

## APPENDIX VI

Excerpt from Hansard transcript relating to ALP's proposed amendment to the Act to include a carbon trigger

*ENVIRONMENT AND HERITAGE LEGISLATION AMENDMENT BILL (NO. 1) 2006 - In Committee*

**Senator CARR** (Victoria) (1:47 PM) —by leave—I move opposition amendments (1) and (2) on sheet 5151, on climate change:

**(1) Schedule 1, page 5 (before line 5), before item 1, insert:**

**1A After paragraph 3(1)(ca)**

*Insert:*

*(cb) to protect Australia from the adverse effects of climate change; and*

**1B After subparagraph 3(2)(e)(i)**

*Insert:*

*(ia) establish a climate change trigger to ensure that large scale greenhouse polluting projects are assessed by the Federal Government; and*

**1C After paragraph 3A(a)**

*Insert:*

*(aa) decision-making processes should consider and minimise where possible the adverse effects of climate change on Australia;*

**1D After section 3A**

*Insert:*

*(ia) establish a climate change trigger to ensure that large scale greenhouse polluting projects are assessed by the Federal Government; and*

**3B Climate change**

*(i) possible higher temperatures and lower rainfall in southern Australia;*

*(ii) possible more frequent extreme weather events such as storms, heatwaves and droughts;*

**1E Subsection 5(5) (before the definition of Australian aircraft)**

*Insert:*

***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.*

***1F Subsection 5(5) (after the definition of Australian vessel)***

*Insert:*

***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.

***1G Subsection 5(5) (after the definition of Australian vessel)***

*Insert:*

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

***1H Subsection 5(5) (after the definition of Australian vessel)***

*Insert:*

***emissions*** means the release of greenhouse gases and/or their precursors into the atmosphere over a specified area and period of time.

***1I Subsection 5(5) (after the definition of Australian vessel)***

*Insert:*

***greenhouse gases*** means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

(2) Schedule 1, page 16 (after line 14), after item 67, insert:

***67A After section 25A***

*Insert:*

***25AA Requirement for approval of climate change actions***

*(1) A person must not knowingly, intentionally or recklessly take a climate change action that has, will have, or will be likely to have, a significant impact on the environment.*

*Civil penalty:*

*(a) for an individual—5,000 penalty units; or*

*(b) for a body corporate—50,000 penalty units.*

*(2) Subsection (1) does not apply to an action if:*

*(a) an approval for the person to take the action is in operation under Part 9 for the purposes of this section; or*

*(b) Part 4 allows the person to 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:  
(i) the action is not a controlled action; or  
(ii) the action is a controlled action but this section is not a controlling provision for the action.

### **25AB What is a climate change action?**

*A climate change action means either of the following:*

- (a) establishing an industrial plant or other facility which emits, or is likely to emit, more than 500,000<sup>1</sup> tonnes of carbon dioxide or carbon dioxide equivalent per year; or*
- (b) any other action, series of actions, or program of actions, which will lead, or are likely to lead, directly or indirectly, to the emission of more than 500,000 tonnes of carbon dioxide or carbon dioxide equivalent per year.*

### **25AC Requirement for decisions about climate change actions**

*(1) In deciding whether or not to approve for the purposes of section 25AA the taking of a climate control action, and what conditions to attach to such an approval, the Minister must consider whether the direct or indirect emissions of carbon dioxide or carbon dioxide equivalent that are likely to result from the action will be minimised by the use of best practice environmental management and low emissions technology.*

*(2) For the purpose of subsection (1), **best practice environmental management and low emissions technology** are management and technology to achieve an ongoing minimisation of the emissions of carbon dioxide or carbon dioxide equivalent through cost-effective measures assessed against the measures and technology currently used nationally and internationally.*

*These amendments moved by the opposition will restore the five-yearly review of the matters of national environmental significance to ensure that the EPBC Act evolves to be able to consider new triggers for environmental protection. The opposition takes the view that legislation has to be able to adapt to changing circumstances and it is unfortunate that legislation of this type and complexity has been negligently put together in such a form whereby in 409 pages the government has failed to deal with the issue of climate change. It is the view of the opposition that the EPBC Act needs to be able to consider new triggers for environmental protection.*

*This was the view that former senator Robert Hill took. In 1999, when discussing the EPBC Act triggers, he stated:*

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<sup>1</sup> WWF-Australia does not support use of a 500,000 tonne trigger, but rather a lower, more precautionary 100,000 tonne per year trigger.

*... it will be an evolving situation reflecting community attitudes and what really is the best and the most appropriate mix at the time.*

*The act provides for a five-year review to assess the need of any new matters of national environmental significance, the key environmental challenges that trigger the act. The most recent review, undertaken in April 2005, failed to produce a report that was seen in public. There may well be a report but the government has not published its evaluation of the act, and so we can see by the amendments before the chamber that no new triggers have been added. In failing to publish the results of the review, the minister, in our judgement, has failed to fulfil his obligations under the act.*

*Section 28A is quite explicit. It states that every five years after the commencement of the act the minister must cause a report to be prepared on whether this part—the matters of national environmental significance—should be amended. It goes on to say that before the preparation of the report is completed the minister must cause to be published in accordance with the regulations, if any, a draft of the report and an invitation to comment on the draft within the periods specified by the minister.*

*As far as I can tell, Minister, none of that has occurred. In my judgement, if that assessment is correct—and I look forward to the minister responding to my question in that regard—and if the minister has not been able to fulfil the requirements of the act, he is in breach of that act. As far as I understand, rather than repealing this section of the act there needs to be an attempt made to strengthen the provisions, particularly in the case where it becomes a climate change trigger .*

*The Labor Party's view is that the **Environment and Heritage Legislation Amendment Bill (No. 1) 2006** should be delayed until the minister is able to table the findings of the current review into the matters of national environmental significance. So I look forward to the minister's response to that inquiry and ask him whether a report was prepared on the review. If so, why has that report not been published? Why has the minister not met his requirements under section 28A of the current act with regard to the preparation of a report, ensuring that there is an opportunity to comment on the draft within the period specified by the minister?*