhouse gas emissions

22C Requirement of approval for certain greenhouse gas emissions

(1) A person must not take an action which:

- a. Regulations provide is a prescribed development for the purpose of this clause, or
- b. Is the construction of a new coal fired power station;
- c. Is the construction of a new coal mine ; or
- d. Is an expansion of an existing coal mine; or
- e. d. Is an expansion of an existing coal fired power station; or
- f. Is otherwise, directly or indirectly, including by change in land use or land clearing, likely to result in the emission of more than 125,000 tonnes of carbon dioxide equivalent into the atmosphere in any 12 month period.

Civil Penalty

- a. for an individual—5,000 penalty units;
- b. for a body corporate—50,000 penalty units.

(2) Subsections (1)(a) (d) and (e) do not apply to an action if:

- a. an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- b. Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- c. there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- d. the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

22D offenses relating to greenhouse gas emissions

(1) A person is guilty of an offense if the person intentionally or recklessly:

- a. Carries out development prescribed by the regulations for the purpose of this clause; or
- b. Constructs a new coal mine; or
- c. Carries out the expansion of an existing coal mine; or
- d. Takes an action which directly or indirectly, including by change in land use or land clearing, is likely to result in the emission of more than 125,000 tonnes of carbon dioxide equivalent into the atmosphere in any 12 month period.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) An offense against subsection (1) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the

maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offense against this section may also be guilty of an offense against section 495.

(3) Subsections (1) (a), (c) and (d) do not apply to an action if:

- a. an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- b. Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- c. there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- d. the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection.

See subsection

13.3(3) of the *Criminal Code*.

22E Prohibition of logging in old growth forests

(1) A person is guilty of an offense if the person conducts logging activities in any forest

that is ecologically mature and / or where the upper stratum or overstorey is in the late mature growth phase.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) An offence against subsection (1) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note : Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

5 Part 23 Division 2 section 528 Definitions

Insert in alphabetical order:

Adverse effects of climate change means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

Climate system means the totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions.

Greenhouse gases means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and reemit infrared radiation, and include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydro fluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆). For the purposes of this Act, the definition of greenhouse gases does not include water vapour.

Greenhouse gas emissions means emissions of greenhouse gases measured in tonnes of carbon dioxide equivalents

Old growth forest means any forest that is ecologically mature and / or where the upper stratum or overstorey is in the late mature growth phase.

About the Climate Action Network Australia

Climate Action Network Australia (CANA) is an alliance of over 50 groups concerned about global warming. They come from the faith, community, development, and environmental movements, as well as the research community. CANA, in turn, belongs to the global Climate Action Network (CAN) which has representative groups in more than 80 nations, in every continent.

Since 1998, CANA has been working in Australia to increase the understanding of climate change, and to encourage governments, businesses and individuals to undertake actions to reduce greenhouse gas emissions, and their climate change impacts. For further information, visit www.cana.net.au.

CANA's member organisations include:

Environment and Climate Organisations (international)

[Climate Action Network – Global](#)
[Friends of the Earth](#)
[Greenpeace Australia Pacific](#)
[The Pew Charitable Trusts](#)
[WWF - Australia](#)

Environment Organisations (national)

[Australian Conservation Foundation](#)
[Australian Marine Conservation Society](#)
[Australian Student Environment Network](#)
[The Climate Institute \(Assoc. Member\)](#)
[The Wilderness Society](#)

Environment, Human Rights and Youth Organisations

[Australian Youth Climate Coalition](#)
[GetUp!](#)
[Mineral Policy Institute](#)

Aid and Development Organisations

[Aidwatch](#)
[Caritas Australia](#)
[Jubilee Australia](#)
[Oxfam Australia](#)
[Tear Australia](#)
[World Vision Australia](#)

Faith-based Organisations

[Australian Religious Response to Climate Change](#)
[Catholic Earthcare Australia](#)
[Edmund Rice Centre](#)
[Sisters of the Good Samaritan](#)

[Sisters of Mercy - Earth Link](#)

[Social Action Office](#)

[Uniting Church, The Justice and International Mission](#)

[UnitingJustice Australia](#)

Renewable Energy and Energy Efficiency Organisations

[Australian & New Zealand Solar Energy Society](#)

[Moreland Energy Foundation](#)

[Urban Ecology Australia](#)

Legal and Research Organisations

[Climate change research cluster, School of Health and Social Development, Deakin University](#)

[Environmental Defender's Office New South Wales \(Ltd\) \(Assoc. Member\)](#)

[Institute of Environmental Studies, University of NSW](#)

[Institute for Sustainable Futures, University of Technology Sydney \(Assoc. Member\)](#)

Environment Organisations (state-based)

[Cairns and Far North Environment Centre](#)

[Conservation Council of South Australia](#)

[Conservation Council of the ACT and Region](#)

[Conservation Council of Western Australia](#)

[Environment Centre of the Northern Territory](#)

[Environment Tasmania](#)

[Environment Victoria](#)

[National Parks Association of NSW](#)

[Nature Conservation Council of New South Wales](#)

[Wales](#)

[Sustainable Living Tasmania](#)
[Tasmanian Conservation Trust](#)
[Total Environment Centre](#)

Environment Organisations (regional)

[Arid Lands Environment Centre](#)
[Central West Environment Council](#)
[Environment East Gippsland](#)
[North Coast Environment Council](#)
[Sunshine Coast Environment Council](#)

**Environment and Climate Organisations
(grassroots)**

[Association for Berowra Creek](#)
[Bathurst Climate Action Network](#)
[Climate Action Newcastle](#)
[Climate Action Tomaree](#)
[Climate Action Now Wingecarribee](#)
[Climate Change Australia](#)
[Climate Change Balmain Rozelle](#)
[Locals Into Victoria's Environment \(L.I.V.E.\)](#)
[Orange Climate Action Now](#)
[ParraCAN \(Parramatta Climate Action
Network\)](#)
[Rising Tide Newcastle](#)
[Wollongong Climate Action Network](#)



Climate Action Network Australia

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