

6 March 2020

SUBMISSION: *ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (CLIMATE TRIGGER) BILL 2020*

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I welcome the Private Member's Bill introduced by Senator Hanson-Young to introduce a climate trigger to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (*EPBC Act*). Within the current environmental regulatory system, it has the potential to help Australia meet and improve its nationally determined contribution to global climate action under the Paris Agreement.

Aware that the *EPBC Act* is currently undergoing its second decadal review, I wish to submit the following comments.

1. The climate trigger, if it is passed at all, should be an interim measure in the overhaul of Australia's environmental regulatory system.

According to a survey of 54,000 Australians in the Australia Talks National Survey, published by the ABC, sixty percent of Australians feel that "climate change has been established as a serious problem and immediate action is necessary".¹ The latest State of Environment Report also specifies climate change as one of the five main pressures affecting the Australian environment.² But I do not need to go into the science; I am sure the Committee is well aware of the severity of anthropogenic climate change as it confronts us now and as far into the future as the 2300s.

If popular surveys over the last fifteen years are to be believed, a Bill like this which seeks to regulate actions which contribute to climate change would be well-received by most of the Australian public. However, it does so within a statutory system which, at least for this part of the *EPBC Act*, operates reactively rather than proactively, focusing at the scale of the project rather than the scale of planetary systems of which Australia is a part. It is well-known that few people are pleased by this approach, particularly as it appears ill-equipped to handle the problems of climate change.

No doubt there will be several calls to overhaul Australia's environmental regulatory system in submissions to the decadal review, but I wish to submit my opinion here that this Bill should pass but only as an interim measure. Given the issues which are captured by this trigger—land clearing, especially—the passage of this Bill, in this form or some other, should be preceded by a meeting of the Council of Australian Governments to negotiate a new intergovernmental agreement which puts the environment at the centre of government strategy, recognises the importance of climate action, and reflects a clearer image of the changes which have occurred in international environmental law since the 1990s.

¹ See <https://www.abc.net.au/news/2020-02-05/australia-attitudes-climate-change-action-morrison-government/11878510>.

² W.J. Jackson et al., 'Letter to the Minister' in *Australia State of the Environment 2016: Overview* (2017).

2. The Bill should include an amendment of the definition of ‘impact’.

The OECD has commented that ‘cumulative environmental effects are ill-considered’ in Australia’s environmental regime.³ In my opinion, this is largely attributable to the inadequate statutory definition of ‘impact’ in the *EPBC Act*.

Given the greenhouse gas emissions are most pernicious because of their impact in accumulation with other greenhouse gases, rather than as individual units of greenhouse gas emissions, it makes scientific sense for the definition of ‘impact’ to be amended to include cumulative impacts. This will make the climate trigger and other triggers in the *EPBC Act* more responsive to actions the effects of which are serious when considered cumulatively, even if their individual impacts may not seem severe.

³ OECD, *OECD Environmental Performance Reviews: Australia 2019* (2019), page 12.