

Setting, tracking and achieving the climate targets and genuine action all Australians deserve

Submission to Climate Change Authority Consultation: Setting, tracking and achieving
Australia's emissions reduction targets

prepared by

Environmental Justice Australia

12 July 2023

About Environmental Justice Australia

Environmental Justice Australia (**EJA**) is a national public interest legal centre. We use the law to empower communities, to protect and regenerate nature, to safeguard our climate and to achieve social and environmental justice.

We are proudly non-profit, non-government and funded by donations from the community. Our legal team combines technical expertise and a practical understanding of the legal system to protect communities and our environment.

EJA has a long history in advocating for a just energy transition, and has worked closely with people, communities and environmental organisations to encourage and compel governments to act, to transform industries, and to ensure justice for the people most affected is at the foundation of all climate solutions, today and tomorrow.

At this critical time, EJA recognises that the Australian government and independent agencies can play a vital role in setting and implementing an ambitious climate agenda to drive real world emissions and addressing the risks that climate change poses to communities, ecosystems, flora and fauna.

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Submitted to:

Climate Change Authority

via email: consultation@climatechangeauthority.gov.au

and via the Consultation Hub: <https://consult.climatechangeauthority.gov.au/australias-emissions-reduction-targets/submissions>

Executive Summary

1. EJA welcomes the opportunity to make a submission to the Climate Change Authority's (the **Authority**) consultation on "Setting, tracking and achieving Australia's emissions reduction targets" (the **Consultation**). This submission responds generally to Sections 2.1 - 2.3, and 3.6 – 3.8 of the (**Issues Paper**). EJA's submission is structured according to those Sections in Issues Paper but as the Authority has noted itself, the issues are not exclusive to certain topics and so, where relevant, we encourage the Authority to consider our responses as cross-cutting guidance to all questions in the Issues Paper.
2. The Authority has a significant opportunity to shape ambitious, greenhouse gas (**GHG**) emissions reduction targets to drive down emissions, and address integrity and transparency issues across Australia's emissions reporting and carbon credits frameworks.
3. As the Authority has recognised, targets, emissions reporting and carbon credits are not isolated issues. Broadly, this submission asserts that to achieve genuine emissions reduction:
 - a. Australia needs ambitious emissions reduction targets which drive bold implementation and community-driven energy transformation (see **Section A** of this submission).
 - b. To set and achieve such targets Australia needs an emissions reporting framework that accurately and consistently accounts for all GHG emissions (including Scope 3 and methane emissions) (see **Section B** of this submission).
 - c. Further, to accomplish such targets Australia needs to take a realistic look at what role, if any, carbon credits should play in driving down emissions. If they play a role, all carbon credits need to be founded on a robust legislative framework that promotes integrity (see **Section C** of this submission).
4. This submission draws on leading scientific research, but also highlights how climate change is impacting the lives, and human rights, of young people from First Nations and disability communities. In his individual capacity, Chris Black (16 years old) courageously speaks to how he has already experienced climate change. Chris tells of his hopes for the future highlighting how crucial it is for the Australian government to act equally courageously for all of us now, and for future generations.
5. In the words of Chris,

"The government's action on climate is nowhere near [where] it should be according to the best available scientific research. The fact they are still approving new fossil fuel projects in the middle of a climate crisis highlights that they are not in any way committed to effective and science-based climate action."
6. EJA therefore calls on the Authority to consult broadly and deeply in this consultation. To take heed of the best available science to make recommendations to the Australian government that reflect the lived realities of climate change. And to ultimately, achieve the climate justice we all deserve.

Summary of Recommendations

In summary, EJA **recommends** that the Authority:

1. In developing its Strategic Framework and to inform the strategic direction of its advice, prioritises the action (and enablers of that action), “Switch fuels” to phase out coal, gas and oil and facilitate the swift development and implementation of renewable energy in consultation with communities.
2. Consults broadly and deeply for the purpose of its functions:
 - a. Under s 14 of the *Climate Change Act 2022* (Cth) (**CC Act**), to inform an inclusive and robust Climate Change Statement.
 - b. Under s 15 of the CC Act, to ensure its advice concerning Australia’s emission reductions targets is reflective of the realities of climate change experienced by people across Australia, and is a rights-based, inclusive and ambitious target which aligns with its domestic and international legal obligations.
3. Takes heed of best practice principles and other recommendations in this submission (including [2.b] above), to advise on setting an emissions reduction target that drives robust and effective emissions reduction.
4. Considers whether a specific methane emissions reduction target should be introduced into the CC Act to ensure there is effective and directed action to reducing methane emissions.
5. Considers broadening the scope of the NGER Act to require the reporting of Scope 3 emissions to ensure the *National Greenhouse and Energy Reporting Act 2007* (**NGER Act**) is fit for purpose.
6. Considers how the NGER Act can best be reformulated in a coherent and consistent way to achieve the statutory objects, protect against further frequent amendments, and provide a strong foundation for emission reduction. For example, the Authority should:
 - a. Ensure reporting obligations of “responsible emitters” covered by the Safeguard Mechanism and “registered corporations”, are consistent across the statutory framework.
 - b. Clarify that all corporate groups should be required to report emissions on a per-greenhouse gas emission basis (rather than reporting the totals of those emissions).
 - c. Ensure the Clean Energy Regulator (**CER**) is required to publish the emissions reported in a transparent and meaningful way. For instance, the CER should be required to publish the reported emissions on a GHG emissions basis as recommended in (b) above.
7. Reviews the NGER Act to:

- a. Phase out Method 1 in s 3.20 of the *National Greenhouse and Energy Reporting (Measurement) Determination 2008 (Cth)* (**NGER Measurement Determination**) for open cut coal mines in all jurisdictions in Australia.
 - b. Review Methods 2 and 3, in ss 3.21 and 3.26 of the NGER Measurement Determination, to require all coal mine operators to report methane emissions against best practice measurement, reporting and verification (**MRV**) frameworks, which should incorporate aerial, satellite and ground-based direct, and site-specific measurement, to ensure the highest standards of accuracy and integrity.
8. Reviews and implements best practice MRV standards in respect of methane emissions across the energy sector in all jurisdictions in Australia, to ensure the highest standards of accuracy and integrity.
 9. Reviews the 16 recommendations by the Independent Review of ACCUs (the **Chubb Review**), and the status of such to ensure those recommendations (at minimum) are all implemented by the Australian government effectively, comprehensively and without delay.
 10. To the extent they are not covered by the recommendations of the Chubb Review, considers the recommendations in the previous submission by EJA to the Chubb Review and encourage the Australian government to consider adopting the same.
 11. Does not recommend any role for international carbon markets to achieve Australia's emissions reduction targets. If any role is recommended, international carbon markets must be founded on a robust legislative framework that achieves the highest standards of integrity.

A. The Authority must play a bold and robust role in establishing an emissions reduction target and framework that secures a safe future for all

I. The legislative framework establishing the Authority and Australia's emissions reduction targets

1. In exploring how Australia's emissions reduction targets should be set, this submission draws on the legislative framework and settings establishing the Authority and legislating Australia's emissions reduction targets.

The *Climate Change Authority Act 2011* (Cth)

2. As the Authority would be aware, the Authority is established by the *Climate Change Authority Act 2011* (Cth) (**CC Authority Act**).¹ Under the CC Authority Act, the Authority is tasked with several functions including, but not limited to:
 - a. Conducting reviews under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (**CFI Act**) and the NGER Act.²
 - b. Providing advice under the CC Act.³
3. Per s 12 of the CC Authority Act, in performing its functions, the Authority must have regard to the following principles:
 - (a) the principle that any measures to respond to climate change should:
 - (i) be economically efficient; and
 - (ii) be environmentally effective; and
 - (iii) be equitable; and
 - (iv) be in the public interest; and
 - (v) take account of the impact on households, business, workers and communities; and
 - (vi) support the development of an effective global response to climate change; and
 - (vii) be consistent with Australia's foreign policy and trade objectives; and
 - (viii) take account of the matters set out in Article 2 of the Paris Agreement; and

¹ *Climate Change Authority Act 2011* (Cth) (**CC Authority Act**) s 10(1).

² CC Authority Act ss 11(a)(i); 11(a)(ii); *Carbon Credits (Carbon Farming Initiative) Act 2011* (**CFI Act**) s 306; *National Greenhouse and Energy Reporting Act 2007* (**NGER Act**) ss 76A and 76B.

³ CC Authority Act s 11(ba); *Climate Change Act* (**CC Act**) pt 4.

(ix) boost economic, employment and social benefits, including for rural and regional Australia;

(b) such other principles (if any) as the Authority considers relevant.

(the **Authority's Guiding Principles**).

Legislative and governing framework underpinning Australia's emissions reduction target

4. Of further relevance to Section A of this submission are the legal settings underpinning Australia's emissions reduction target.
5. The Authority would be aware that as a signatory to the Paris Agreement,⁴ Australia is required to set a "Nationally Determined Contribution" (**NDC**) in pursuit of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.⁵
6. In June 2022, the Australian government communicated its Third NDC, whereby committing to reducing GHG emissions 43% below 2005 levels by 2030 (**Third NDC**).⁶ In September 2022, the CC Act commenced, giving legislative effect to the Third NDC, and introduced a statutory framework relating to Australia's climate emissions reduction target.
7. The objects of the CC Act include to:⁷
 - a. Advance an effective and progressive response to the urgent threat of climate change drawing on the best available scientific knowledge.
 - b. Set out Australia's GHG emissions reduction targets contributing to the goals of the Paris Agreement.
 - c. Promote accountability and ambition by requiring the preparation of annual climate change statements.
 - d. Ensure that independent advice from the Climate Change Authority informs:
 - i. The preparation of annual climate change statements; and
 - ii. The GHG emissions reduction targets to be included in a new or adjusted NDC.

⁴ Paris Agreement, 2016, opened for signature 22 April 2016 ATS 24 (entered into force 4 November 2016) (**Paris Agreement**). Australia became a signatory to the Paris Agreement on 22 April 2016 and ratified the Paris Agreement on 9 November 2016: United Nations Treaty Collection, Chapter XXVII Environment 7d. Paris Agreement.

⁵ Paris Agreement art 2; 4.

⁶ Australian government Department of Industry, Science, Energy and Resources (**DISER**), 'Australia's Nationally Determined Contribution Communication 2022', available at: <<https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf>>.

⁷ CC Act s 3.

8. Each of these objects should be borne in mind by the Authority, when undertaking this consultation.
9. Part 4 of the CC Act sets out certain, further functions of the Authority. These include:
 - a. To give the Minister advice that relates to the preparation of an annual climate change statement;⁸ and
 - b. If requested to do so by the Minister, to advise the Minister on matters relating to GHG emissions reduction targets.⁹
10. Finally, while the CC Act establishes the emissions reduction target itself there are multiple statutes which are influenced by and have an impact on the implementation and achievement of the Government's emissions reduction targets.¹⁰ EJA encourages the Authority to keep this broader framework in mind when undertaking this critical consultation.

II. The Strategic Framework must prioritise working with communities to ensure a rapid, and just phase out of coal and gas projects

11. This section of the submission responds generally to Section 2.1 of the Issues Paper, concerning the "Strategic Framework".
12. Recently, the Australian government has signalled bold commitments to ambitious climate action. Illustratively, in the last 12 months, the Australian government committed to the Third NDC, introduced the CC Act and on 23 October 2022 joined the Global Methane Pledge, a voluntary commitment to reduce global methane emissions across all sectors by at least 30% below 2020 levels by 2030.¹¹
13. These announcements and commitments were in urgent need. In its sixth assessment cycle, the Intergovernmental Panel on Climate Change (**IPCC**) concluded that global warming is more likely than not to reach 1.5°C between 2021 and 2040 even under the very low GHG emissions scenarios and likely or very likely to exceed 1.5°C under higher emissions scenarios.¹²
14. In its Net Zero by 2050 report, the International Energy Agency (**IEA**) stated the pathway to net zero by 2050 is "narrow and requires an unprecedented transformation of how energy is produced, transported and used globally".¹³

⁸ CC Act s 14.

⁹ Ibid s 15.

¹⁰ See, eg, CFI Act, NGER Act, *Australian Renewable Energy Agency Act 2011*; *Clean Energy Finance Corporation Act 2012*; *Export Finance and Insurance Corporation Act 1991*; *Infrastructure Australia Act 2008*.

¹¹ Minister for Climate Change and Energy, Australia joins Global Methane Pledge (Media Release, 23 October 2022), available at: <<https://minister.dcceew.gov.au/bowen/media-releases/australia-joins-global-methane-pledge>>.

¹² Intergovernmental Panel on Climate Change (**IPCC**), 'Synthesis Report of the IPCC Sixth Assessment' (March 2023) 4.1 (p 56).

¹³ International Energy Agency (**IEA**), 'Net Zero by 2050' (18 May 2021) <<https://www.iea.org/reports/net-zero-by-2050>>.

15. Despite the glaring evidence and its legal commitments to climate mitigation, the Australian government is avoiding genuine action on climate change. For example, the Australian government is continuing to approve coal and gas projects and extension with the approval of a Santos' Towrie Gas Development, Idemitsu's Ensham extension, QCoal's Star Coal Project and Coking Coal One Pty Ltd's Isaac River Coal mine coming in recent months.¹⁴
16. Hence, at this juncture, EJA refers to the six actions in the Authority's Strategic Framework, and specifically, the action to "Switch Fuels".
17. With widespread acceptance of the contribution of coal and gas projects to climate change, EJA strongly encourages the Authority to prioritise this action, and community-driven energy transformation. Prioritising this action, and the enablers of this action, requires genuine consultation with all affected community members to ensure:
 - a. No further approvals of coal and gas projects by the Australian government; and
 - b. The establishment and implementation of clear and robust legislative frameworks to facilitate the rapid and responsible roll out of renewable energy projects.
18. These are ambitious actions. But, ambitious actions, targets and consultation are needed and are well-aligned with the Australian government's international obligations, domestic commitments, as well as the Authority's functions.¹⁵

Recommendation

EJA **recommends** that in developing its Strategic Framework to inform the strategic direction of the Authority's advice, the Authority must prioritise the action (and enablers of that action), "Switch fuels" to phase out coal, gas and oil and facilitate the swift development and implementation of renewable energy in genuine consultation with communities.

III. The Progress Framework must be developed and implemented with those who will be most impacted by climate change

19. This section of the submission responds generally to Section 2.2 of the Issues Paper. Within that section, EJA acknowledges the important work the Authority is undertaking to provide advice on "wellbeing" to set and track the Australian government's response to climate change.¹⁶

¹⁴ See, EPBC Public Portal, Towrie Gas Development PL 1059, available at: <<https://epbcpublicportal.awe.gov.au/all-referrals/project-referral-summary/?id=52bfcf0b-42cf-eb11-80c5-00505684c137>>; EPBC Public Portal, Isaac River Coal Mine Project, available at: <<https://epbcpublicportal.awe.gov.au/all-referrals/project-referral-summary/?id=40bf58e3-c3cf-eb11-80c5-00505684c137>>; EPBC Public Portal, Ensham Life of Mine Extension, available at <https://epbcpublicportal.awe.gov.au/all-referrals/project-referral-summary/?id=2b538ece-5e8f-ea11-962c-00505684324c>; Australian Greens, 'Another day, Another coal mine given Plibersek stamp' (28 June 2023).

¹⁵ Paris Agreement art 4; CC Act ss 12, 15.

¹⁶ Climate Change Authority, 'Setting, tracking and achieving Australia's emissions reduction targets: Issues Paper' (May 2023) (**Issues Paper**) p 12.

Climate change is already impacting people across Australia, and will continue to do so in the future

20. There is little doubt that climate change will impact people across Australia in varied, broad and life-altering ways. In this regard, we highlight the IPCC6 Working Group II report which concerns the impacts of climate change to ecosystems, biodiversity and human communities, and outlines in sobering detail observed impacts and risks to people from climate change. For example, in Australasia, extreme events such as heatwaves, droughts, floods, storms and fires have already caused deaths and injuries, and affected many households, communities and businesses via impacts on ecosystems, critical infrastructure, essential services, food production, the national economy, valued places and employment.¹⁷
21. The adverse impact of climate change on people has also been recognised by courts in Australia. While the applicants were unsuccessful in their claim to establish a novel duty that the Minister owed a duty of care to avoid causing injury to young people *Minister for the Environment v Sharma* [2022] FCAFC 35, the comments made by the Court are nonetheless significant. In his first instance decision, Bromberg J, stated:

“It is difficult to characterise in a single phrase the devastation that the plausible evidence presented in this proceeding forecasts for the Children. As Australian adults know their country, Australia will be lost and the World as we know it gone as well. The physical environment will be harsher, far more extreme and devastatingly brutal when angry. As for the human experience – quality of life, opportunities to partake in nature’s treasures, the capacity to grow and prosper – all will be greatly diminished. Lives will be cut short. Trauma will be far more common and good health harder to hold and maintain. None of this will be the fault of nature itself. It will largely be inflicted by the inaction of this generation of adults, in what might fairly be described as the greatest inter-generational injustice ever inflicted by one generation of humans upon the next.”¹⁸
22. In his judgment on appeal, Allsop CJ further stated, “there are challenges to some of the primary judge’s findings (which should be rejected), but, by and large, the nature of the risks and the dangers from global warming, including the possible catastrophe that may engulf the world and humanity was not in dispute”.¹⁹
23. In the more recent case of *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 in the Land Court of Queensland, President Kingham J recommended applications for a proposed major new coal mine be rejected on grounds that included human rights and climate change. In her decision, with respect to the project in question, President Kingham J concluded that regardless of where the emissions are generated, the impacts of climate change will be experienced by environments and people across Australia, and the world.²⁰
24. As the Authority has recognised in the Issues Paper, the time for ignoring the impacts of climate change on humanity have now passed. But, there must be bold action by policy

¹⁷ IPCC WGII, Summary for Policy Makers, p SPM-9, available at: <https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_SummaryForPolicymakers.pdf>; IPCCWGII, ‘Fact sheet on Australasia’ available at:

<https://www.ipcc.ch/report/ar6/wg2/downloads/outreach/IPCC_AR6_WGII_FactSheet_Australasia.pdf>.

¹⁸ Emphasis added. *Sharma & Others v Minister for the Environment* [2021] FCA 560 at [293].

¹⁹ Emphasis added. *Minister for the Environment v Sharma* [2022] FCAFC 3, [2].

²⁰ [2022] QLC 21, [1016].

and decision makers to ensure that climate targets are incorporating the lived reality of climate change, to ensure that we are all able to enjoy a future where we can all thrive, and our rights can be fully realised.

25. Aside from the real-world effects of failing to do so, it may also put the Australian government in breach of its legal obligations. Such potential breaches were considered in detail in a recent communication EJA lodged with three United Nations Special Rapporteurs, on behalf of five brave young people in Australia from First Nations and disability communities.²¹

The UN SR Communication demonstrates the critical importance of listening to affected communities, and striving to protect all human rights

26. In October 2021, EJA, on behalf of five young people from First Nations and disability communities across Australia, submitted a communication to the United Nations Special Rapporteur on Human Rights and the Environment, the Special Rapporteur on the rights of Indigenous peoples, and the Special Rapporteur on the rights of persons with disabilities (the **UN SR Communication**). In the UN SR Communication, our clients assert that the previous Government's 2030 emissions reduction target, failed to uphold the human rights of every young Australian, particularly those at acute risk from climate harms including young First Nations people and people with disabilities. A copy of the UN SR Communication is **enclosed** to this submission at **Annexure A**.
27. Beyond examining the legal obligations of the Australian government to set a climate target aligned, and act compatibly, with the human rights of our clients and young people across Australia, the communication seeks to highlight the unique human experience of climate change, and the experience of some of those who will be impacted disproportionately – youth, people with disabilities, First Nations people and those at the intersection.
28. The UN SR Communication communicates these climate experiences in detail, directly from those who have experienced it. For example,
 - a. Adrien Edwards shares how the impact of heatwaves and colder winters have impeded their ability to attend school due to their sensory and chronic pain issues.
 - b. Ethan Lyons shares his awareness that he is at greater risk of climate impacts due to his Type 1 diabetes and understands that should he be stuck in an extreme weather event his ability to access insulin and other essential supplies will be impeded.

²¹ Similar experiences and potential breaches have been considered elsewhere, including in a recent complaint to the UN Human Rights Committee lodged by a group of eight Zenadth Kes Islanders. In a ground-breaking decision in September 2022, the UN Human Rights Committee found that Australia's failure to adequately protect Torres Strait Islanders against adverse impacts of climate change violated their rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home. For further detail, see, <<https://www.ohchr.org/en/press-releases/2022/09/australia-violated-torres-strait-islanders-rights-enjoy-culture-and-family>>.

- c. Shylucia McKiernan, a Kulkalaig woman from Kulkalgal Nation, Zenadth Kes, shares how sea level rise has already had devastating impacts on her and her community's home island, Masig.
29. The UN SR Communication asserts that failure to adequately act on climate change and protect human rights (or actions in fuelling the crisis, for example, approving coal and gas proposals), puts the Australian government at risk of breaching the Paris Agreement and their international legal obligations under the Convention of the Rights of Child (**CRC**); the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), the International Covenant on Civil and Political Rights (**ICCPR**) and the Convention on the Rights of People with Disabilities (**CRPD**).²² It asserts that only serious, genuine and immediate action on climate change will ensure all children's rights are guaranteed and able to be fully realised now and into the future.

The climate target set by the Australian government in 2022 is inadequate in responding to the lived reality of climate change

30. EJA acknowledges that since the UN SR Communication was lodged in 2021, the Australian government has submitted a new climate target, the Third NDC. EJA, however, remains concerned that the Third NDC and the Australian government's actions to meet that target are not adequate to fulfil its legal obligations and to respond to the current threat of the climate crisis.
31. Chris Black is a disabled student and one of the UN SR Communication complainants.²³ Chris is now 16 years old and in this submission shares his personal views on climate action (and inaction) by the Australian government.
32. In the time since the UN SR Communication was lodged, Chris has experienced the devastating effects of flooding in eastern Australia. Chris recounts,
- “My school flooded twice [during 2022]. The first time was the worst. It wasn't that bad, but the water was at knee height. The school is built over a river in a valley. [The school] is not in a remote, but an urban area and there are only two roads in and out. One road was shut because of flooding and the other road was closed because of a landslide or something. I couldn't go to school for two days.”
33. As the UN SR Communication details, the right to education is not indivisible but links to all other fundamental rights.²⁴ It is designed to “strengthen the child's capacity to enjoy the full range of human rights”, including the rights to life, health and development.²⁵ Every

²² See, UN SR Communication para [41] – [47].

²³ Please note, we use the term 'disabled' on our client's instructions.

²⁴ UN Committee on the Rights of the Child, General comment No. 1: The Aims of Education (article 29) (2001), 17 April 2001, CRC/GC/2001/1, 26th sess, para 14, available at: <[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx)>; see, also, UNICEF, Child rights and human rights explained, <<https://www.unicef.org/child-rights-convention/children-human-rights-explained>>.

²⁵ UN Committee on the Rights of the Child, General comment No. 1: The Aims of Education (article 29) (2001), 17 April 2001, CRC/GC/2001/1, 26th sess, para 2, available at: <[https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx)>; see, also, UNICEF, Child rights and human rights explained, <<https://www.unicef.org/child-rights-convention/children-human-rights-explained>>.

child deserves the right to go to school every day, and ambitious climate targets and implementation are crucial to that.

34. Reflecting on his experience with the flooding in 2022, Chris says,

“The government’s action on climate is nowhere near [where] it should be according to the best available scientific research. The fact they are still approving new fossil fuel projects in the middle of a climate crisis highlights that they are not in any way committed to effective and science-based climate action.”

35. Chris says he is also disappointed that the Australian government isn’t taking the views of people impacted into account. He says,

“The views of young people, especially young people and those who are disabled, [are] vitally important for the government when making climate legislation. Lived expertise is the best and most effective way for governments to get accurate information on the climate crisis, especially from young people who are and will be some of those most affected.”

36. Despite his disappointment, Chris still hopes to become a scientist one day. Chris states,

“I am very keen to get into climate science because the longer we keep burning fossil fuels, the more temperatures will rise and the bigger the jump will be. And it will be worse. It is figuring out the next step. We will need to figure out how to solve that part. If we continue on burning fossil fuels [the impacts] will be worse.”

37. Although some may applaud Chris and others for committing their future to respond to the climate crisis, climate action cannot be left to future generations - it needs decisive action now.

38. The climate crisis requires governments to be ambitious in their emissions reduction targets and policy design, in their ability to drive down emissions and to reflect the lived experience of climate change. Regarding the latter, it is evident global governments’ climate targets and policies are lacking in inclusiveness. For example, research published by the Disability-Inclusive Climate Action Research Programme in 2022 revealed that:²⁶

- a. Only 35 of 192 State Parties to the Paris Agreement currently refer to persons with disabilities in their NDC (or their “Intended Nationally Determined Contribution”, if an updated NDC has been provided).
- b. Only 45 State Parties to the Paris Agreement currently refer to people with disabilities, people with health conditions or those with chronic illnesses in their climate adaptation policies.

39. Unfortunately, Australia is not a State Party that refers to people with disabilities.

40. As Chris stated above, without hearing from or taking into account the views and experiences of those who are and will be impacted by climate change, climate targets and

²⁶ Disability Inclusive Climate Action Research Program, ‘Disability Rights in National Climate Policies: Status report’ (June 2022) available at: https://static1.squarespace.com/static/5f10f916d115b114fe4e2b97/t/62c5bf570eb5343618272352/1657126745878/DRCC+Status+Report_English_formatted_corrected.pdf.

policies will necessarily be inadequate. This does not just apply to people with disabilities, but all people, and especially those who are and will continue to be disproportionately impacted by climate change.

41. The Parliament has granted the Authority broad statutory scope to take an inclusive approach to exercising its functions. In addition to the Authority's Guiding Principles it must take into account when exercising all of its functions,²⁷ the Authority's specific functions under the CC Act require a wide-ranging, and comprehensive approach.²⁸
42. Therefore, EJA strongly encourages the Authority to consult widely and deeply with all kinds of experts – from individuals and communities with formal and/or traditional scientific expertise, to those with lived expertise of climate impacts, and all those at the intersection.

Recommendation

EJA **recommends** that the Authority consult broadly and deeply for the purpose of its functions:

- a. Under s 14 of the CC Act, to inform an inclusive and robust annual climate change statement.
- b. Under s 15 of the CC Act, to ensure its advice to the Minister concerning Australia's emission reductions targets is reflective of the realities of climate change experienced by people across Australia; and is a rights-based, inclusive, and ambitious target which aligns with its domestic and international legal obligations.

IV. The Target-setting framework and Australia's emissions reduction targets must be led by best practice guiding principles

43. This section of the submission responds generally to Section 2.3 of the Issues Paper, regarding the 'Target-setting framework'. EJA recommends that the Authority should have regard to best practice guiding principles for establishing emissions reduction targets, when advising the Australian government on the same.
44. In this regard, EJA refers the Authority to the following principles which are underinclusive but are drawn from the Paris Agreement and the CC Act. In particular:
 - a. Climate targets must be ambitious and guided by the best available scientific knowledge.²⁹
 - b. Public participation is crucial to setting climate targets and mitigating and adapting to climate change.³⁰

²⁷ See para [3] in Section A(l) above, citing CC Authority Act s 12.

²⁸ See CC Act ss 14 and 15.

²⁹ Paris Agreement art 2; 4.3; CC Act s 3(aa).

³⁰ Ibid Preamble; art 6.4, 6.8(b), 7.5, 12. See, also, CC Act s 15(3).

- c. Climate targets must be guided by principles of equity and common but differentiated responsibilities.³¹
 - d. Climate targets, their development and their implementation must strive for transparency and accountability.³²
45. EJA strongly encourages the Authority to prioritise these principles when advising the Minister on emissions reduction targets.
46. Furthermore, and in relation to the principle that targets should be guided by best available science, EJA would like to draw the Authority's attention to the exponential increase in the state of scientific knowledge in relation to the potency of methane emissions.³³ Given the increased understanding regarding the dangers of methane emissions and to ensure there is focussed efforts to cutting these emissions, EJA encourages the Authority to consider whether a specific methane emissions target should be introduced into the CC Act.

Recommendation

EJA **recommends** that the Authority take heed of best practice principles and the other recommendations in this submission (including those recommended in Section A(III)), in exercising its statutory functions under the CC Authority Act and CC Act to advise on setting an emissions reduction target that drives robust and effective emissions reduction.

To ensure there is effective and directed action to reducing methane emissions, EJA **recommends** that the Authority consider whether a specific methane emissions reduction target should be introduced into the CC Act.

B. Effective climate action requires accurate measurement, reporting and verification of emissions and a robust offsets framework

47. EJA welcomes the position of the Authority that climate targets should be considered with cross-cutting issues such as the role of MRV of GHG emissions and carbon offsets.

I. Accurate and transparent MRV of GHG emissions is critical to genuine emissions reduction

48. Accurate and transparent MRV of GHG emissions can assist governments in achieving genuine emissions reductions for a number of key reasons, including:

³¹ Paris Agreement Preamble; art 2.2 and 4.3.

³² See, eg Ibid art 13; CC Act s 3(b).

³³ For further discussion concerning methane emissions, see from para [47] of, and Annexure B to, this submission.

- a. Baseline determination, to serve as a reference point and measuring progress over time.³⁴
 - b. Evidence-based, effective, directed emissions reduction target setting and policy design and implementation.³⁵
 - c. Monitoring and evaluation, to improve emission reduction strategies over time.³⁶
 - d. Transparency and accountability, to build trust and ensure the effective implementation of emission reduction strategies and agreements (such as the Paris Agreement).³⁷
49. The advantages of effective MRV are not just important for government, but also for the private sector. For example:
- a. Science-based targets can provide a clearly-defined pathway for a company to reduce GHG emissions.³⁸
 - b. Accurate disclosure of climate impacts and risk builds credibility and investor confidence and is important to allow such actors to make meaningful assessments of a company's position.³⁹
 - c. Accurate disclosure can assist in avoiding "greenwashing" in companies' climate disclosures, and litigation and reputation risks associated with such.⁴⁰

II. The NGER Scheme: Improving Australia's emissions reporting and measurement framework to achieve genuine reductions

50. The NGER Act establishes a national framework for reporting and publishing corporate information about GHG emissions (including methane emissions), energy production, and energy consumption.
51. It is apparent that when it introduced the *National Greenhouse and Energy Reporting Bill 2007* (the **NGER Bill**), Parliament recognised the importance of accurate MRV of GHG emissions. It is notable for instance, that the NGER Bill was introduced to lay the

³⁴ Intergovernmental Panel on Climate Change (IPCC), 2006 IPCC Guidelines for National Gas Inventories (Vol 1 Ch 1 Introduction), p 1.7

³⁵ See, eg, United Nations Economic Programme (UNEP), How do countries measure greenhouse gas emissions? (13 September 2022) available at: <<https://www.unep.org/news-and-stories/story/how-do-countries-measure-greenhouse-gas-emissions>>.

³⁶ IPCC, above n34 p 1.7; Ellis, J. and S. Moarif (2015), "Identifying and addressing gaps in the UNFCCC reporting framework", *OECD/IEA Climate Change Expert Group Papers*, No. 2015/07, OECD Publishing, Paris, available at: <<https://doi.org/10.1787/5jm56w6f918n-en>>.

³⁷ As recognised by Paris Agreement art 4.

³⁸ See, Task Force on Climate-Related Financial Disclosures, Metrics and Targets, <<https://www.tcfhub.org/metrics-and-targets/>>.

³⁹ ACCR, Climate-related financial disclosure: ACCR response to Treasury consultation (17 February 2023) available at: <<https://www.accr.org.au/research/submission-climate-related-financial-disclosure/>>.

⁴⁰ Noel Hutley SC and Sebastian Hartford Davis, Climate Change and Director Duties: Further Supplementary Memorandum of Opinion, (23 April 2021) available at: <<https://cpd.org.au/wp-content/uploads/2021/04/Further-Supplementary-Opinion-2021-3.pdf>>.

foundations for the establishment of an emissions trading scheme in Australia - at that time, the cornerstone of the Australian government's emission reduction scheme.⁴¹

52. Additionally, in his second reading speech concerning the NGER Bill, the then Minister for the Environment and Water Resources, Malcolm Turnbull stated,⁴²

"The bill will improve the Australian government's ability to meet its international reporting obligations under the United Nations Framework Convention on Climate Change and to the International Energy Agency. It will also, for the first time, provide easily accessible company level information to investors and the general public on [GHG] gas emissions and energy use by Australia's major companies..."

53. Prior to the introduction of the NGER Act, relevant corporations were required to report under disparate State and Federal reporting frameworks. So, the Explanatory Statement to the NGER Bill further explained there was a crucial need to streamline and harmonise reporting requirements and for improved quality of information reporting.⁴³
54. These originally intended goals are still reflected in the objects of the NGER Act today.⁴⁴ For example, s 3(1)(b) of the NGER Act states the object of the NGER Act is to "introduce a single national reporting framework... to inform government policy formulation and the Australian public", with the second object in s 3(2) aiming "to contribute to the achievement of Australia's [GHG] emissions reduction targets".
55. Despite aiming to "streamline" and increase the "quality" of reporting, it is questionable whether the NGER Act is achieving what was originally set out for it to achieve.

The scope of the NGER Act should be revised to include reporting of Scope 3 emissions

56. EJA commends the Authority for considering the role of Australia's Scope 3 emissions in the Issues Paper.⁴⁵ There is little doubt that Scope 3 emissions are significant on both a company and country level. For example, it has been estimated that:
- a. Scope 3 emissions can comprise up to six times more emissions than direct (Scope 1 and 2) emissions for corporations.⁴⁶
 - b. In 2017, Australian exports of coal and gas accounted for around 3.6% of global GHG emissions, far greater than the 1.4% of global emissions that Australia generated domestically.⁴⁷

⁴¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 15 August 2007, 2 (Malcolm Turnbull, Minister for the Environment and Water Resources) available at: <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F2007-08-15%2F0009%22>>.

⁴² Ibid.

⁴³ Emphasis added. Explanatory Memorandum to the *National Greenhouse and Energy Reporting Bill* p 16-17.

⁴⁴ *National Greenhouse and Energy Reporting Act 2007* (Cth) s 3(1).

⁴⁵ EJA refers to Section 3.3

⁴⁶ Brendan Baker, MSCI Research, *Scope 3 Carbon Emissions: Seeing the Full Picture* (17 September 2020) available at: <<https://www.msci.com/www/blog-posts/scope-3-carbon-emissions-seeing/02092372761>>.

⁴⁷ Climate Analytics, *Evaluating the significance of Australia's global fossil fuel carbon footprint*, (July 2019) 2 <https://climateanalytics.org/media/australia_carbon_footprint_report_july2019.pdf>.

57. Despite Australia’s role in facilitating a significant amount of Scope 3 emissions, the NGER Act does not currently require relevant registered corporations to report on these emissions.⁴⁸ To set ambitious targets and achieve genuine reductions, accurate MRV of all emissions is required.

Recommendation

EJA **recommends** that to ensure the NGER Act is fit for purpose, the Authority consider reviewing the scope of the NGER Act to require the reporting of Scope 3 emissions.

Rationalising the NGER Act to provide a consistent, coherent and fit-for-purpose MRV framework

58. Since the NGER Act was passed in 2007, it has been amended a frequent and unprecedented number of times.⁴⁹ For a statutory scheme that aims “to inform government policy formulation and the public”,⁵⁰ trust in MRV methods is crucial.
59. However, if the foundation of policy and decision making is constantly shifting, it is difficult for government, policy and decision-makers to take action in a targeted and effective manner. To act on climate effectively, all policy and decision makers need accurate, certain and transparent data.

Recommendation

EJA **recommends** that the Authority consider how the NGER Act can best be reformulated in a coherent and consistent way to achieve the statutory objects, protect against further frequent amendments, and provide a strong foundation for emission reduction. For example, the Authority should:

- a. Ensure reporting obligations of “responsible emitters” covered by the Safeguard Mechanism and “registered corporations”,⁵¹ are consistent across the statutory framework.
- b. Clarify that all corporate groups should be required to report emissions on a per-GHG emission basis (rather than reporting the totals of those emissions).⁵²
- c. Ensure the CER is required to publish the emissions reported in a transparent and meaningful way.⁵³ For example, the CER should be required to publish the reported emissions on a GHG emissions basis as recommended in (b) above.

⁴⁸ See, eg, NGER Act s 7 definition of “**emission** of greenhouse gas means: (a) a scope 1 of greenhouse gas; or (b) a scope 2 of greenhouse gas.”

⁴⁹ EJA understands the NGER Act has been amended 17 times since it was passed in 2007.

⁵⁰ NGER Act s 3(1).

⁵¹ See, NGER Act s 22XH “responsible emitter”; Part 3 for registered corporations.

⁵² The relevant reporting requirement to be reviewed is set out in s 19 of the NGER Act.

⁵³ The reporting requirements of the CER are set out in s 24 of the NGER Act.

The Authority must ensure the NGER scheme is well-adapted to meet the significant challenge that methane emissions pose

60. EJA welcomes the Authority's inclusion of a specific focus on MRV of methane emissions. With methane responsible for around 30% of the observed global warming since the Industrial Revolution, there is an urgent need to accurately measure methane emissions, to ensure deep and genuine reductions.
61. To this end, in May 2023, EJA made a submission to the Federal Department of Climate Change, Energy, the Environment and Water's (**DCCEEW**) review of the 2023 NGER Scheme Updates (the **EJA NGER submission**).⁵⁴ Please find that submission **enclosed at Annexure B**.
62. In short, the EJA NGER submission asserted:
 - a. In recognition of the significant challenge that methane emissions pose, the Australian government committed to bold and ambitious action by signing onto the Global Methane Pledge. But, without an accurate and clear understanding of the true levels of methane emissions, the Australian government will not be able to achieve its committed emission reductions.
 - b. In Australia, methane emissions from coal mining are being emitted at a significant level, making the nation the world's sixth largest coal methane emitter.⁵⁵ In light of this, the objects of the NGER Act and Australia's commitments to transparency under the Global Methane Pledge, the blanket, state-based emissions factor to calculate and report methane emissions from open cut coal mines across Australia is wholly inadequate.⁵⁶
 - c. Instead, state-based emissions factors, which disguise the true scale of methane emissions, should be replaced across all jurisdictions in Australia with best practice MRV to ensure accurate reporting and genuine emission reductions.
63. The EJA NGER submission further called on the Government to:
 - a. Review the other methods for reporting methane emissions (Methods 2 and 3)⁵⁷ from open cut coal mines, to align reporting with best practice MRV; and
 - b. Given the threat methane poses across the coal, gas and oil sector, review and implement best practice MRV of methane emissions, across the energy sector in all jurisdictions in Australia through the NGER Act.

⁵⁴ See, DCCEEW, '2023 National Greenhouse and Energy Reporting (NGER) Scheme updates', <<https://consult.dcceew.gov.au/2023-nger-scheme-proposed-updates>>. The EJA NGER submission formally responded only to Section B of the consultation paper, concerning the update to Method 1 used to calculate fugitive methane emissions from Queensland open cut coal mines.

⁵⁵ Ember, 'Tackling Australia's Coal Mine Methane Problem (2022)', available at: <<https://ember-climate.org/insights/research/tackling-australias-coal-mine-methane-problem/>>.

⁵⁶ The state-based emissions factor is known as 'Method 1' in the NGER Act, and is set out in ss 3.19 and 3.20 of the *National Greenhouse and Energy Reporting (Measurement) Determination 2008* (Cth) (**NGER Measurement Determination**).

⁵⁷ NGER Measurement Determination ss 3.21, 3.26.

Recommendation

As recommended in the EJA NGER submission, EJA **recommends** the Authority review the NGER scheme to:

- a. Phase out Method 1 in s 3.20 of the NGER Measurement Determination for open cut coal mines in all jurisdictions in Australia.
- b. Review Methods 2 and 3, in ss 3.21 and 3.26 of the NGER Measurement Determination, to require all coal mine operators to report methane emissions against best practice MRV frameworks, which should incorporate aerial, satellite and ground-based direct, and site-specific measurement, to ensure the highest standards of accuracy and integrity.
- c. Review and implement best practice MRV standards in respect of methane emissions across the energy sector in all jurisdictions in Australia, to ensure the highest standards of accuracy and integrity.

C. The Authority must address concerns regarding the integrity of the CFI, ERF and role of carbon credits to ensure emissions reduction are achieved

64. This section of the submission addresses the themes of integrity and governance in relation to the CFI Act, Emissions Reduction Fund (**ERF**) and carbon integrity across Sections 3.6 and 3.7 of the Issues Paper. It focuses on the CFI Act, ERF and carbon credit integrity together due to their intertwinement. Namely,
- a. The ERF is a voluntary scheme that aims to provide incentives for a range of organisations and individuals to adopt new practices and technologies to reduce their emissions, through carbon credits and abatement.⁵⁸
 - b. The ERF is established by the CFI Act. The ACCUs scheme forms the first limb of the ERF and is also established by the CFI Act.⁵⁹ The CFI Act is administered by the CER.
 - c. The CFI Act also establishes the Emissions Reduction Assurance Committee (**ERAC**). An independent statutory committee, ERAC has a number of functions under the CFI Act, including advising the Minister on whether to make, vary or revoke methods based on their assessment of their compliance with the Offsets Integrity Standards.⁶⁰ The CER is a body nominated under the CFI Act who may “assist” ERAC in the performance of their functions.⁶¹
65. Further integrated to this scheme is the Safeguard Mechanism, “the [Australian government’s] policy for reducing emissions at Australia’s largest industrial facilities”.⁶² The CER also administers the Safeguard Mechanism.⁶³

I. The ACCUs scheme must be founded on and executed with good governance and integrity

66. EJA draws the Authority’s attention to a submission prepared by EJA in response to the Chubb Review “Ensuring integrity and good governance in the ACCUs scheme” dated 3 October 2022 (the **EJA Chubb Review submission**). The EJA Chubb Review submission is **enclosed at Annexure C**.
67. Focussing on the legal settings and governance of the scheme for the issuing of ACCUs under the CFI Act, the EJA Chubb Review submission posited the scheme’s settings,

⁵⁸ IEA, ‘Emissions Reduction Fund – Policies’ (25 January 2023), available at <<https://www.iea.org/policies/2620-emissions-reduction-fund>>.

⁵⁹ CFI Act pt 2.

⁶⁰ Ibid div 2. For provisions regarding the making, varying or revoking of methodology determinations by ERAC, see, specifically, CFI Act s 123A.

⁶¹ Ibid s 269.

⁶² Emphasis added. Australian government Department of Climate Change, Energy, the Environment and Water, Safeguard Mechanism, (online) available at: <<https://www.dcceew.gov.au/climate-change/emissions-reporting/national-greenhouse-energy-reporting-scheme/safeguard-mechanism>>.

⁶³ See, *Clean Energy Regulator Act 2011* s 12; NGER Act div 4A.

structure and legislative requirements are not appropriate or well-adapted to ensure good governance and confidence in the integrity of the ACCUs scheme.

68. In summary, the submission asserted the following key points:

- a. The ACCUs scheme requires the highest standards of integrity. In order for carbon offsetting schemes to be a viable and trusted measure in transitioning to a safe future, such a scheme must be well-regulated, of high integrity and adhere to the best available science and principles concerning offset markets.
- b. To achieve its independent, advisory role, the scope of ERAC's functions and (governance) procedures must be reviewed to embed principles of good governance. The scheme should be supported by independent and specialized advice from ERAC in relation to methods that receive accreditation and protect against delegated legislation containing the methods undermining the intent of the CFI Act.
- c. The CFI Act must be amended to improve transparency and accountability.

69. In conclusion, the EJA Chubb Review submission recommended:

- a. The reintroduction of an express requirement under the CFI Act that the Minister may only approve methods that comply with each of the offsets integrity standards, supported by relevant, authoritative scientific results.
- b. That an independent assessment be conducted of all existing methods against the offsets integrity standards, and take necessary action to vary or revoke methods that are not compliant.
- c. That the statutory processes for the development and approval of new methods and the review of current methods expressly incorporate appropriate expert advice across relevant fields, including academia, industry and non-government organisations.
- d. That ERAC's scope should be limited to matters concerning the offsets integrity standards or matters directly incidental to ensuring those standards are met.
- e. That the Panel consider whether to amend s 262 of the CFI Act to expand the concept of 'conflict of interest' to require the disclosure by ERAC members of potential, perceived and actual conflicts of interests arising in relation to a matter being considered or about to be considered by ERAC.

ACCUs integrity concerns post-Chubb Review

70. It is evident from the Final Report and Recommendations of the Chubb Review, that some of the concerns raised by EJA were shared by the panel to the Chubb Review itself.⁶⁴ For example, the panel recommended:

⁶⁴ Chubb, I., Bennett, A., Gorring, A., Hatfield-Dodds, S. 'Independent Review of ACCUs' (December 2022), available at: <<https://www.dcceew.gov.au/sites/default/files/documents/independent-review-accu-final-report.pdf>>.

- a. In recognition of the blurred lines between the scheme assurer, scheme regulator and related policy development roles:
 - i. Each function is resourced sufficiently to play its role effectively in administering the scheme and supporting well-functioning carbon offset markets (*Recommendation 1*).
 - ii. The ERAC be re-established as the Carbon Abatement Integrity Committee (the **CAIC**) as soon as practicable with adjusted terms of reference, membership and functions, and that it be well-resourced and supported by an independent secretariat (*Recommendation 2*). This was in response to a key finding that there is a need for a new body, differently constituted and supported, with the major responsibility of assuring method integrity.
 - iii. The CER be responsible for project monitoring, compliance and enforcement and providing transparent project and scheme information (*Recommendation 3*).
- b. Recommended the offsets integrity standards should be clearly defined and supplemented with ACCU Scheme Principles to support their consistent application in method development and project implementation and administration (*Recommendation 6*).

71. EJA notes that the Australian government welcomed the final report of the Chubb Review and agreed in principle to all 16 recommendations of the review.⁶⁵

72. However, despite the serious concerns raised by the Chubb Review, which have been acknowledged by the Australian government, ACCUs are set to play a role in the reformed Safeguard Mechanism.

ACCUs in a post-Chubb Review *and* Safeguard Mechanism context

73. The new arrangements under the reformed Safeguard Mechanism took effect from 1 July 2023. The Safeguard Mechanism reforms were primarily affected through the *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (the **Safeguard Mechanism Rule**), which amended the NGER Act.

74. Broadly speaking, and as the Authority would be aware, the Safeguard Mechanism sets legislated targets, known as baselines, on the net GHG emissions of 215 facilities covered by the Mechanism. With limited exceptions, if covered facilities generate a level of emissions which is below their baseline, those facilities automatically generate tradeable Safeguard Mechanism Credits which can be onsold to other Safeguard facilities to meet

⁶⁵ Australian government, 'Government Response to the Independent Review of Australian Carbon Credit Units' (January 2023) available at: <<https://www.dcceew.gov.au/sites/default/files/documents/australian-govt-response-accu-review.pdf>>.

their Safeguard compliance obligations or hold them for future use.⁶⁶ Facilities can also purchase and surrender ACCUs to meet their compliance obligations.⁶⁷

75. EJA acknowledges that the Australian government through the *Safeguard Mechanism (Crediting) Amendment Act 2023*, has sought to implement “the first stage of the Government’s response to the [Chubb] review”.⁶⁸ And, just recently, it has published the “Independent Review of Australian Carbon Credit Units (ACCUs): Implementation Plan” to implement actions and consult with stakeholders on “priority reforms” to the ACCU scheme.⁶⁹
76. These moves by the Australian government, however, only cover the recommendations put forward by the Chubb Review. Accordingly, EJA raises serious concerns that without broader and widespread reform of the ACCUs scheme, the Safeguard Mechanism risks importing the integrity issues concerning ACCUs and the CFI Act into its own scheme.
77. While it has been touted as “a crucial building block for Australia's transition to net zero”,⁷⁰ the Safeguard Mechanism is at risk of failing to effectively reduce emissions and meet Australia’s emissions reduction targets unless and until the issues within the ACCUs scheme are reformed.

Recommendation

EJA therefore **recommends** that the Authority urgently, in exercising its review functions under the CFI Act and the NGER Act,

- a. Review the 16 recommendations by the Chubb Review, and the status of such to ensure those recommendations (at minimum) are all implemented by the Australian government effectively, comprehensively and without delay.
- b. To the extent they are not covered by the recommendations of the Chubb Review, consider the recommendations in the EJA Chubb Review submission and encourage the Australian government to consider adopting the same.

II. Any future role of international carbon markets should be approached with utmost caution

78. This section of the submission responds generally to section 3.8 of the Issues Paper.

⁶⁶ See, NGER Act pt 3H; Australian Government Department of Climate Change, Energy, the Environment and Water, ‘Safeguard Mechanism Reforms: Fact sheet’ p 3-4 <<https://www.dcceew.gov.au/sites/default/files/documents/safeguard-mechanism-reforms-factsheet-2023.pdf>>.

⁶⁷ NGER Act s 22XM.

⁶⁸ See, Revised Explanatory Memorandum, Safeguard Mechanism (Crediting) Amendment Bill 2023, 2.

⁶⁹ Department of Climate Change, Energy, the Environment and Water, ‘Independent Review of Australian Carbon Credit Units (ACCUs): Implementation Plan (2023)’, <<https://www.dcceew.gov.au/climate-change/publications/accus-implementation-plan>>.

⁷⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 November 2022, 3892 (Chris Bowen, Minister for Climate Change and Energy) <<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F26233%2F0077%22>>.

79. EJA is aware that, first, art 6 of the Paris Agreement (theoretically) provides for an international market-based mechanism to facilitate international, and therefore national, abatement of emissions. Second, that the Australian government is intending to consult on allowing access to high integrity international units to the Safeguard Mechanism (and potentially more broadly) late in 2023.⁷¹
80. Given the ongoing concerns regarding ACCUs, EJA encourages the Authority to consider the role of international carbon markets with great caution. First, we encourage the Authority to consider whether carbon credits can truly assist with genuine emissions reduction. If the answer to that is yes, then EJA asserts that any carbon credit framework must be founded on strong integrity principles.
81. For example, as outlined in the EJA Chubb Review submission, we highlight the following key principles of effective carbon offsetting schemes for the Authority:
- a. Mitigation hierarchies within and across sectors are crucial to ensuring that carbon offsets are secondary to mitigation.⁷²
 - b. In sectors where the use of carbon offsets is necessary, robust certification schemes must ensure that emissions credits result in permanent, additional and verified emissions reductions;⁷³ and
 - c. Bottom-up and community driven strategies are central to carbon removal policy and projects.⁷⁴
82. Second, we refer to Part 4 of the Authority's 2022 Review of International Offsets, concerning "The most important criteria".⁷⁵ Here, the Authority set out necessary criteria for offsets to achieve genuine abatement. These included:
- a. Additionality: abatement that is additional if it would not have occurred in the absence of a government program or a market for offset units.
 - b. Permanence: the length of time that GHG are stored after being removed from the atmosphere.
 - c. Quantifiability: project abatement must be able to be calculated in accordance with conservative and transparent measurement methods.

⁷¹ Australian government Department of Climate Change, Energy, the Environment and Water, 'Safeguard Mechanism Reforms: Fact sheet' p 4.

⁷² The reference to 'mitigation hierarchies' refers to the need to prioritising abatement and mitigation measures over carbon offsetting or removal methods. See, IEA, *Net Zero by 2050 – A Roadmap for the Global Energy Sector*, (11 May 2021) (**IEA Net Zero Report**) pp 36 and 96 available at: <<https://iea.blob.core.windows.net/assets/4719e321-6d3d-41a2-bd6b-461ad2f850a8/NetZeroby2050-ARoadmapfortheGlobalEnergySector.pdf>>.

⁷³ Ibid p 36.

⁷⁴ IPCC, *Climate Change 2022: Mitigation of Climate Change*, (4 April 2022) Ch 12 available at: <<https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/>>.

⁷⁵ Climate Change Authority, 'Review of International Offsets' (August 2022), p 43 available at: <<https://www.climatechangeauthority.gov.au/sites/default/files/2022-08/Review%20of%20International%20Offsets%20-%20Report%20-%20August%202022.pdf>>.

- d. Baseline setting: seeking to ensure that activities are not over-credited by setting high integrity baselines for reduction.
 - e. Stakeholder inclusivity: active consultation throughout a project to help protect against adverse impacts and encourage positive outcomes for all.
 - f. Transparency: information about projects and schemes are available to the public.
 - g. Legal compliance: requires projects to be compliant with all applicable laws and regulations within the jurisdiction in which they are being developed.
 - h. Avoiding adverse impacts: requires informed consent and engagement of individuals or communities that are impacted by offset projects to avoid any adverse impacts to communities and the environment.
83. Unless international offsets can absolutely and wholly meet those criteria and guiding principles, EJA considers there is no place for international carbon units in Australia's emissions reduction framework.

Recommendation

EJA **recommends** that the Authority does not recommend any role for international carbon markets to achieve Australia's emissions reduction targets. If any role is recommended, international carbon markets must be founded on a robust legislative framework that achieves the highest standards of integrity.

Conclusion

84. EJA are grateful to the Authority for its consideration of this submission and we welcome any queries or requests arising from it.
85. We look forward to reviewing the Authority's recommendations for setting, tracking and achieving Australia's emissions reduction targets to secure the safe future we all deserve.

Annexure A

UN Communication lodged by EJA on behalf of five young people from disability and First Nations communities (October 2021)

25 October 2021

Dr. David R. Boyd

Special Rapporteur on Human Rights and the Environment

OHCHR-UNOG

8-14 Avenue de la Paix

1211 Geneve 10 Switzerland

Mr. Francisco Calí Tzay

Special Rapporteur on the rights of Indigenous peoples

OHCHR-UNOG

8-14 Avenue de la Paix

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Mr. Gerard Quinn

Special Rapporteur on the rights of persons with disabilities

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CH-1211 Geneve 10 Switzerland

By email: srenvironment@ohchr.org

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Dear Mr Boyd, Mr Calí Tzay and Mr Quinn

Human rights harms of the Australian government's Nationally Determined Contribution and inaction on climate change

1. Environmental Justice Australia (EJA) is grateful to submit this complaint on behalf of five young people living in Australia. We are writing to respectfully request that as Special Rapporteurs on human rights and the environment, on the rights of Indigenous peoples and on the rights of persons with disabilities, you consider the grievances contained in this communication and do all in your power to give effect to the complainants' requests.

**Environmental
Justice Australia**
ABN 74052124375

PO Box 12123
A'Beckett Street PO
Melbourne VIC 8006
L3, 60 Leicester St, Carlton

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Environmental Justice Australia is the environment's legal team. We use our specialist legal skills to take cases to court and advocate for better environment laws.

The Complainants

2. EJA is a leading public interest legal organisation. Our lawyers act on behalf of people and community organisations to safeguard health, to protect forests, rivers and wildlife, and to tackle climate change.
3. We make this complaint on behalf of:
 - a. **Shylicia McKiernan** – a 24 year old Kulkalaig woman from Kulkalgal Nation, Zenadth Kes (the Torres Strait), living on Wurundjeri land. Shylicia looks forward to a world where everyone can come together and become the community we need to be to properly create a sustainable world that is just for everyone. However, as her statement (**Annexure A**) describes, Shylicia’s and her community’s experience with sea level rise has had devastating impacts on their home island, Masig;
 - b. **Adrien Edward** – a 15 year old high school student, currently in year 10. Adrien lives on Wurundjeri country in Melbourne. As they detail in their statement (**Annexure B**) Adrien enjoys reading, script writing and painting, and hopes for a safe and secure future where they can follow their passion to become a filmmaker. As a disabled person, Adrien has already and will continue to face climate-related harms unless the government addresses the level of disproportionate harms on disabled people;
 - c. **Chris Black** – a 14 year old high school student, currently in year 10. Chris lives on Gadigal and Guringai land in Sydney. In his statement (**Annexure C**), Chris details his hopes to become a scientist when he grows up so he can help the environment and people, and continue to build a healthy future for his and all generations to come. He has mental health issues and disabilities including climate change-induced anxiety, which he knows puts him at a higher risk of climate-related harm than some other people;
 - d. **Ethan Lyons** – a 15 year old Wiradjuri teen, living on the Country of the Gandangara (Gadigal) people of the Eora Nation, in Sydney. Ethan is proud to have such a large and supportive mob from all across Country, and hopes to share and spread his passion for culture around the world one day. As detailed in his statement (**Annexure D**) though, Ethan has Type 1 diabetes and is already seeing how bushfires, floods and droughts caused by climate change is hurting his and other First Nations peoples’ connection to Country.

- e. **Leila Mangos** – a 18 year old high school student, currently in Year 12. Leila lives on Darkinjung land on the Central Coast, in New South Wales. In her statement (**Annexure E**), Leila shares her hopes for a future where she feels safe, secure and is pursuing her passions. Leila describes her experience with climate-induced anxiety and depression, and how she feels that climate change has prevented her from living as a child.

Together, the **Complainants**.

4. The Complainants would like to express that although this communication is made on behalf of them, the rights-based harms outlined in this complaint are and will continue to affect all children across Australia. The Complainants would also like to note that the terms ‘First Nations’ and ‘disabled people’ have been used in this complaint on their instructions.
5. Short statements containing the evidence of the Complainants are enclosed at **Annexures A to Annexure E**.

Executive Summary

Australia’s Nationally Determined Contribution, its current conduct and harm to the human rights of young people in Australia

6. On 8 October 2021, and in a landmark move, the United Nations (**UN**) Human Rights Council recognised that the right to a clean, healthy and sustainable environment is a human right.¹ The UN High Commissioner for Human Rights, Michelle Bachelete, introduced the session stating that, “a safe, clean, healthy and sustainable environment is the foundation of human life” and called on States to take “ambitious action”.²
7. Under the Paris Agreement too, Australia is explicitly required to adopt a greenhouse gas reduction target, known as a “Nationally Determined Contribution” (**NDC**), which reflects “its highest possible ambition.”³ Despite this, and the explicit recognition that climate change is a human rights issue, Australia’s conduct remains tied to harmful inaction and its inadequate 2030 emissions reduction target as reflected in its NDC.
8. The human rights consequences of this costly inaction, and the Australian government’s facilitation of soaring emissions, are already being felt across Australia. Extreme bushfires, heat waves, sea level rises, coral bleaching and freak hailstorms are only some examples of climate-induced events people in Australia are experiencing. Young people are particularly vulnerable and exposed to these life-threatening events, and will continue to be disproportionately harmed as global warming intensifies. Even more exposed are young First Nations people and young

disabled people who are already suffering and will suffer even more acutely as continuing climate change exacerbates existing inequalities and directly undermines their health and cultural rights. Each of the Complainants face this terrifying reality and the infringement of their fundamental rights, including the rights to life, education and health, by virtue of Australia's conduct and inaction.

9. In this complaint, we detail the harms being experienced by the Complainants as well as their well-justified fears of future harm, including significant mental health issues, damage to and forced disconnection with important cultural sites and Country, the impeded ability to attend school, as well as inability to leave their homes and corresponding alleged human rights violations. The Complainants assert the Australian government is in breach of the Paris Agreement and multiple United Nations (**UN**) instruments, including but not limited to the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, and United Nations Declaration on the Rights of Indigenous Peoples. They respectfully request your urgent intervention to:

a. Seek explanation from the Australian State regarding:

- i. How the Australian State's current inaction on climate change and its first and second NDCs are consistent with its human rights obligations to the Complainants and to young people in Australia, especially young people from First Nations communities and disabled people;
- ii. How its current conduct is compatible with the human rights of young Australians and a 1.5 degree pathway, in light of:
 1. the Intergovernmental Panel on Climate Change Sixth Assessment Report;
 2. the 2021 International Energy Agency Roadmap;
 3. the 2021 International Energy Agency World Economic Outlook; and
 4. its continued approval and pursuit of new gas and coal extraction projects across Australia including major gas exploration in the Beetaloo basin; and
- iii. How its current NDC decision-making has involved young people in Australia who are and will continue to feel the acute impacts of climate harms and the State's decision-making, and whether the State will establish a permanent forum to take advice from young people from impacted communities about the lived reality of climate inaction.

b. Urge the Australian State to, without delay, set a 2030 target that is consistent with its human rights obligations to young people in Australia and to the Complainants.

Australia's Nationally Determined Contribution

10. In 2015, the Australian government announced its first NDC pursuant to its obligations under the Paris Agreement.⁴ The government committed to reducing greenhouse gas emissions (**GHGEs**) by 26 to 28 percent below 2005 levels by 2030 (**First NDC**).⁵ Despite years of widespread criticism that this reduction target was insufficient, on 31 December 2020 and at the midpoint of severe bushfires in south-eastern Australia, fuelled by anthropogenic climate change (**Black Summer bushfires**),⁶ the Federal Government decided against raising its ambition. It simply recommunicated its First NDC (**Second NDC**) in an utter failure to comply with the Paris Agreement and numerous UN Conventions.⁷
11. The stark reality of climate change and its widespread, rapid and intensifying risks to the world has been underscored by the IPCC when it released its Sixth Assessment Report in August 2021. The report found that unless there are immediate, rapid and large-scale reductions in GHGEs, limiting warming to close to 1.5°C or even 2°C will be beyond reach.⁸ Similarly, in their ground-breaking report released in May 2021, the International Energy Agency (**IEA**) highlighted the path to net zero by 2050 (and therefore a sustainable future) was narrow, and to reach it requires all governments to significantly strengthen their ambition and ensure that ambition is implemented.
12. The Australian government's Second NDC flies in the face of this science, is grossly inadequate to limit warming to 1.5°C by 2030 (even by the standard of Australia's own Climate Change Authority)⁹ and does not represent Australia's fair share of global emissions reductions. The Complainants raise their view that the First and Second NDCs and Australia's conduct consistent with these NDCs undermines their rights under multiple instruments, as detailed below.
13. Climate Action Tracker data shows that if all countries were to follow Australia's approach, warming could reach over 3°C and up to 4°C.¹⁰ Recent research predicts that limiting global warming to 1.5°C compared with warming levels associated with current pledges, nearly halves the additional exposure of newborns to extreme heat waves, and reduces the exposure to crop failures, droughts and river floods by about a third.¹¹ The Australian government must drastically raise ambition – the inadequacy of the Second NDC is an affront to all people in Australia, but especially young people in Australia who are acutely exposed to climate harms as rising GHGEs continues unabated. We detail this, and the Complainants' personal experiences of this, below.

Australia's NDC Decision and harm to all young people in Australia

Current harms to young people in Australia at 1.2°C

14. In 2020, it was estimated that current warming had already reached 1.2°C above pre-industrial levels.¹² The IPCC has predicted with a high degree of confidence that Australian land areas have warmed by around 1.4°C.¹³ Even at this level of warming, acute and chronic harms of climate change are threatening our planet and communities. Illustratively, the Black Summer fires caused 33 direct deaths, killed or displaced nearly 3 billion native animals and estimates of the national financial impacts were over \$10 billion.¹⁴ The Great Barrier Reef has suffered three major bleaching events in recent years,¹⁵ and hailstorms lasting only a few minutes caused more than \$1 billion in damage in Queensland in October 2020.¹⁶ Meanwhile we are seeing more frequent, longer and intense heatwaves,¹⁷ more intense heavy rainfall and flooding,¹⁸ ecosystems on the verge of collapse,¹⁹ and significant erosion from sea level rise.²⁰

15. It is now well-acknowledged that children are some of the most vulnerable to climate threats and these catastrophic and deeply distressing events are disproportionately harming young people in Australia. The Office of the UN High Commissioner for Human Rights (**OHCHR**) has stated,

“Children are disproportionately impacted by climate change due to [childrens’] unique metabolism, physiology and developmental needs. The negative impacts of climate change, including the increasing frequency and intensity of natural disasters, changing precipitation patterns, food and water shortages, and the increased transmission of communicable diseases, threaten the enjoyment by children of their rights to health, life, food, water and sanitation, education, housing, culture, and development, among others. Climate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children’s well-being.”²¹

(Emphasis added)

16. Studies undertaken after extreme weather events are illustrative of these comments. Studies show that after natural disasters, such as the Black Summer bushfires, children may be exceptionally disempowered as access to education is undermined if school facilities are destroyed, teachers are not available or children are relocated.²² The studies state the disruption to education acts as a multiplier to the original event reducing mental health and well-being for years after the original event.²³

17. The right to access education is undermined too by the chronic impacts of climate change which are already being felt.²⁴ Complainant, Adrien Edward, is 15 years old and lives on Wurundjeri land in Melbourne.²⁵ Adrien has sensory issues and chronic pain which are exacerbated by extremes of cold and heat. The impact of heatwaves on Adrien’s sensory issues, and the effects of colder winters on Adrien’s chronic pain has impeded their ability to attend school. When there is bushfire smoke around, too, Adrien has trouble breathing and their sensory issues mean they have to stay inside, and cannot attend school. As they explain, in their personal statement (**Annexure B**):

“All of this heavily impacts my ability to leave the house, get education and travel which then negatively impacts my mental health. This also makes me really angry.”

18. As with other rights protected by the Convention on the Rights of the Child, the right to education is not indivisible but linked to all other fundamental rights.²⁶ It is designed to “strengthen the child’s capacity to enjoy the full range of human rights”, including the rights to life, health and development.²⁷ Undermining a single right has a domino effect on other rights. The Australian government must act and take serious, genuine and immediate action on climate change to ensure all children’s rights are guaranteed and able to be fully realised.
19. Each of the Complainants’ experience with current climate harms and their devastating effects on their current and future rights, including to their right to education and the highest attainable standard of health are detailed further in their personal statements enclosed at **Annexures A** to **E**. The Complainants raise these current harms to identify their current experiences, but also as clear indications of the intensifying and expanding future harms they will face in a lifetime determined by the current material conduct and inaction of Australia, including actions consistent with its inadequate First and Second NDCs.

Future harms to all young people in Australia in a 2°C and 3°C future

20. In 2021, the Climate Action Tracker released data showing that current Paris Agreement pledges and targets puts the world on a pathway to reach 2.4°C by the end of the century.²⁸ This is significantly higher than current 1.2°C warming and the Paris Agreement target of 1.5°C. Similar analysis released by the IEA in their 2021 World Energy Outlook (**WEO**) found that current pledges, if implemented, would lead to global average temperature rise of 2.1°C by the end of the century, but the temperature trend would not have stabilised.²⁹ Further, Australia’s pledge in the context of the other global pledges, would only result in less than 20% of the emissions

reductions by 2030 which are necessary to reach net zero by 2050.³⁰ Indeed, the 2021 Climate Transparency report found that Australia's 2030 domestic emissions reduction target is consistent with 4°C warming if all other countries followed suit, rating Australia's emissions targets overall as "highly insufficient".³¹

21. In their Sixth Assessment Report released in August this year, the IPCC considered the risks of global warming rising above 1.5°C. It projected that heatwaves, droughts and floods will be more widespread across Australasia at 2°C, and even more widespread and/or pronounced for higher levels of warming.³² With respect to heatwaves, droughts and floods at least, the OHCHR states that globally, children will suffer exceptionally. It highlights:

- a. As heatwaves increase in duration and intensity, children may suffer from heat rash, heat-related cramps, exhaustion, renal disease, respiratory illness, stroke and death as bodies adapt at a slower rate to changes in heat;³³
- b. Droughts are expected to intensify thereby reducing access to water, agriculture and economic activities which accordingly increases the risk of malnutrition, child labour and domestic violence;³⁴ and
- c. The increase in occurrence and severity of flooding will see the incidence of waterborne disease rise – by 2030, it is projected that climate change will result in 48,000 additional deaths from diarrhoeal disease in children under 15.³⁵

22. With respect to children in Australia, the evidence relied upon in *Sharma & Others v Minister for the Environment* [2021] FCA 560 suggests impacts on children in Australia are no less than severe than the global experience. For example:

- a. Dr Meyricke, an actuary and member of the Institute of Actuaries Climate Change Working Group, opined that even with effective adaptation and risk mitigation there will still be excess mortality in future for individuals currently under 18 years of age from heatwaves in Australia.³⁶
- b. Professor Capon, Director and Professor of Planetary Health at Monash University, stated that the effects of prolonged droughts in Australia caused by reduced levels of soil moisture, declines in agricultural productivity, and declines in rural incomes has and will have the flow on effect of mental illness, including rising levels of

depression.³⁷ In his judgement, his Honour Justice Bromberg accepted this evidence, and found that a recognisable psychiatric injury as a result of a climate change induced drought was reasonably foreseeable for current Australian children whose lives will be affected by drought.³⁸

- c. In terms of economic loss, Dr Mallon, a physical risk analysis expert and Director at Climate Risk Pty Ltd and XDI Pty Ltd, stated that today's children can on average expect to lose between \$41,000 and \$85,000 of family wealth due to climate driven corrections in the property market.³⁹ This loss accounts for elevated and increasing risk of about 750,000 dwellings exposed to flooding, coastal inundation, forest fire and subsidence.⁴⁰ These figures were to be considered conservative, as they did not include the southerly movement of cyclones.⁴¹

23. As his Honour Justice Bromberg stated,

"It is difficult to characterise in a single phrase the devastation that the plausible evidence in this proceeding forecasts for the Children [Plaintiffs]. ... the human experience – quality of life, opportunities to partake in nature's treasures, the capacity to grow and prosper – all will be greatly diminished ... It will be inflicted by the inaction of this generation of adults, in what might fairly be described as the greatest inter-generational injustice ever inflicted by one generation of humans upon the next."⁴²

(Emphasis added)

24. Other studies confirm catastrophic risk exposures to young people in Australia at 3°C level of warming. Heatwaves in parts of Australia are projected to become twice as likely (seven per year) and last twice as long (16 days on average) when compared to 1.5°C warming.⁴³ Human mortality and morbidity is expected to increase.⁴⁴ Water and food availability, quality and security will be significantly compromised, with the consequences including broad public health harms, undermining various industries reliant on water supplies (for example, agriculture) and contributing to regional instability and conflict.⁴⁵ A recent study found that a 6 year old in 2020 will experience twice as many bushfires and tropical cyclones, three times more river floods, four times more crop failures, five times more droughts, and 36 times more heatwaves compared to a person born in 1960.⁴⁶ Each of these harms severely compromise multiple rights of the Complainants, including the rights to life, to attain the highest attainable standard of health and to an adequate standard of living.⁴⁷

25. In addition to physiological risks, young people in Australia will continue to grapple with mental health issues as they mourn ecological losses and human harms, and carry legitimate fear for the future.⁴⁸ Given their age, children have little power to limit climate harms, making them more vulnerable to climate anxiety and potentially exacerbating pre-existing mental health problems.⁴⁹ For each of the Complainants, current devastation and the fears they have for the future are already impacting their mental health. Chris Black is 14 years old and lives on Gadigal and Guringai land in Sydney.⁵⁰ Chris has Autism, obsessive compulsive disorder and other disabilities which puts him at higher risk of climate harms. Chris also experiences climate-induced anxiety which is so severe that it manifests in physical pain. As he describes in his personal statement (**Annexure C**): “It can lead to really bad chest pains, a sore tummy, and trouble breathing”. Sometimes the pain is so severe that Chris cannot move. Leila Mangos is 18 years old and lives on Darkinjung land on the Central Coast, in New South Wales.⁵¹ Leila also experiences climate-induced anxiety and depression, and explains that she feels as though climate change has prevented her from living as a child. Leila also describes how she feels pressure to dedicate time and energy to climate activism, rather than her other passions which do not carry such a heavy personal toll.
26. The right to the highest attainable standard of health is guaranteed by article 24 of the Convention on the Rights of a Child.⁵² The Committee on the Rights of the Child has stated that health is “a state of complete physical mental and social well-being and not merely the absence of disease or infirmity”, and that States must “put children’s health concerns at the centre of their climate change adaptation and mitigation strategies”.⁵³ In considering a recent petition to the UN brought on behalf of 16 children (**Sacchi Petition**), some of whom are suffering from climate-induced mental harms, the Committee acknowledged these harms and stated that children are “particularly impacted by the effects of climate change, both in terms of the manner in which they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular if immediate action is not taken” (Emphasis added).⁵⁴ Accordingly, “states have heightened obligations to protect children from foreseeable harm”.⁵⁵
27. Rather than heeding to heightened obligations though, the Australian government is threatening the current and future health of young people in Australia, by ignoring the principle of intergenerational equity, and remaining stubborn on its insufficient and non-compliant NDC.
28. The potential rights violations by the Australian government extend beyond the right to health. Current climate projections and the life-threatening risks they pose to young people in Australia, will (if they have not already) infringe nearly all of their fundamental economic, social and health rights including the rights to life, family relations, adequate standard of living, education, freedom

from any form of violence or exploitation and recreation and play,⁵⁶ and the right to a clean, healthy and sustainable environment recognised by the Human Rights Council on 8 October 2021.⁵⁷ If the Australian State continues its current conduct, including actions consistent with its NDCs, the potential infringements of these international obligations will necessarily intensify.

29. For further detail concerning each of the Complainants' concerns regarding future climate harms, please see **Annexure A – Annexure E**.

Harm to young First Nations people in Australia

30. Current climate harms, and the threat of widespread and intensified risks, exposes the cultural rights of young First Nations people in Australia. As Mibu Fischer, a Quandamooka woman and saltwater scientist, has stated,

“It’s not just the food sources, resources, culture and connections to Country ...the changes to the physical environment for First Nations people globally also impacts our ability to contribute to our economy, it impacts our wellbeing and our health - particularly our mental health. It is adding an additional obstacle to already marginalised communities.”⁵⁸

31. International bodies have recognised the centrality of natural resources to the right to enjoy culture. The Inter-American Court has stated, “[T]he close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival.”⁵⁹ Ethan Lyons is 15 years old and a Wiradjuri teen from Sydney, although his family is originally from Narrandera.⁶⁰ Ethan is proud of his culture, but can already see that extreme events are hurting First Nations peoples’ connection to Country. Ethan states in his personal statement (**Annexure D**):

“To me, connection to Country is everything. Country is not just the land but kinship, the Dreamtime, food and cultural practices – these all make up Country. When land is destroyed, it is disconnecting. Seeing bushfires destroy the land is disconnecting.”

32. Torres Strait communities situated on low-lying islands are particularly exposed to sea level rise, storm surge and flooding impacts,⁶¹ with some raising concerns that they will see their islands disappear within their lifetimes.⁶² Shylicia McKiernan is a Kulkalaig woman from Kulkalgal Nation, Zenadth Kes (the Torres Strait). She is currently living on Wurundjeri land but her family is originally from the low-lying island, Masig. For Shylicia the experience of rising sea levels is very anxiety-inducing.⁶³ Shylicia’s great-grandparents moved away from their home, Masig, due to

rising sea levels. She says it is terrible to think you could be displaced in your own country. As Shylcia explains in her statement (**Annexure A**):

“Knowing the impacts of climate change threaten the survival of Masig overwhelms me. Even though I didn’t grow up there it doesn’t hurt any less thinking my family’s home island could be lost. Our songlines and culture is deeply connected to the island so it is really upsetting.”

33. In addition, evidence shows that in the Torres Strait, changes to temperature and rainfall have affected the range of mosquito species for dengue,⁶⁴ drought conditions will impact water security and cyclones are projected to become more intense.⁶⁵ For communities living in the Torres Strait the direct and indirect impacts of these events will be aggravated due to their remote location with limited healthcare and economic resources, and higher burden of pre-existing health conditions.⁶⁶
34. This experience is not limited to the Torres Strait. Throughout Australia climate change has and will continue to exacerbate the recognised social, health and economic inequalities between First Nations people in Australia and non-First Nations people in Australia.⁶⁷ Research and evidence regarding the impact of the Black Summer bushfires on First Nations people in NSW and Victoria provided to the Australian government’s Royal Commission Inquiry into Natural Disasters (authors of which include Euahlayi man and academic Bhiemie Williamson) highlights that:
 - a. at the time of the fires one quarter of all Indigenous peoples in NSW and Victoria were directly affected by the bushfires; and
 - b. 1 in 10 children living in bushfire affected areas were Indigenous with over 36% of the total Indigenous population in fire-affected areas being less than 15 years old.⁶⁸
35. The authors stated that these figures highlight and should lead to concerns regarding the diverse and unique effects on First Nations children from those bushfires, including trauma, health and access to education and housing.⁶⁹ When the Black Summer bushfires hit NSW, Ethan Lyons saw the firsthand impacts of bushfire smoke on people in his community, and how their health conditions put them at greater risk.⁷⁰ Ethan also had uncles who were fighting fires in the Illawarra region. In his personal statement (**Annexure D**), Ethan has described how scary this experience was, especially as his family were unable to keep in steady and regular contact with his uncles.

36. The Complainants assert that the material contribution of Australia to these present and ongoing climate harms violate, and will continue to violate, young First Nations peoples' rights to enjoy their culture and take part in cultural life breaching multiple human rights instruments including: the Convention on the Rights of the Child (**CRC**); the International Covenant on Economic, Social and Cultural Rights (**ICESCR**); the International Covenant on Civil and Political Rights (**ICCPR**); the Universal Declaration of Human Rights (**UDHR**); and the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).⁷¹ The Australian government has either ratified or supports each of these instruments, and has an international obligation to act on climate and protect these rights.⁷²

Harm to young disabled people

37. The Complainants also identify the disproportionate harm of Australia's contribution to climate change on young disabled people. Disabled people, and especially those with intersecting factors related to age, gender, and culture, will experience the direct and indirect impacts of climate change differently and more severely than others.⁷³ The OHCHR has stated the harms are broad-reaching and severe, for example: adverse impacts of climate change exacerbate environmental and institutional barriers to access to health and healthcare for disabled people, and as the harms of climate change undermine educational and vocational opportunities, young disabled people are likely to suffer disproportionately.⁷⁴ Research shows that for disabled people, natural disasters can and will mean loss of power for life sustaining equipment, transportation challenges meaning people have to evacuate without equipment they use and need, and no place to go because evacuation information and environments are inaccessible.⁷⁵

38. The exposure to aggravated risk is already being experienced. For example, the Victorian Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability identified that during the Black Summer Bushfires disabled people were more at risk during the fires as evacuation plans, communications and information broadcast were inadequate and/or inaccessible.⁷⁶ Eleanor Beidatsch, a disability and environmental rights activist, has stated that when a wild winter storm hit her home on the south coast of Western Australia, her life was placed in jeopardy.⁷⁷ Eleanor relies on respirators for life support and when the storm hit and caused power outages, she was left with a finite supply of power to the respirators.⁷⁸ In their personal statement (**Annexure B**), Adrien Edward explains they have already experienced that in times of crisis, such as COVID-19, when there is a large burden on hospitals, adjustments which are critical for the health of disabled people are not available, and that attention also drifts to

abled people.⁷⁹ They identify that the disruption caused by extreme weather events will, in the same way, cause their health to be placed at risk and de-prioritised.

39. Research too shows there will be direct impacts of climate change on people with diabetes.⁸⁰ Studies show that in hotter temperatures, dehydration and heatstroke increases morbidity and mortality in people with diabetes.⁸¹ They are also predisposed to cardiovascular events during heat waves and higher mortality from heart attack on days of high air pollution.⁸² Extreme weather events can leave people with no access to care or essential medicines, such as insulin.⁸³ This has both short-term and long-term impacts on this condition. Ethan Lyons has said he has always been aware that he is at greater risk due to his Type 1 diabetes, understanding that should he be stuck in an extreme weather event his ability to access insulin, and other essential supplies, will be impeded.⁸⁴
40. The current and future harms facing disabled people breaches fundamental freedoms and rights enshrined under the ICCPR, ICESCR, CRC, UDHR and the Convention on the Rights of Person with Disabilities (**CRDP**).⁸⁵ The rights include, but are not limited to, the rights to life, education, and highest attainable standard of healthcare.⁸⁶ The Australian government is obliged under the CDRP to “take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.”⁸⁷ The Complainants assert that Australia’s current climate-related targets and actions, including the Second NDC, are inconsistent with the rights of disabled people.

Australia’s NDC recommunication and inconsistency with its legal obligations

The Paris Agreement

41. Australia became a signatory to and ratified the Paris Agreement in 2016.⁸⁸ Despite this, the Australian government is failing to meet the obligations it imposes. Article 4(3) of the Paris Agreement requires parties’ NDC to:

“...represent a progression beyond the Party’s then current NDC and reflect its highest possible ambition.”⁸⁹ (Emphasis added)

As outlined in paragraphs 10 - 12 above, however, the Second NDC is not a progression beyond the First NDC, and it does not reflect the highest possible ambition of the Australian government.

42. The Paris Agreement goes beyond imposing science-based obligations on party States, to encouraging States to take inclusive and rights-based action. The preamble acknowledges that:

“...climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity.”⁹⁰

43. Despite this, the Australian government is not currently respecting, promoting or considering the obligations and rights outlined. If the First NDC was not already, the Second NDC is an abdication of the Australian government’s obligations under the Paris Agreement.

International Human Rights Law

44. In addition to and by virtue of breaching the Paris Agreement, through failing to take meaningful and inclusive action on climate change, and by setting and conducting itself in line with the First and Second NDCs, the Australian government is also likely in breach of several international human rights instruments.

45. The inextricable link between human rights, climate change and State’s obligations is now well-acknowledged. In 2019, five UN bodies released a joint statement confirming that climate change poses “significant risks to the enjoyment of human rights” with “the risk of harm... particularly high [for] women, children, persons with disabilities, indigenous peoples and persons living in rural areas”.⁹¹ The bodies asserted that accordingly States “must adopt and implement policies aimed at reducing emissions which reflect the highest possible ambition [and] foster climate resilience”.⁹² It is a stance echoed by the Committee on Economic, Social and Cultural Rights, and the Special Rapporteur on Human Rights and the Environment.⁹³ Further, in their recent response to the Sacchi Petition, the Committee on the Rights of the Child confirmed that,

“while climate change and the subsequent environmental damage and impact on human rights it causes is a global issue... State parties will carry individual responsibility for their own acts or omissions in relation to climate change and their contribution to it.”⁹⁴

(Emphasis added)

46. As outlined in this complaint, the rights of the Complainants and all young people in Australia are protected under numerous UN Conventions such as the CRC, ICESCR, ICCPR and the CRPD. Australia has ratified each of these instruments, voluntarily accepting its obligations to respect these rights.⁹⁵ Despite this, the Australian government has likely breached and will continue to breach each of these instruments through inaction on climate change, and ignoring the present and future threat of intergenerational injustices to young people in Australia.
47. If Australia wishes to make a concerted effort to uphold the human rights of people in Australia, as required by its international human rights obligations, the Australian government must revise its NDC to reflect its highest possible ambition, its fair share and the latest climate science.

Request for redress and comment from the Australian government

48. The Complainants respectfully seek your urgent intervention to:
- a. Seek explanation from the Australian State regarding:
 - i. How the Australian State's current inaction on climate change and its First and Second NDC is consistent with its human rights obligations to the Complainants and to young people in Australia, especially young people from First Nations communities and disabled people;
 - ii. How its current conduct is compatible with the human rights of young Australians and a 1.5 degree pathway, in light of:
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 2. the 2021 IEA Roadmap;
 3. the 2021 IEA World Economic Outlook; and
 4. its continued approval and pursuit of new gas and coal extraction projects across Australia including major gas exploration in the Beetaloo basin;
 - iii. How its current NDC decision-making has involved young people in Australia who are and will continue to feel the acute impacts of climate harms and the State's decision-making, and whether the State will establish a permanent forum to take advice from young people from impacted communities about the lived reality of climate inaction.
 - b. Urge the Australian State to, without delay, set a 2030 target that is consistent with its human rights obligations to young people in Australia and to the Complainants.

If you have any queries or would like further information regarding this complaint or any issues raised therein, please do not hesitate to contact Nicola Rivers or Elizabeth McKinnon, co-CEOs at EJA, at CEOs@envirojustice.org.au or on +613 8341 3112.

Yours faithfully

Handwritten signature in black ink, appearing to read 'NRS' followed by 'EMKinnon'.

Nicola Rivers and Elizabeth McKinnon | Co-CEOs

CEOs@envirojustice.org.au

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- ¹ Human Rights Council (HRC), 48/13, *Human right to a safe, clean, healthy and sustainable environment*, A/HRC/48/L.23/Rev.1, 8 October 2021.
- ² Michelle Bachelet (UN High Commissioner for Human Rights), 'Environmental crisis: High Commissioner calls for leadership by Human Rights Council member states', (Speech, Human Rights Council, 48th sess, 13 September 2021) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27443>.
- ³ Paris Agreement, 2016, opened for signature 22 April 2016 ATS 24 (entered into force 4 November 2016) (**Paris Agreement**) art 4(4).
- ⁴ Ibid.
- ⁵ Australian government, *Australia's Nationally Determined Communication: Communication 2020* (31 December 2020), https://www4.unfccc.int/sites/NDCStaging/pages/Party.aspx?party=AUS_
- ⁶ Geert Jan van Oldenborgh et al., Attribution of the Australian bushfire risk to anthropogenic climate change, *Nat. Hazards Earth Syst. Sci.*, (2021) 21, 941-960 <https://doi.org/10.5194/nhess-21-941-2021>.
- ⁷ Alleged violations are considered in paragraphs 41 - 47 of this complaint.
- ⁸ Intergovernmental Panel on Climate Change (IPCC), *IPCC Sixth Assessment Report: Headline Statements from the Summary for Policymakers* (2021). https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_Headline_Statements.pdf; IPCC, *IPCC Sixth Assessment Report* (2021) <https://www.ipcc.ch/report/ar6/wg1/#FullReport>.
- ⁹ Australian government Climate Change Authority, *Final report on Australia's future emissions reduction targets* (2 July 2015) 6. <http://climatechangeauthority.gov.au/sites/prod.climatechangeauthority.gov.au/files/Finalreport-Australias-future-emissions-reduction-targets.pdf>.
- ¹⁰ Climate Action Tracker, *Australia*, (as at 13 October 2021) <https://climateactiontracker.org/countries/australia/>.
- ¹¹ Wim Thierry, et al., *Intergenerational inequities in exposure to climate extremes*, (2021) *Science* 3 10.1126/science.abi7339.
- ¹² World Meteorological Organization (WMO), *State of the Global Climate 2020 (WMO-No. 1264)*, (21 April 2021) <https://public.wmo.int/en/our-mandate/climate/wmo-statement-state-of-global-climate>.
- ¹³ IPCC, *IPCC Sixth Assessment Report: Regional Fact Sheet – Australasia*, (2021) https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Australasia.pdf.
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²⁴ The right to education is guaranteed by article 28 of the Convention of the Rights of a Child. Convention on the Rights of the Child 1989, (resolution 44/25), opened for signature 20 November 1989, entered into force 2 September 1990 (CRC).

²⁵ See, Annexure B.

²⁶ UN Committee on the Rights of the Child, *General comment No. 1: The Aims of Education (article 29) (2001)*, 17 April 2001, CRC/GC/2001/1, 26th sess, para 14, available at: [https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a\)GeneralCommentNo1TheAimsofEducation\(article29\)\(2001\).aspx](https://www.ohchr.org/EN/Issues/Education/Training/Compilation/Pages/a)GeneralCommentNo1TheAimsofEducation(article29)(2001).aspx); see, also, UNICEF, *Child rights and human rights explained*, <https://www.unicef.org/child-rights-convention/children-human-rights-explained>.

²⁷ *Ibid* para 2.

²⁸ Climate Action Tracker, *Warming Projections Global Update (May 2021)* https://climateactiontracker.org/documents/853/CAT_2021-05-04_Briefing_Global-Update_Climate-Summit-Momentum.pdf; Climate Transparency, *Climate Transparency Report: Australia*, (2021) 15 <https://www.climate-transparency.org/wp-content/uploads/2021/10/CT2021Australia.pdf>.

²⁹ IEA, *World Energy Outlook (13 October 2021)* <https://iea.blob.core.windows.net/assets/88dec0c7-3a11-4d3b-99dc-8323ebfb388b/WorldEnergyOutlook2021.pdf>.

³⁰ *Ibid*.

³¹ Climate Transparency, above n 28: Climate Transparency’s Climate Action Tracker’s overall rating, ‘combines the several, separately rated elements, of policies and actions, domestic and internationally supported targets, ‘fair-share target’ and the country’s contribution to climate finance’ at 15.

³² IPCC, above n 13, See, also, Steffen and Bradshaw, above n 17, 32-37.

³³ See, for example, Johns Hopkins Medicine, *Heat-related illnesses (heat cramps, heat exhaustion, heat stroke)*,

www.hopkinsmedicine.org/healthlibrary/conditions/pediatrics/heatrelated_illnesses_heat_cramps_heat_exhaustion_heat_stroke_90,P01611/ cited in OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, UN Human Rights Council, 35th sess, UN Doc. A/HRC/35/13 (4 May 2017).

³⁴ Kathleen Beegle, Rajeev H. Dehejia and Roberta Gatti, Child labor and agricultural shocks, (2006) *Journal of Development Economics*, 81(1); OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, UN Human Rights Council, 35th sess, UN Doc. A/HRC/35/13 (4 May 2017).

³⁵ WHO, Quantitative Risk Assessment of the Effects of Climate Change on Selected Causes of Death, 2030s and 2050s (Geneva, 2014), 80 cited in OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, UN Human Rights Council, 35th sess, UN Doc. A/HRC/35/13 (4 May 2017).

³⁶ *Sharma & Others v Minister for the Environment* [2021] FCA 560 [219].

³⁷ *Ibid* [244]. Bromberg J also relied on a report authored by Dr Meyricke and Professor Rafal Chomik that referred to two studies in 2018 which found that climate change is likely to drive longer, harsher and more frequent droughts in parts of Australia, and the negative impacts of drought on mental health of those living in remote and regional communities is widely evidenced. Ramona Meyricke and Rafal Chomik, ‘The Impact of climate change on mortality and retirement incomes in Australia’ (2019) Actuaries Institute, <https://actuaries.asn.au/Library/Opinion/2019/TheDialogue10ClimateWEBLres.pdf>.

³⁸ *Sharma*, above n 36, [245].

³⁹ *Ibid* [292].

⁴⁰ *Ibid*.

⁴¹ *Ibid*.

⁴² *Ibid*.

⁴³ Trancosco, et al., Heatwaves intensification in Australia: A consistent trajectory across past, present and future” *Science of the Total Environment* (2020) 742, <https://doi.org/10.1016/j.scitotenv.2020.140521> 9. The authors predict these figures for parts of Queensland. At page 9: ‘In a 1.5 °C warmer world, heatwaves would occur about 3 times per year with events lasting 7.5 days on average. With 2.0 °C of global warming, heatwaves events would occur at least 4 times/year, lasting 10 days on average. In a 3.0 °C warmer world, heatwaves would happen as often as 7 times per year, with these events lasting 16 days on average (Fig. 7a).

Interestingly, sub-tropical regions seem to be more impacted by heatwave number and duration if the world reach 3.0 °C above pre-industrial levels.'

⁴⁴ Australian Academy of Science, *The risks to Australia of a 3°C warmer world*, (March 2021) 51-52, <https://www.science.org.au/files/userfiles/support/reports-and-plans/2021/risks-australia-three-deg-warmer-world-report.pdf>.

⁴⁵ Ibid.

⁴⁶ Thierry, above n 11, 2.

⁴⁷ See, eg, CRC arts 6, 24, 27.

⁴⁸ Susie E. L. Burke, et al., "The Psychological Effects of Climate Change on Children," *Current Psychiatry Reports* (2019)20(35) 2: '[C]hildren exposed to EWE disasters and the ensuing family stress [19], disruptions to social support networks, and displacement are at risk of developing PTSD and other mental health problems like depression, anxiety, phobias and panic, sleep disorders, attachment disorders, and substance abuse. . . In addition to diagnosable mental health problems, other psychological effects of traumatic experiences in climate-related disasters and their ensuing disruptions can include negative impacts on children's capacity to regulate emotions, increased cognitive deficits, learning problems, behavioral problems, adjustment problems, impaired language development, and an undermining of academic performance. Sustained and repeated stressful early-life events, likely in the context of climate change, can also create a predisposition to adverse mental health outcomes later in life' cited in Sacchi, et al. v. Argentina, et al. Petition (23 September 2019) (**Sacchi Petition**) [94] available at: http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190923_Communication-No.-1042019-Argentina-Communication-No.-1052019-Brazil-Communication-No.-1062019-France-Communication-No.-1072019-Germany-Communication-No.-1082019-Turkey_petition.pdf.

⁴⁹ Ibid; Elizabeth Marks , et al., *Young People's Voices on Climate Anxiety, Government Betrayal and Moral Injury: A Global Phenomenon*, (2021) (Pre-print) <http://dx.doi.org/10.2139/ssrn.3918955>.

⁵⁰ See, Annexure C.

⁵¹ See, Annexure E.

⁵² CRC art 24.

⁵³ UN Committee on the Rights of the Child, *General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, 17 April 2013, CRC/C/GC/15 4, 50.

⁵⁴ Committee on the Rights of the Child, Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019, 8 October 2021, CRC/C/88/D/104/2019.

⁵⁵ Ibid.

⁵⁶ CRC arts 3, 6, 9, 10, 16, 24, 27, 28, 30, 31, 32, 34, 36; UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, (**ICESCR**) arts 11, 12, 13; UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 (**ICCPR**) arts 1, 3, 5, 6, 12, 17; UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III) (**UDHR**) arts 1, 2, 3, 12, 13, 25, 26.

⁵⁷ HRC, above n 1.

⁵⁸ Mibu Fischer quoted in Climate Council, *First Nations Climate Justice: Written summary of the online public panel* (June 2021) 4 <https://emergencyleadersforclimateaction.org.au/wp-content/uploads/2021/07/First-Nations-Climate-Justice-panel-Climate-Council.pdf?plt=2.2.1.1.0>.

⁵⁹ *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79, p 149 (Aug. 31, 2001) (Awas Tingni). See, also, UN HRC comments regarding the importance of natural resources to the right culture in UN Human Rights Committee, *Bernard Ominayak and the Lubicon Lake Band v. Canada*, Communication No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984 (Mar. 26, 1990) (Lubicon Lake Band).

⁶⁰ See, Annexure D.

⁶¹ Torres Strait Regional Authority, *Climate change and the Torres Strait* (as at 9 March 2021), <https://www.tsra.gov.au/the-tsra/programmes/env-mgt-program/adapting-to-climate-change>.

⁶² ClientEarth, *Torres Strait Islander group submits response in historic climate case* (30 September 2020), <https://www.clientearth.org/latest/latest-updates/news/torres-strait-islander-group-submits-response-in-historic-climate-case/>.

⁶³ See, Annexure A.

⁶⁴ Nina Hall, et al., Climate change and infectious diseases in Australia's Torres Strait Islands, *Aust NZ J Public Health* (2021) 45 122-128, 124-125 <https://pubmed.ncbi.nlm.nih.gov/33522674/>.

⁶⁵ Torres Strait Regional Authority, *Torres Strait Climate Change and Health – First Pass Risk Assessment Thursday Island* (2018) 24 <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1753-6405.13073> cited in Nina

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⁶⁶ Hall, above n 64, 124-125.

⁶⁷ Special Rapporteur on the rights of indigenous peoples (Victoria Tauli Corpuz), Report of the Special Rapporteur on the rights of indigenous peoples, 15 September 2017, A/HRC/36/46 304.

⁶⁸ Bhiemie Williamson, Jessica Weir and Francis Markham, Submission to Royal Commission into National Natural Disaster Arrangements (28 April 2020) 4 <https://naturaldisaster.royalcommission.gov.au/system/files/submission/NND.001.00969.pdf> citing B Williamson, J Weir and F Markham, Aboriginal peoples and the response to the 2019–2020 bushfires, (2020) Working Paper No. 134/2020, *Centre for Aboriginal Economic Policy Research* 3,5 <https://doi.org/10.25911/5e7882623186c>.

⁶⁹ Ibid.

⁷⁰ Annexure D.

⁷¹ ICESCR arts 1, 15; ICCPR art 1, 27; UDHR arts 2, 22, 25 and 27; CRC arts 2, 23, 24, 27, 30-31; see, generally, UNDRIP.

⁷² Australia ratified ICCPR on 13 August 1980; ICESCR on 10 December 1975; CRC on 17 December 1990, and the Australian government states it 'supports UNDRIP as a non-legally binding instrument' and while stating that 'as an original signatory to the UNDHR. We have been a leading proponent of its consistent and comprehensive implementation': see OHCHR, *Status of Ratification Interactive Dashboard*, <https://indicators.ohchr.org/>; Australian government, *International human rights system*, accessed on 17 September 2021 at [https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system#:~:text=Australia%20is%20a%20party%20to,Civil%20and%20Political%20Rights%20\(ICCP&text=the%20International%20Convention%20on%20the,of%20Discrimination%20against%20Women%20\(CEDAW\);](https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/international-human-rights-system#:~:text=Australia%20is%20a%20party%20to,Civil%20and%20Political%20Rights%20(ICCP&text=the%20International%20Convention%20on%20the,of%20Discrimination%20against%20Women%20(CEDAW);) Australian government Department of Foreign Affairs and Trade, *Our commitment to human rights*, accessed on 17 September 2021 at <https://www.dfat.gov.au/international-relations/themes/human-rights/Pages/human-rights>.

⁷³ OHCHR, *Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change*, A/HRC/44/30 (20 April 2020), p. 3, <https://undocs.org/A/HRC/44/30>; Nada Al-Nashif (UN Deputy High Commissioner for Human Rights) 'Panel discussion on the rights of persons with disabilities in the context of climate change' (Speech, Human Rights Council 44th Session, 8 July 2020) <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26052&LangID=E>.

⁷⁴ Ibid paras 4, 6, 7.

⁷⁵ Michelle Villeneuve et al., Applying a person-centred capability framework to inform targeted action on Disability Inclusive Disaster Risk Reduction, *International Journal of Disaster Risk Reduction* (2021) 52 <https://doi.org/10.1016/j.ijdrr.2020.101979>.

⁷⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Issues Paper: Emergency Planning and Response*, (15 April 2020) <https://disability.royalcommission.gov.au/system/files/2020-07/Issues%20paper%20-%20Emergency%20Planning%20and%20Response.pdf> citing People with Disability Australia, *People with disability must be part of bushfire plans and recovery*, (15 January 2020) <https://pwd.org.au/media-release-people-with-disability-must-be-part-of-bushfire-plans-and-recovery/>.

⁷⁷ Eleanor Beidatsch, *Climate change threatens the life of people with disabilities* (Independent Australia, 5 July 2021) <https://independentaustralia.net/environment/environment-display/climate-change-threatens-the-lives-of-people-with-disabilities>.

⁷⁸ Ibid.

⁷⁹ Annexure B.

⁸⁰ International Diabetes Federation, *Diabetes and Climate Change Report*, (2012) <https://ncdalliance.org/sites/default/files/rfiles/IDF%20Diabetes%20and%20Climate%20Change%20Policy%20Report.pdf>.

⁸¹ Ibid citing Michael A McGeekin and Maria Mirabelli, Potential impacts of climate variability and change in temperature-related morbidity, *Environmental Health Perspectives*, *Harvard School of Public Health, Effects of temperature patterns on long term mortality* (2001) 109 Harvard School of Public Health, <http://www.hsph.harvard.edu/news/pressreleases/2012-releases/summer-temperaturevariability-mortality-risk.html>; Semenze et al., Excess hospital admissions during the July 1995 Heat Wave in Chicago, *Am J Prev Med*, (1999) 16(4); Antonella Zanobetti and Joel Schwartz, Cardiovascular damage by airborne particles: are diabetics more susceptible?, *Epidemiology*, (2002) 13(5).

⁸² Ibid.

⁸³ Vivian Fonseca et al., *Impact of a Natural Disaster on Diabetes: Exacerbation of disparities and long-term consequences*, (2009) 32(9) <https://doi.org/10.2337/dc09-0670>.

⁸⁴ Annexure D.

⁸⁵ ICCPR art 6, ICESCR arts 11, 12, 13, 15; CRC arts 6, 16, 23, 24, 27, 28, 31, 32; UDHR arts 3, 12, 24, 25, 26, 27; CDRP arts 4, 5, 6, 7, 10, 11, 19, 24, 25, 28, 30.

⁸⁶ ICCPR art 6, ICESCR arts 12, 13; CRC arts 6, 17, 28; UDHR arts 3, 25, 26; CDRP arts 7(1), 10, 24, 25.

⁸⁷ CDRP art 7.

⁸⁸ Australia became a signatory to the Paris Agreement on 22 April 2016 and ratified the Paris Agreement on 9 November 2016: United Nations Treaty Collection, *Chapter XXVII Environment 7d. Paris Agreement*, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27&clang=_en.

⁸⁹ Paris Agreement art 4(4).

⁹⁰ *Ibid* Preamble, 4.

⁹¹ OHCHR, *Five UN human rights treaty bodies issue a joint statement on human rights and climate change* (16 September 2019), para 3 <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998>.

⁹² *Ibid* para 1 under the heading “States’ Human Rights Obligations”.

⁹³ Committee on Economic, Social and Cultural Rights (**CESCR**), *Climate change and the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2018/1 (31 October 2018), para 4, <https://undocs.org/en/E/C.12/2018/1>; Special Rapporteur on human rights and the environment (David Boyd), *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, A/74/161 (15 July 2019), <https://undocs.org/en/A/74/161>.

⁹⁴ Sacchi Response, above n 48, para 10.8.

Annexure A – Statement of Shylicia McKiernan

Name: Shylicia McKiernan
Occupation: Student and Community Fundraiser
Date: 22 October 2021

I, Shylicia McKiernan, complainant, state as follows:

1. My name is Shylicia McKiernan. I am 24 years old. I am a Kulkalaig woman from Kulkalgal Nation, Zenadth Kes (the Torres Strait). I am currently living on Wurundjeri land.
2. I am currently in my second year of university, studying Urban and Regional planning. The appeal of this degree for me was that I could help design and create spaces to help people get everything they need out of that space. So they can fulfil their rights. They don't have to leave their Local Government Area to get everything they need – whether that be to access health services, green spaces, or blue spaces. I like things to have a plan, and things to work. As well, I would like to theoretically and literally, help build a bridge between the planning industry and First Nations people – there currently is little to no First Nations representation and people in that sector.
3. In addition to studying, I am a Community Fundraiser and part of the National Leaders team at Seed. Seed is Australia's first Indigenous-led Youth Climate Network. It is a not-for-profit run by First Nations people for First Nations people to fight for climate justice and First Nations justice.
4. Although I became actively involved with Seed this year, I have been involved with them for a few years. I have been involved with the climate movement for about 8 or 9 years. I have been involved in activist spaces, rallies, protests and stuff like that.
5. In my spare time, I enjoy doing lots of different activities. I have a pet dog, so I spend a lot of time at parks and exploring different green spaces. I really enjoy gardening. I am also really getting into arts and crafts – I crochet a bit and sew things for myself. I like cooking too.
6. In the future, I am really hopeful that we can all come together, that people can come together to connect and become the community that we need to be to properly create a sustainable world that is just for everyone. As anxious as I get about climate change, I am really hopeful and believe can we achieve that. Everything I am doing is to do what I can to help make that happen. I couldn't go to sleep at night if I wasn't doing everything in my ability to make the world a safe place for everyone, a world where everyone can be who they want to be.

Lived experience with climate harms

7. I do not think I am not a climate change expert, however, I have learnt a lot about climate change through my lived experience. I have always lived on the coast and as a young person witnessed environmental and weather changes. They were really noticeable to me even when I was really little. For a while before knowing the term 'climate change' or knowing what it meant, I didn't really understand why the weather was changing. I didn't understand why it was happening. But I could see it was.
8. As a Kulkalaig woman, the island my family is from is one of the outer islands – it is called Masig. A few generations before myself, my great-grandparents actually left the island and moved closer to the mainland. The reason my great-grandparents moved really was that sea levels were rising and that was noticeable even at that time. I now know this is climate change. After some more generations, some of my family moved closer again into the mainland. My family knows about climate change as they have experienced it and how it impacts First Nations people. This was well before environmentalism came into the picture.
9. This is really hard for me. My great-grandparents moved for us, but then there is a disconnection I have with Masig itself. It just goes to show how climate change has impacted me, and how First Nations people have been reading the signs well before the science was there. This makes me proud but it can also be quite upsetting.

Future harms associated with climate change

10. Although I am hopeful for the future, I still feel anxious about it.
11. This anxiety is because my family's island is a low-lying island and has been seeing the impacts of climate change for a long time. The thought of more of my family being displaced from our home is heart-breaking. It is terrible to think you could be displaced living in your own country.
12. Knowing the impacts of climate change threaten the survival of Masig overwhelms me. Even though I didn't grow up there it doesn't hurt any less thinking my family's home island could be lost. Our songlines and culture is deeply connected to the island so it is really upsetting.
13. I am also anxious about seeing the inaction from government and society. It is anxiety-inducing seeing the perspectives some people still have. Something like littering is still so common yet it has such a huge impact.

14. It is 2021 now. 2030 isn't that far away. On the individual and local level there are some people doing some great things, but it isn't enough. Everything makes a difference but right now, what we need is action from our governments.

Australian government inaction on catastrophic climate harms

15. I really want the Australian government to take climate change serious. It is for all of our futures and for future generations to come. I don't understand their ignorance.
16. I would like them to make new commitments on climate change. I don't want them to allow any new coal, oil or gas projects.
17. I want politicians to go into First Nations communities across the country. There are so many Aboriginal and Torres Strait Islander communities across Australia that are seeing and feeling the harshest impacts of climate change. Politicians have never spent enough time with and in First Nations communities to truly understand what is best for us. I imagine it is the same with other vulnerable groups, like people with disabilities.
18. This is a democracy. The government is meant to represent all of us. All of us are hurting and will hurt. But the government isn't. That is messed up. I want to see proper representation.

I confirm the contents of this statements are a true and correct record of my evidence.

Shylicia McKiernan

Name



22 October 2021

Signature

Date

Annexure B – Statement of Adrien Edward

Name: Adrien Edward
Occupation: Student
Date: 22 October 2021

I, Adrien Edward, high school student and complainant, state as follows:

1. My name is Adrien Edward. I am 15 years old and currently in year 10. I live on Wurundjeri country in Melbourne.
2. In my spare time I like to read, script write and paint. In the future, I hope to go into education policy or filmmaking. At the moment, I am heading towards filmmaking.

My experience with the climate crisis

3. I know that a key cause of climate change is our use of fossil fuels. It is caused by lots of things – electricity use, farming, travel and fast fashion. I think a lot can be tied back to industrialisation.
4. I know that climate change is causing extreme temperatures – it is causing both hotter summers and colder winters.
5. I am a disabled person. I have Autism, chronic pain and chronic fatigue. I have sensory issues and chronic pain which are exacerbated by extremes of cold and heat. During the warmer summers we have been experiencing, my sensory issues meant that I struggled to attend school. In the colder winters, my joint pain gets worse. Both of these have impacted my ability to get to school.
6. I do not live close to fire prone areas but I do live in areas that get a lot of bushfire smoke. When there is bushfire smoke around, I have trouble breathing and have had to wear a mask outdoors. My sensory issues means I have to tape up my windows and stay inside. My agoraphobia becomes worse when I cannot leave the house, and leaves me stuck inside.
7. All of this heavily impacts my ability to leave the house, get education and travel which then negatively impacts my mental health. This also makes me really angry. The government has an unwillingness to address the level of disproportionate harms on disabled people, especially when there are global crises. It is unfair that we are harmed more just because they can't and don't consider us.

Future harms associated with climate change

- 8. I have large worries about future climate change harms, and that the current harms I am experiencing will be exacerbated. I worry I will struggle to continue my education and find work. I have found that even now, missing so much school in childhood has caught up with me.
- 9. I worry that I will struggle to find employment due to lack of stability. If there is a heatwave, I probably won't be able to go into work. That means struggling with money. If I struggle with money, then I won't be able to have the things I need to live and the options to pursue my dreams and to make films or be part of educational policy like I would love to.
- 10. With my disabilities, I need an air conditioner, medication and need to pay medical bills. If there is a huge crisis, my medical care will possibly be seen as less important and I worry the disruption caused by extreme weather events will cause my health to be further at risk. We have seen with COVID-19, when there is a large burden on hospitals, attention drifts to abled people. There are high climate risks for disabled people.

Government inaction on climate change

- 11. I think the government's response on climate change has been pitiful. The Australian government needs to act on climate change. It needs to set a net zero target for a deadline scientists deem to be safe. It needs to listen to scientists and set goals the scientists say are safe. It needs to consider and listen to people who aren't just able-bodied white people. We need to move towards renewables. It is necessary for our survival.

Name		
	Adrien Edward	22/10/2021
Signature	<i>Adrien</i>	Date

Annexure C – Statement of Chris Black

Name: Christopher Black

Occupation: Student

Date: __ October 2021

I, Christopher Black, high school student and complainant, state as follows:

1. My name is Christopher, but most of my friends call me Chris. I am 14 years old and am currently in year 8. I live on Gadigal and Guringai land in Sydney.
2. My favourite subject at school is science. I would really like to be a scientist when I grow up. I would like to be a scientist that is doing work to help the environment and people, potentially an environmental scientist or a marine biologist but I am not sure yet.
3. In my spare time, I like music and making music. I like to ride my bike, hang out with my friends and be in nature. I really like photographing nature and going on bushwalks.

Motivations for becoming involved with climate justice

4. I have been involved with climate advocacy for a while. I have previously helped clean up beaches, and have recently become involved with School Strike for Climate.
5. One of the reasons I became involved with climate advocacy was because, earlier this year, my family and I got caught in Cyclone Seroja when we were on holidays in Kalbarri. We had to be evacuated from the hotel and when we returned to hotel, it had been completely demolished by the cyclone.
6. If we had stayed in our hotel I worry about what could have happened. We may not be dead, but we could definitely have been injured. We had to be evacuated out by plane to Perth because the roads were so badly damaged.
7. It was a huge cyclone and I could see the devastation it caused for the local communities. I remember reading that 70% of buildings in Kalbarri were destroyed. I know that to go on a holiday is a privileged thing to be able to do.
8. I know the cyclone happened because of climate change. The reason so many buildings were destroyed was because those buildings weren't built for cyclones as cyclones usually happen further

north. It was really intense and it represents the impact of the climate crisis on rural communities. It has really driven me to get involved with the climate crisis, because it's only going to get worse.

Impacts on my mental health and disabilities

9. I have some mental health issues and disabilities. I know that having a disability puts me at a higher risk of climate-related harm than some other people. I know that it automatically puts me at a higher level of risk when extreme weather events mean that my access to medication and to my support services can be interrupted.
10. I have Autism and obsessive compulsive disorder (**OCD**) and other disabilities which put me at this higher risk. For me, my OCD is more presenting in the 'O' and means I latch onto an idea. This can be climate change, for example.
11. I also have a condition which means that I don't absorb vitamins from food in the same way as other people. I take 10 to 12 tablets daily for this, to help me stay healthy and build my strength.
12. As I explain more below, I already know that climate change hurts my mental health.
13. I have an anxiety condition which is triggered by climate change and the climate crisis and causes me harm now. My anxiety is more severe and different to what some other people may experience. Sometimes my symptoms are extreme and it can spiral. It manifests in physical symptoms and can lead to having really bad chest pains, a sore tummy or general anxiety. Sometimes I am in such serious pain that the way I deal with my symptoms is to lie down on my bed and I am not able to move.
14. My anxiety can be triggered by certain events. The Black Summer bushfires and the consequences of it are an example of this.
15. My grandparents and other members of my family own a house in the Blue Mountains. We visit the house often and it is a very special place for our family. I know I am lucky to have this house for our family to visit and stay at.
16. During the Black Summer bushfires, this house was almost burnt down. The fire came within about 100 metres of the house. With my anxiety, I jump to the worst case scenario, and catastrophise events. At the time, I kept thinking what would have happened if the house had burnt down, and what if we had been at the house. We could have lost things that are important to us and we could have died. The thing is, the catastrophe was real. People who live in the area did lose their homes. Thinking about this, and how climate will get worse, causes me a great deal of anxiety and fear regarding the climate crisis.

Future harms associated with climate change

17. The impacts of climate change can be predicted, but no one truly knows what is going to happen completely. We know there will be more fires, more floods, animals and plants will become extinct but we don't really know the full impact. I think there will be things that come up in the future that we can't predict.
18. For me, my anxiety will get worse as the climate crisis gets worse, more tummy aches, more feeling like I am not breathing. I worry I may not be as good at a job compared with someone who is not constantly worried about climate change.
19. I am worried about my physical health too, as I get older.
20. I might be affected disproportionately, but I also worry the harm to other young people my age as we all get older.

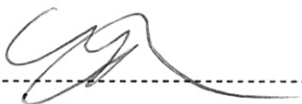
Australian government inaction on catastrophic climate harms

21. I am very annoyed that the Australia government doesn't have any solid actions on climate change.
22. It astounds me how long they can continue to ignore the climate crisis.
23. My demands for the Australian government would be to fund no new oil, gas and coal and to set a real and achievable net zero goal by 2050. I want a just transition, a just and proper transition for all workers moving from fossil fuel industries into renewable industries. I want to build up our economy so that it is not dependent on coal and gas. We could easily be a renewable energy powerhouse - we have lots of sun and wind, and we have lots of ocean territory which would be good for hydroelectricity and hydro-wind power. The government is ignoring the opportunities we have.

I confirm the contents of this statements are a true and correct record of my evidence.

Christopher Black

Name



Signature

22/10/21

Date

Annexure D – Statement of Ethan Lyons

Name: Ethan Lyons
Occupation: Student
Date: 21 October 2021

I, Ethan Lyons, high school student and complainant, state as follows:

1. My name is Ethan Lyons. I am 15 years old. I am a Wiradjuri teen from Sydney, although my family is originally from Narrandera. I am proud to have such a large and supportive mob from all across Country. I live on the Country of the Gandangara (Gadigal) people of the Eora Nation, in Sydney.
2. I enjoy painting, and am very into the history and practice of my culture's art.
3. When I am older, I want to go to university but I am not sure what I would like to study yet. I know that I would like to help and work with people though and share my passion for culture around the world. Journalism has always sparked my interest and with that comes learning – something I love to do.
4. I also want to travel. I would like to travel outside Australia, but also within Australia to see more of and embrace my culture.
5. I have Type 1 Diabetes. I have always known that I am at more of a disadvantage because of this. I know that having health vulnerabilities will put me at higher risk as the climate crisis worsens. I understand that, for example, during an extreme weather event it may become harder to get the supplies I need such as insulin.

Climate justice advocacy

6. I have been involved in activism for 3 years, but have only formally become involved with School Strike for Climate (**SS4C**) this year.
7. I think it is important there is First Nations representation in SS4C and the broader climate movement. I think including people in the climate movement who have lived experience and who have directly seen the effects of climate change is vital.
8. It is vital, too, to recognise the importance of intersectionality in the climate movement. It is important for the movement to work on including and representing intersectional experience, and I think that it is something that I strive to do.

Experience with Bushfire Risk

9. I live in south-western Sydney where there is a greater bushfire risk. During the Black Summer bushfires, we didn't have to evacuate but it was really scary knowing we were at greater risk.
10. The smoke was unbelievable. I know that it puts people with health issues at greater risk. In the area I live, there is a large concentration of vulnerable older folks and I have six siblings all with health conditions. I was very worried about them.
11. I have uncles who live in the Illawarra region, and who were fighting fires. It was really scary and my whole family was feeling very stressed because we were unable to keep in steady and regular contact with my uncles.
12. I am scared about what will happen when fires come to south-western Sydney and what could happen to my home or to me because of the smoke.

Climate harms and culture

13. Already I can see that bushfires, floods and droughts caused by climate change are destroying the land. One important way we have connection to Country and culture, is through land. These events are therefore hurting our connection to Country. To me, connection to Country is everything. Country is not just the land but kinship, the Dreamtime, food and cultural practices – these all make up Country.
14. When land is destroyed, it is disconnecting. Seeing bushfires destroy the land is disconnecting. You can't have that connection to land in the way ancestors had. We cannot understand the connection to culture through the land, waters and skies as well as our ancestors could.
15. When you lose your land, family disconnects, dreaming disconnects and these connections undermine that greater relationship with your culture. When you lose your sense of Country it has a holistic effect, one which determines your understanding of culture. Inevitably, it begins to diminish your culture even more.
16. I am really worried about the future of my culture as a result of climate change. Climate change puts culture on the line and it is scary to know it could be lost. That is why being involved with the climate movement is important to me because you want to protect country, community and culture as much as you can.
17. I know the climate crisis is going to impact the generations to come. The intergenerational trauma that my mob has faced is enough already, but now we face the trauma of losing connection to Country and

culture as a result of climate change. It is so worrying knowing that future generations will experience a more complex form of intergenerational trauma, which is so intricate and formed of many factors.

Australian government inaction on catastrophic climate harms

- 18. I think the Australian government's inaction on catastrophic climate change is hypocritical and it is a total violation of rights of Australian people, especially those who have been disproportionately impacted.
- 19. We have seen horrific bushfires, the what-seems-to-be endless droughts and a rise in temperatures. It is clear the Australian government is not prioritising climate change. The government is valuing profit over people, and it is clear that Australians are not in their best interest.
- 20. We have First Nations people who have already been impacted enough by the Australian political system. As the politicians who pride themselves on their contributions to First Nations communities, they still cannot address and take effective action on climate change. The Government's failure to act to drastically cut greenhouse gas emissions is harming Australian First Nations communities, and undermining the big and small ways that we practice our culture.

I confirm the contents of this statements are a true and correct record of my evidence.

Ethan Lyons

Name



21st October 2021

Signature

Date

Annexure E – Statement of Leila Mangos

Name: Leila Mangos
Occupation: Student
Date: 22 October 2021

I, Leila Mangos, high school student and complainant, state as follows:

1. My name is Leila Mangos. I live on Darkinjung land on the Central Coast, in New South Wales.
2. I am 18 years old and currently in Year 12. I am a huge artist and in my spare time, I paint a lot, sketch a lot, love creative writing, and love reading (too much). Anything creative, or musical, is a great outlet for me.
3. I hope that my future is one in which I feel safe, secure and am pursuing my passions, such as pursuing art or influencing social change on the issues that are important to me. I hope that our future world is more empathetic and that we've achieved progression on topics of environmental and social justice.
4. I also spend a lot of my spare time in the activism space. I attended my first climate strike in March 2019.
5. Since I discovered climate change, my anxiety surrounding what it would mean for my future was an isolating and solitary experience. After my first strike though, I joined the School Strike for Climate (**SS4C**) movement, which made me realise how broadly my worries were shared. There was not initially a working group on the Central Coast so I started one with a few others in my area. Our first strikes started off small (only a few people), but then grew to larger groups when thousands of people showed up.
6. I am a member of the New South Wales Youth Advisory Council (**YAC**). YAC is a youth advisory body that advises government on policy concerning young people. Usually it concerns issues such as education, mental health and something environment-related.

Experience with climate harms

7. I remember first learning about human impacts on our climate and environment when I was in grade 4. I was shocked. I have also learnt about climate change at high school, and now I stay up-to-date with climate news through information online.

8. I feel lucky and privileged to have not had any firsthand experience with climate-related natural disasters. However, I have had significant experience with the mental health repercussions of impending climate doom. I have struggled with depression or anxiety induced by the knowledge that the planet I live on has an expiry date. These experiences with mental illness have prevented me from attending school regularly, have resulted in the need for psychological therapy and are the reason I feel as though I must dedicate my energy to climate advocacy.
9. According to climate science, climate change will be irreversible by 2030. I will only be 26, and my life will have barely begun. We're told time and time again that we will be the generation that will save the planet, and youth globally feel the pressure from our own leaders to address an issue that we have no capacity to influence change on.
10. This has led to extreme feelings of hopelessness and anxiety surrounding what my future will hold, and, unfortunately, an overall and ongoing depressive outlook on everyday life and our overall purpose as a species with a destructive future.

Concerns regarding my future

11. Climate change has prevented me from living as a child. As someone who loves and is passionate about many topics, such as literature and the arts, my childhood ambition was to pursue a creative career. However I've felt pressure from a young age that I must dedicate my time and energy to activism and ultimately pursue a career in which I can influence change on justice issues.
12. I do not feel like I can pursue something I love doing and that is beneficial for me as an individual, whilst the planet and my future are at risk. Now, I feel as though I have to pursue a career in politics or another significant change-making position. I feel this responsibility to address the climate crisis, like I don't have a choice.
13. I want to pursue a career in politics, or another significant position in which I can influence change. I feel the responsibility to address the climate crisis, because it concerns my entire future, whereas the world's current leaders have the luxury of ignoring the issue and passing down the catastrophic consequences onto future generations. I believe this is unjust and a violation of my rights as a young person and as a human being, and that the government should feel the responsibility to safeguard the future of all youth in Australia and youth around the world in the same that way I do.

Australian government inaction on catastrophic climate harms

14. My climate-induced anxiety comes from the knowledge of the consequences of humanity's treatment of the planet as an infinite pool of resources.
15. I understand that the future consequences of this will be droughts, flooding, rising sea levels in the Torres Strait and coastlines, and bushfires all throughout our dry, hot country. I know that with these natural disasters will come food, water and resource shortages for our exponentially growing population. I can't understand how the magnitude of what is at stake surrounding the future of our planet can correlate with the lack of action we are seeing from our government.
16. No government wants to take on the responsibility of serious climate action, however I believe our current governments and leaders have a duty to adequately address climate change, which will mean restructuring the way we, as a society and as an economy exist, and live off the planet - from transitioning to renewable energy sources, to dealing with waste, to reforestation - in order to safeguard the future of all young people, both in Australia and globally.
17. Additionally, as a democratic society, the Australian Government must act upon the desire of Australians. With regular protests for adequate climate action occurring in Australia since 2018, with tens of thousands of attendees at each protest (300 000+ on 20th Sept 2019), the desire of Australians, particularly Australian youth, is climate action in accordance with the United Nations Sustainable Development Goals and the UN Paris Agreement.

I confirm the contents of this statements are a true and correct record of my evidence.

Leila Mangos

Name



22/10/21

Signature

Date

Annexure B

EJA submission to the DCCEEW review of the 2023 NGER Scheme Updates (May 2023)

Australia's methane reporting problem: Critical amendments to the National Greenhouse Energy Reporting (Measurement) Determination

Submission to the Department of Climate Change, Energy, the Environment and Water's 2023 National Greenhouse and Energy Reporting (NGER) Scheme updates Consultation Paper

prepared by

Environmental Justice Australia

2 May 2023

About Environmental Justice Australia

Environmental Justice Australia (**EJA**) is a national public interest legal centre. We use the law to empower communities, to protect and regenerate nature, to safeguard our climate and to achieve social and environmental justice.

We are proudly non-profit, non-government, and funded by donations from the community. Our legal team combines technical expertise and a practical understanding of the legal system to protect communities and our environment.

EJA has a long history in advocating for a just energy transition, and has worked closely with people, communities and environmental organisations to encourage and compel governments to act, to transform industries, and to ensure justice for the people most affected is at the foundation of all climate solutions, today and tomorrow.

In July 2022, EJA, on behalf of the Environment Council of Central Queensland, lodged 19 requests for reconsideration pursuant to s 78A of the *Environment Protection and Biodiversity Conservation Act 1999* on the basis of 'substantial new information' demonstrating likely climate harms of 19 proposed coal and gas projects to thousands of protected matters under the EPBC Act. Those requests have resulted in the Minister reconsidering the 'controlled action' decision for each of those proposed projects. Our client's reconsideration requests, and EJA through its climate work more broadly, recognise the danger arising from the substantial and increasing contribution of methane to climate harms, and the consequential need to responsibly and accurately measure and account for those emissions.

For further information on this submission, please contact:

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Submitted to:

National Greenhouse Accounts

National Inventory Systems and International Reporting Branch

Department of Climate Change, Energy, the Environment and Water

GPO Box 3090 Canberra ACT 2601

via email: nationalgreenhouseaccounts@dcceew.gov.au

Executive Summary

1. EJA welcomes the opportunity to make a submission to the Federal Department of Climate Change, Energy, the Environment and Water's (**DCCEEW**) review of the 2023 NGER Scheme updates. This submission responds only to Section B of the 'National Greenhouse and Energy Reporting (NGER) Scheme: 2023 Proposed Amendments: Consultation Paper' (**Consultation Paper**) concerning the update to Method 1 used to calculate fugitive methane emissions from Queensland open cut mines.
2. While EJA recognises the proposal in Section B of the Consultation Paper to increase the Method 1 emissions factor for Queensland is an improvement for estimating methane emissions, it remains utterly inadequate. The reliance on a state-based emission factor falls short of best practice coal methane measurement, reporting and verification (**MRV**) standards, and obscures the reality of emissions at each site.
3. Broadly, this submission calls on the Australian Government to phase out state-based emissions factors in Method 1 in the *National Greenhouse and Energy reporting (Measurement) Determination 2008* (Cth) (**NGER Measurement Determination**), and require all relevant corporations in the energy sector in Australia to report methane emissions against best practice MRV frameworks to ensure accuracy and integrity.
4. According to the Intergovernmental Panel on Climate Change (**IPCC**), the concentration of methane in the atmosphere today are higher than at any time in at least 800,000 years,¹ and in October 2022, Australia committed to ambitious action on methane by signing the Global Methane Pledge. But, without an accurate and clear understanding of the problem that methane emissions pose, the Australian Government will not be able to achieve its committed emission reductions.
5. Anything less than robust MRV and genuine emissions reduction, puts the Government at risk of falling short of domestic and international obligations and ultimately, securing a safe climate for generations to come.

Summary of Recommendations

In line with the objects of the NGER Act and its international legal obligations, EJA calls on the Australian Government to:

Recommendation A: Phases out Method 1 in s 3.20 of the NGER Measurement Determination for open cut coal mines in all jurisdictions in Australia.

Recommendation B: Review Methods 2 and 3, in ss 3.21 and 3.26 of the NGER Measurement Determination, to require all coal mine operators to report methane emissions against best practice MRV frameworks, which should incorporate aerial, satellite and ground-based direct, and site-specific measurement, to ensure the highest standards of accuracy and integrity.

¹ IPCC 6th Assessment Report Working Group I (**IPCC6 WGI**) (2021), <https://www.ipcc.ch/working-group/wg1/>.

Recommendation C: Review and implement best practice MRV standards across the energy sector in all jurisdictions in Australia, to ensure the highest standards of accuracy and integrity.

Coal mine methane emissions require greater scrutiny and action by the Australian Government

6. There is increasing global, widespread scientific consensus that methane emissions are a significant contributor to dangerous climate change, having contributed around 30% of observed global warming since the Industrial Revolution.² There is increasing recognition, too, that cutting methane emissions is one of the most important (and cost-effective) measures to limiting temperatures to 1.5 degrees by 2030.³
7. The Australian Government itself recognises the dangers methane emissions pose, and in 2022 joined the Global Methane Pledge pledging to reduce global methane emissions across all sectors by at least 30% below 2020 levels by 2030.⁴ While other sectors have played a role in Australia's poor methane track record, the energy sector, and particularly the coal industry, has much to answer for.
8. In 2019, Australia's coal mines released 68% of Australia's methane emissions from the energy industry overall, making coal mines a larger contributor than both oil and gas.⁵ In 2022, it was reported that Australia is the world's sixth largest coal mine methane emitter, and is on track to become the third worst.⁶ Several coal mines in Queensland and New South Wales are 'super-emitters' of the potent gas. A study released in November 2021, found that methane emissions from Glencore's Hail Creek mine accounted for 88% of Australia's total reported surface coal mine emissions.⁷
9. The scale of methane emissions presents a significant danger to communities across Australia, and the world. While signing the Global Methane Pledge was a start in acknowledging issues regarding methane, the Australian Government must follow through with rapid, concrete action. Implementing responsible and accurate MRV of methane emissions from coal mines is a crucial step in achieving essential emission reductions.

² International Energy Agency (IEA), Global Methane Tracker 2023, (2023) <https://www.iea.org/reports/global-methane-tracker-2023>; United Nations Economic Program (UNEP), Global Methane Assessment: Benefits and Costs of Mitigating Emissions (May 2021) <https://www.unep.org/resources/report/global-methane-assessment-benefits-and-costs-mitigating-methane-emissions>; IPCC6 WGI (2021), <https://www.ipcc.ch/working-group/wg1/>.

³ Ibid.

⁴ Australian government, Australia joins Global Methane Pledge, (2022), <https://minister.dcceew.gov.au/bowen/media-releases/australia-joins-global-methane-pledge>.

⁵ Ember, Tackling Australia's Coal Mine Methane Problem (2022), <https://ember-climate.org/insights/research/tackling-australias-coal-mine-methane-problem/>.

⁶ Ibid.

⁷ Pankaj Sadavarte et al., "Methane Emissions from Superemitting Coal Mines in Australia Quantified Using TROPOMI Satellite Observations," *Environmental Science & Technology* 55, no. 24 (December 21, 2021): 16573–80, <https://doi.org/10.1021/acs.est.1c03976>.

The need for site-specific and accurate coal mine methane measurement, reporting and verification

10. In its Global Methane Tracker 2023, the IEA reported that a key barrier to reducing methane emissions is incomplete information about actual emission levels and a lack of awareness about the cost effectiveness of abatement.⁸ It emphasised that transparent, robust and science-based MRV is a prerequisite to design policy tools that can drive deeper cuts in emissions in an efficient manner, including market-based instruments, performance standards and trade measures.⁹
11. The IEA is not alone in its calls, with the increasing importance of data-driven measures having been met by unprecedented global action. In recent years, several new satellite programs have been launched, with several under development, to further improve understanding of the scale and location of anthropogenic methane emissions.¹⁰ For example, in 2021, the United Nations Economic Program's (UNEP) International Methane Emissions Observatory (IMEO) was launched to address a significant 'data problem'.¹¹ The IMEO was concerned that available methane data is largely based on generic emissions factor-based calculations, which have been repeatedly proven to dramatically underestimate measured methane emissions levels. Further, it recognised that more accurate data will enable more targeted action.¹²
12. Indeed, through joining the Global Methane Pledge, the Australian Government has itself signalled that it understands:¹³

*that improvements to the transparency, accuracy, completeness, comparability, and consistency of methane emissions data assessed and validated in accordance with United Nations Framework Convention on Climate Change (UNFCCC) and Paris Agreement standards and Intergovernmental Panel on Climate Change (IPCC) good practice can promote more ambitious and credible action;*¹⁴

and committed:¹⁵

*...[working individually and cooperatively] to continuously improve the accuracy, transparency, consistency, comparability, and completeness of national greenhouse gas inventory reporting under the UNFCCC and Paris Agreement, and to provide greater transparency in key sectors.*¹⁶

⁸ IEA, Global Methane Tracker 2023, (2023) <https://www.iea.org/reports/global-methane-tracker-2023>.

⁹ Ibid.

¹⁰ Ember, above n 5.

¹¹ UNEP, About IMEO, <https://www.unep.org/explore-topics/energy/what-we-do/methane/about-imeo>.

¹² Ibid.

¹³ The Global Methane Pledge, available at: <https://www.ccacoalition.org/en/resources/global-methane-pledge>.

¹⁴ Emphasis added.

¹⁵ The Global Methane Pledge, available at: <https://www.ccacoalition.org/en/resources/global-methane-pledge>.

¹⁶ Emphasis added. We note that the IPCC good practice inventory guidance was published in 2019, and therefore might be considered outdated given the significant developments in this space in the last few years. For example, the UNEP's International Methane Emissions Observatory, which has provided a significant improvement in the collection of data and to solve the problem of underreporting, was only launched in 2021: see, <https://www.unep.org/explore-topics/energy/what-we-do/methane/about-imeo>.

13. With ever increasing, global driving forces providing a compelling rationale to provide specific, and accurate data, it is clear the Australian Government must make critical amendments to ensure the accuracy and integrity of the NGER reporting framework.

Measuring methane emissions from open cut coal mines: the NGER framework

14. The *National Greenhouse and Energy Reporting Act 2007* (**NGER Act**) creates a national framework for reporting and publishing corporate information about greenhouse gas emissions (include methane emissions), energy production, energy consumption. Importantly, the primary objects of the Act are to:¹⁷

(b) inform government policy formulation and the Australian public; and

(c) meet Australia's international reporting obligations...

...

15. Again, these objects acknowledge that a robust reporting framework is capable of facilitating better government policy, contributing to emission reductions and to meeting Australia's international reporting obligations.

16. Section 19 of the NGER Act imposes obligations on registered corporations to report to the CER on certain specified matters, including the GHG emissions from the operation of its facilities.¹⁸ The methods by which the amounts of emissions are to be measured are set out in the NGER Measurement Determination,¹⁹ which this submission is concerned with.

17. Section 3.19(2) of the NGER Measurement Determination applies to open cut mining activities, and methane measurement. That provision allows the relevant registered corporations a choice between three methods for reporting methane emissions from the extraction of coal from a mine, to meet the s 19 reporting requirements.²⁰ The Consultation Paper proposes an amendment to one of those methods, 'Method 1' and specifically proposed to amend s 3.20(c) relating to Queensland by increasing it by a factor of 0.35.

¹⁷ *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) s 3(1).

¹⁸ 'Greenhouse gas' is defined to include 'methane' in NGER Act s 7A(1).

¹⁹ The NGER Measurement Determination is made pursuant to NGER Act s 10(3).

²⁰ Titled '*Methane from extraction of coal*' s 3.19(2) states, 'Subject to subsection (7), one of the following methods must be used for estimating fugitive emissions of methane that result from the extraction of coal from the mine: (a) method 1 under section 3.20; (b) method 2 under section 3.21; (c) method 3 under section 3.26.' Section 3.19(7) then states, 'However, for incidental emissions another method may be used that is consistent with the principles in section 1.13.'

Significant reforms to the NGER methane reporting framework are critical

The Australian Government must phase out state-based emissions factors

18. While EJA is encouraged by the proposal to amend the NGER Measurement Determination, we submit that in the context of growing, near unanimous consensus regarding the dramatic under-reporting of methane, the proposed amendment is wholly insufficient. EJA highlights the following concerns with the amendment to 'Method 1' in s 3.20 of the NGER Measurement Determination.
19. First, Method 1 is known as a 'state-wide emissions factor' approach. Not only is this approach to measuring methane outdated (being based on a CSIRO report from 1993),²¹ but the blanket, flat-rate approach to measuring emissions obscures the reality of the contribution of super-emitting facilities, and major pollution events.
20. If Glencore's Hail Creek is taken as an example, in 2021, relying on satellite measurements, researchers found that the Hail Creek mine was emitting at a rate of 34,000 gCH₄ per tonne of unprocessed coal.²² The researchers found this is 22 times higher than the IPCC reporting default. In subsequent analysis by the Australasian Centre for Corporate Responsibility, it was reported that the emissions estimate by Dutch researchers was 10-13 times greater than what was Glencore had reported to the Clean Energy Regulator.²³ Ember has also reported that the methane intensity is 30 times higher than Method 1's proposed intensity of 1.1 kg of methane per tonne of coal.²⁴
21. Manifestly, a flat-rate approach is just not sufficient in exposing the reality of methane emissions from a super-emitter like Hail Creek.
22. Second, EJA is concerned that the proposed amendments to s 3.20 of the NGER Measurement Determination are seeking to only amend the Queensland state-based emissions factor.
23. In 2022, it was reported that methane leaking from NSW's coal mines accounts for 34% of the state's methane emissions, and contributes 42.3% of Australia's coal mine methane emissions.²⁵ Shockingly, the two highest emitting mines in NSW, Appin and Tahmoor underground mines, were also the gassiest and emitted 24% of the Clean Energy Regulator reported coal emissions whilst producing less than 3% of NSW's coal.²⁶ It is

²¹ Williams et al, Methane Emissions from Open-Cut Mines and Post-Mining Emissions from Underground Coal (August 1993), available at: <https://publications.csiro.au/rpr/pub?list=BRO&pid=procite:fb99ba33-8605-4647-b1e3-38f8a046bade>. This report is the scientific basis for the current method 1 emissions factors contained in the NGER Measurement Determination.

²² Pankaj Sadavarte et al., above n 7.

²³ Australasian Centre for Corporate Responsibility, *Glencore's Methane Problem* (20 April 2022) available at: <https://www.accr.org.au/downloads/glencore-s-methane-problem-20-apr-2022.pdf>. See, also, Steve Cannane, 'How satellites are challenging Australia's official greenhouse gas emission figures' (ABC News, online, 3 December 2021) <https://www.abc.net.au/news/2021-12-03/satellites-are-challenging-australias-coal-mining-industry/100663676>.

²⁴ Ember, Submission to Australia's National Greenhouse and Energy Report Scheme 2023 Proposed Amendments (28 April 2023) p 5, <https://t.co/a6UxDmlb9W>.

²⁵ Ember, above n 5.

²⁶ Ibid.

evident then that the methane reporting issues stretch beyond Queensland, and any reform to coal mine methane MRV should apply to all jurisdictions.

Recommendation A

EJA recommends the Australian Government phases out Method 1 in s 3.20 of the NGER Measurement Determination for open cut coal mines in all jurisdictions in Australia.

State-based emissions factors should be replaced by best practice MRV to ensure accuracy and integrity

24. With state-based emissions factors disguising the true scale of methane emissions, the NGER Measurement Determination must be reformed to incorporate best practice MRV frameworks and standards.

25. As above, the NGER Measurement Determination contains three methods for relevant corporations to report their open cut coal mine methane emissions against. In EJA's view, Methods 2 and 3 (set out in ss 3.21 and 3.26 of the NGER Measurement Determination, respectively) are improvements on Method 1 in that they both require a mine-specific model for estimation and reporting of coal mine methane emissions.²⁷ However, given:

- a. Methods 2 and 3 under the NGER Measurement Determination have both been criticised for lacking in integrity;²⁸ and
- b. There is increased understanding of MRV standards and improved technology to measure emissions,

EJA considers Methods 2 and 3 are inadequate and in crucial need of reform.

26. Specifically, EJA encourages the Australian Government to review and implement best practice MRV based on drawing on leading scientific, academic, and comparative jurisdiction analysis. We encourage the Australian Government to:

²⁷ NGER Measurement Determination ss 3.21; 3.26. Australian Government Clean Energy Regulator, *Estimating emissions and energy from coal mining guideline* (July 2022) p50

<https://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/Estimating%20emissions%20and%20energy%20from%20coal%20mining%20guideline.pdf>; Australian Coal Association Research Program. *Guidelines for the Implementation of NGER Method 2 or 3 for Open Cut Coal Mine Fugitive GHG Emissions Reporting*; ACARP Project C20005; 2011.

²⁸ For example, in their publication 'Fossil Methane in Australia', Energy Resource Insights raised that Methods 2 and 3 allow for employees of the mine operator to conduct the required sampling and modelling. The method does require a second person to peer review the original work, but peer review by a fellow employee of the same company is expressly permitted. And, recent evidence of systematic fraud occurring in the closely related, though separate, domain of coal quality testing - that has gone largely unpunished - is sufficient to suggest a need for increased probity measures above what is currently accepted by the regulations: Energy Resource Insights, *Monitoring, reporting and verification of fossil methane in Australia* (March 2023) <https://energyresourceinsights.com/wp-content/uploads/2023/03/FossilMethaneInAustralia.pdf> citing Australian Coal Association Research Program. *Guidelines for the Implementation of NGER Method 2 or 3 for Open Cut Coal Mine Fugitive GHG Emissions Reporting*; ACARP Project C20005; Walsh, 'Fake Coal' Test: How to Get Away with Manipulating Data' (Australian Financial Review, online, 16 January 2023) <https://www.afr.com/companies/mining/fake-coal-test-how-to-get-away-with-manipulating-data-20230113-p5ccd0>.

- a. First, consider incorporating best practice MRV standards as published by organisations such as the Met Coal Methane Partnership, as supported by the United Nations Economic Program and IMEO,²⁹ into the NGER Measurement Determination.
- b. Second, take heed of the recent developments in satellite technology and monitoring allowing for multiple means through which lower order methods can be validated with direct measurement.³⁰ As the quality and capability of these complementary technologies continues to improve over coming years, EJA encourages the Australian Government to act now to keep pace with those developments.

Recommendation B

EJA recommends the Australian Government review Methods 2 and 3, in ss 3.21 and 3.26 of the NGER Measurement Determination, to require all coal mine operators to report methane emissions against best practice MRV frameworks, which should incorporate aerial, satellite and ground-based direct, and site-specific measurement, to ensure the highest standards of accuracy and integrity.

Addressing measurement concerns across the energy sector in Australia

27. The IEA estimates that as at February 2023, the energy sector accounts for around 40% of total methane emissions.³¹ Therefore, while the Consultation Paper focuses on improving the state-based emission factor in respect of Queensland open cut coal mines, EJA encourages the Australian Government to review and implement best practice methane MRV across the energy sector as a critical priority.
28. It is critical that best practice and accurate MRV standards are not only implemented in the Queensland coal sector, but across the coal, oil and gas sectors for all Australian jurisdictions. The Australian Government should again draw from improved science, comparative jurisdictions and expertise, such as the Oil & Gas Methane Partnership, to ensure high integrity and accuracy MRV frameworks and standards across the energy sector.

Recommendation C

EJA recommends the Australian Government review and implement best practice MRV standards across the energy sector in all jurisdictions in Australia, to ensure the highest standards of accuracy and integrity.

²⁹ See, Roland Kupers, Global Advisor, International Methane Emissions Observatory, Metcoal Methane Partnership (March 2023) <https://unece.org/sites/default/files/2023-03/9.%20Kupers%20-%20Metcoal%20Methane%20Partnership%20-%20Slide%20Deck.pdf>.

³⁰ See discussion above at paragraph [8]. See, also, Energy Resource Insights, Monitoring, reporting and verification of fossil methane in Australia' (March 2023) <https://energyresourceinsights.com/wp-content/uploads/2023/03/FossilMethaneInAustralia.pdf>

³¹ IEA, above n 8.

Conclusion

29. EJA thanks DCCEEW for its consideration of this submission and we welcome any queries or requests for further material arising from this submission.
30. We look forward to DCCEEW's recommendations for a more accurate, robust and science-based methane MRV framework to drive urgent methane emissions reduction and mitigation measures necessary to address the climate crisis.

Annexure C

EJA submission to Independent Review of ACCUs (the Chubb Review) “Ensuring integrity and good governance in the ACCUs scheme” (October 2022)

Ensuring integrity and good governance in the ACCUs scheme

Submission in response to the Independent Review of Australian Carbon Credit Units

Prepared by

Environmental Justice Australia

3 October 2022

About Environmental Justice Australia

Environmental Justice Australia (**EJA**) is a national public interest legal centre. We use the law to empower communities, to protect and regenerate nature, to safeguard our climate and to achieve social and environmental justice.

We are proudly non-profit, non-government, and funded by donations from the community. Our legal team combines technical expertise and a practical understanding of the legal system to protect communities and our environment.

We run legal cases and advocacy campaigns to stop the expansion of climate damaging fossil fuels and make sure Australia contributes our fair share to reducing global emissions. EJA also has a long history in advocating for a just energy transition and ensuring any public funding for fossil fuels is rigorously tested against our laws.

At this critical time, EJA recognises that financial support and institutional responses to climate risk must be directed at efforts to reduce real-world emissions and the protection of communities, ecosystems, flora and fauna.

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Submitted to:

ACCU Review Secretariat
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Executive summary

1. EJA welcomes the opportunity to make a submission in relation to the Independent Review of Australian Carbon Credit Units (**ACCUs**).

Outline of submission

2. This submission will focus on the legal settings and governance of the current scheme for the issuing of ACCUs under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (**CFI Act**). Broadly, EJA submits that the scheme's settings, structure and legislative requirements are not appropriate or well-adapted to ensure good governance and confidence in the integrity of the scheme.
3. This submission highlights the following concerns around integrity, transparency and governance in the ACCUs scheme, taking as an example where relevant, the making of the *Carbon Credits (Carbon Farming Initiative – Carbon Capture and Storage) Methodology Determination 2021* (Cth):
 - a. The key principles of effective carbon offsetting schemes and the deficiencies in the ACCUs scheme;
 - b. Integrity concerns in the development of the methods for the creation of ACCUs;
 - c. Governance concerns with the Clean Energy Regulator and the Emissions Reduction Assurance Committee (**ERAC**); and
 - d. Transparency and accountability concerns.
4. It also briefly highlights the critical importance of this Independent Review at this time, having regard to other law reform proposals currently under consideration which would seek to adopt or continue certain features of the ACCUs scheme.

Overview of recommendations

5. In summary, this submission makes the following recommendations for changes to the CFI Act and ACCUs scheme:
 - A. The reintroduction of an express requirement under the CFI Act that the Minister may only approve methods that comply with each of the offsets integrity standards, supported by relevant, authoritative scientific results.
 - B. That an independent assessment be conducted of all existing methods against the offsets integrity standards, and take necessary action to vary or revoke methods that are not compliant.
 - C. That the statutory processes for the development and approval of new methods and the review of current methods expressly incorporate appropriate expert advice across relevant fields, including academia, industry and non-government organisations.
 - D. That ERAC's scope should be limited to matters concerning the offsets integrity standards or matters directly incidental to ensuring those standards are met.
 - E. That the Panel consider whether to amend s 262 to expand the concept of 'conflict of interest' to require the disclosure by ERAC members of potential, perceived and actual conflicts of interests arising in relation to a matter being considered or about to be considered by ERAC.

- F. That secrecy provisions are removed from the CFI Act and the Act is amended to impose a positive statutory duty on agencies involved in the administration of the scheme to regularly publish information on the performance of the scheme.
- G. That the CFI Act be amended to provide for third party rights to seek reasons and administrative review of key decisions made under the scheme, as well as extended standing provisions for third parties to seek judicial review (ie, a challenge made in relation to the lawfulness of the decision only) under the Act.

Key principles of effective carbon offsetting schemes

1. The ACCUs scheme is the first limb of the Emissions Reduction Fund (**ERF**). It provides a crediting mechanism under which private entities earn credits for their emissions abatement activities in accordance with methods approved under the CFI Act.

Integrity and transparency are crucial

2. There is theoretical acceptance of a limited role for carbon offsetting schemes in achieving net zero,¹ particularly for hard-to-abate sectors. However, in order to be a viable and trusted measure in transitioning to a safe future, such a scheme must be well-regulated and of high integrity.
3. Authoritative research and commentary on voluntary carbon markets identify the following key principles of effective carbon offsetting schemes:
 - a. Mitigation hierarchies within and across sectors are crucial to ensuring that carbon offsets do not become a substitute for deep emission reductions;²
 - b. In sectors where the use of carbon offsets is necessary, robust certification schemes must ensure that emissions credits result in permanent, additional and verified emissions reductions;³ and
 - c. Bottom-up and community driven strategies are central to carbon removal policy and projects.⁴
4. These principles (and the risks of not adhering to the same) have been endorsed by the IPCC, IEA, leading Australian barristers and voluntary carbon market initiatives across the world.⁵ Although they are often raised in the context of international carbon markets, they are equally relevant to a domestic carbon market scheme that seeks to incentivise abatement in order meet international climate change obligations.
5. Similarly, in its *Review of International Offsets* released in August 2022, Australia's Climate Change Authority stated that 'integrity and transparency are crucial' in a carbon offsets market to ensuring that:
 - a. carbon units represent genuine abatement;
 - b. participants and observers in carbon markets are able to:

¹ See, eg, International Energy Agency (IEA), *Net Zero by 2050 – A Roadmap for the Global Energy Sector*, (11 May 2021) < <https://iea.blob.core.windows.net/assets/4719e321-6d3d-41a2-bd6b-461ad2f850a8/NetZeroBy2050-ARoadmapfortheGlobalEnergySector.pdf> > (**IEA Net Zero Report**); Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Mitigation of Climate Change*, (4 April 2022) < <https://www.ipcc.ch/report/sixth-assessment-report-working-group-3/> > (**IPCC WGIII Report**).

² The reference to 'mitigation hierarchies' refers to the need to prioritising abatement and mitigation measures over carbon offsetting or removal methods. See, IEA Net Zero Report pp 36 and 96.

³ IEA Net Zero Report p 36.

⁴ IPCC WGIII Report Ch 12.

⁵ IEA Net Zero Report; IPCC WGIII Report; Noel Hutley SC and Sebastian Hartford Davis, *Climate Change and Directors Duties: Further Supplementary Memorandum of Opinion* (23 April 2021) < <https://cpd.org.au/wp-content/uploads/2021/04/Further-Supplementary-Opinion-2021-1.pdf> >; The Voluntary Carbon Markets Integrity Initiative < <https://vcmintegrity.org/> >; The Taskforce on Scaling Voluntary Carbon Markets < <https://www.iif.com/tsvcm> >.

- i. track what is happening;
 - ii. have confidence in what units represent;
 - iii. hold one another to account; and
 - iv. drive continuous improvement.⁶
6. It is evident that even in a domestic context, ensuring a robust, high-integrity and transparent market is essential to ensuring carbon markets achieve their primary goal – abatement and elimination of emissions – and to foster confidence in the scheme necessary for it to operate at scale. Put simply, in order for the ERF to achieve its policy and statutory objectives, the credits produced as part of the ACCUs scheme must have integrity and represent real world emissions reductions, and the institutional arrangements for the scheme’s administration must transparently facilitate that outcome.

The offsets integrity standards

7. Under the CFI Act, the legislated criteria that intend to import the key principles of effective carbon offsets schemes into the ACCUs scheme are the ‘offsets integrity standards’. Set out in s 133 of the CFI Act, these six standards are said to be ‘based on international standards and ensure carbon credits issued under methods represent real emissions reductions that may be counted towards meeting Australian’s international emissions reduction obligations.’⁷ In general terms, the offsets integrity standards are used as a measure against which new methodologies and variations to existing methods are assessed.
8. Prior to the establishment of the ERF, the offsets integrity standards operated under the ‘Carbon Farming Initiative’ policy. However, the CFI Act was subject to large scale reform pursuant to the *Carbon Farming Initiative Amendment Act 2014* (Cth) (**Amendment Act 2014**) in preparation for the commencement of the ERF. With these changes, the offsets integrity standards were altered,⁸ and the process for assessing and making methodologies simplified. Said to provide ‘greater flexibility to develop methodologies for emissions reduction activities across the economy’, it was also intended that the reformed scheme for carbon credits under the ERF would ‘[retain] the same high standards as under the Carbon Farming Initiative’.⁹
9. It is apparent from the matters that have given rise to this Independent Review,¹⁰ that this has not been the case.

⁶ Climate Change Authority, *Review of International Offsets* (August 2022)

<<https://www.climatechangeauthority.gov.au/sites/default/files/2022-08/Review%20of%20International%20Offsets%20-%20Report%20-%20August%202022.pdf>>.

⁷ Clean Energy Regulator, Emissions Reduction Assurance Committee, *Information Paper: Committee considerations for interpreting the Emissions Reduction Fund’s offsets integrity standards* (March 2021, v 2.0).

⁸ For example, the requirement under the standards that methodologies specifically deal with issues of additionality was repealed.

⁹ Explanatory memorandum for the Carbon Credits (Carbon Farming Initiative) Bill 2014, p 8.

¹⁰ Australian National University, *Australia’s carbon market a “fraud on the environment* (4 March 2022) <<https://www.anu.edu.au/news/all-news/australia%E2%80%99s-carbon-market-a-%E2%80%9Cfraud-on-the-environment%E2%80%9D>> and related research papers.

Integrity concerns in the development of methods

10. EJA considers that a critical step for restoring integrity in the ACCUs scheme is to ensure that:

- a. higher standards of integrity are mandated across the statutory process for developing and approving methods including in relation to the appointment of statutory officers associated with the ACCUs scheme; and
- b. the methods themselves are informed by and subject to rigorous assessment by appropriately qualified experts across relevant fields to ensure that any credits created thereunder will result in permanent, additional and verified emissions reductions.

Offsets integrity standards must be a mandatory benchmark

11. First, we recommend that the CFI Act is amended to re-introduce the requirement that all methodologies must comply with the offsets integrity standards, supported by relevant, authoritative scientific results, noting the following:

- a. Prior to the Amendment Act 2014, the CFI Act prohibited the Minister from making a methodology if it did not comply with, amongst other things, the offsets integrity standards.¹¹
- b. Currently, the Minister is only required 'have regard' to whether the method complies with the offsets integrity standards, among other matters (including the advice of the Emissions Reduction Assurance Commission (**ERAC**)) when deciding to make a methodology determination.¹²
- c. Prior to the Amendment Act 2014, the offsets integrity standards included the requirement that a method specified in a determination made by the Minister 'should be supported by relevant scientific results published in peer reviewed literature'.¹³ The Amendment Act 2014 removed this requirement and, instead, created a new requirement in s 106 that methods should be supported by 'clear and convincing evidence', which may include (without limiting other forms of evidence) 'relevant scientific results published in peer reviewed literature'.¹⁴ From a legal perspective, the effect of this amendment was a weakening of the standard, in terms of the objectivity and specificity of evidence required.

12. Consequently, EJA submits that it will be necessary to assess all existing methods against the offsets integrity standards to ensure that they clearly comply with those standards and will result in permanent, additional and verified real-world emissions reductions. Methods that do not meet these requirements should be varied or revoked in accordance with the existing mechanisms contemplated by Part 9 of the CFI Act. We

¹¹ *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) as enacted, s 106(4)(c).

¹² CFI Act (current), s 106.

¹³ *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) as enacted, s 133(d).

¹⁴ CFI Act, ss 106(1)(d), 106(2).

acknowledge that this exercise might subsequently result in the need to revoke low integrity ACCUs that have been issued. However, to take any other path is to perpetuate payment obligations drawn from Commonwealth funds towards methods that lack the requisite integrity to justify public payment, and which do not contribute to abatement which they must.

Recommendations A and B

- A. The reintroduction of an express requirement under the CFI Act that the Minister may only approve methods that comply with each of the offsets integrity standards, supported by relevant, authoritative scientific results.
- B. That an independent assessment be conducted of all existing methods against the offsets integrity standards, and take necessary action to vary or revoke methods that are not compliant.

The need for broad and authoritative expert advice

13. Second, we recommend that the statutory process governing the development and approval of methods requires the formal incorporation of appropriate expert advice across relevant fields, including academia, industry and non-government organisations with applicable, public interest (as opposed to commercial) research focuses.
14. We note published suggestions that the participation in existing processes for the making of methods has been 'largely reserved for the beneficiaries of the scheme' and that the 'token statutory public consultation processes...generally last for less than 21 days.'¹⁵ In the case of the design of the Carbon Capture and Storage method, documents obtained under FOI revealed that when designing that method, the Clean Energy Regulator consulted 'almost exclusively' with 'fossil fuel companies and big emitters'¹⁶ and rejected attempts by non-government research bodies with relevant expertise to participate.
15. EJA makes no comment as to the extent to which processes for the making of methodology determinations have, to date, occurred in accordance with the current legislative requirements. However, we do note the grave and ongoing risk of excluding civil society and disinterested third parties with relevant expertise from participating in the process and informing the methods ultimately approved. This risk is compounded where, as is the case under the current CFI Act:
 - a. the Minister need only 'have regard' to the offsets integrity standards and 'have regard' to the advice from the ERAC;
 - b. ERAC need only give an opinion on whether the offsets integrity standards are satisfied (with no requirement to provide reasons for this opinion under the

¹⁵ Macintosh, et al *Fixing the Integrity Problems with Australia's Carbon Market* (June 2022) <https://law.anu.edu.au/sites/all/files/short_-_erf_reform_june_2022_final.pdf> p 2.

¹⁶ The Australia Institute, *Come Clean: How the Emissions Reduction Fund came to include carbon capture and storage* (March 2022), p 4.

CFI Act and a high degree of uncertainty and no case law regarding whether ERAC’s opinion may be subject to a request for reasons under other legislation commonly used to seek reasons for important government decisions);¹⁷

- c. the scheme limits the ability for third parties to seek review of a decision to make a methodology determination, and
- d. there are very limited opportunities for third parties to access relevant information.

Recommendation C

- C. That the statutory processes for the development and approval of new methods and the review of current methods expressly incorporate appropriate expert advice across relevant fields, including academia, industry and non-government organisations.

Clean Energy Regulator and ERAC: Addressing governance concerns

- 16. Good governance is essential to support a high-integrity ACCUs scheme.
- 17. As has been extensively highlighted elsewhere, the Clean Energy Regulator has many statutory functions, some of which it has been suggested are in conflict. EJA supports calls to separate out and distribute to other agencies the Regulator’s market and method development, and market promotion functions, and to reduce its powers and scope to only its regulatory functions in respect of method and project accreditation and audits.
- 18. ERAC is an independent entity established pursuant to the CFI Act which has an advisory role, essential for accountability and integrity under the scheme, in the making of methodology determinations. Before making a methodology determination (which takes the form of a legislative instrument) the Minister must request advice from ERAC about whether the Minister should make the determination. ERAC must give the requested advice to the Minister, and the Minister must have regard to (but is not required to follow) any advice given by ERAC in deciding whether to make a determination. Importantly, the Minister *must not* make a methodology determination if ERAC has advised that the determination does not comply with one of more of the offsets integrity standards.¹⁸
- 19. EJA is aware that, following the announcement of this Independent Review, there have been reports in the media relating to the resignation of three members of ERAC appointed by the previous Energy Minister. These members are reported to have, respectively, political associations, associations with the fossil fuel industry and with the

¹⁷ Under, for example, the *Administrative Decisions (Judicial Review) Act 1977* (Cth). For an example of an ERAC advice, see eg the advice of ERAC on the draft Carbon Credits (Carbon Farming Initiative—Carbon Capture and Storage) Methodology Determination 2021

<<https://www.dcceew.gov.au/sites/default/files/documents/ERAC%20advice%20-%20Carbon%20capture%20and%20storage%20-%20proposed%202021.pdf>> which concluded, with cursory consideration, that the draft method complies with the offsets integrity standards: p 3.

¹⁸ CFI Act, Pt 9, subdiv DA.

cement industry.¹⁹ EJA notes that these members deny having any conflict of interest and makes no comment in respect of any such suggestion.

20. In order to ensure the scheme is supported by independent and specialised advice from ERAC in relation to methods that receive accreditation, and to protect against the delegated legislation containing the methods undermining the intent of the CFI Act, EJA recommends the following in relation to ERAC:
- a. ERAC's scope should be limited to matters concerning the offsets integrity standards or matters directly incidental to ensuring those standards are met, thereby giving it a narrower, integrity-focused remit (as was the case with its predecessor, the Domestic Offsets Integrity Committee). Review or consultation for other purposes should not be a part of ERAC's purview, and are functions that should more properly sit with the Department;
 - b. Consideration should be given to amending the provisions under the CFI Act that provide for the appointment of ERAC members. In particular, we recommend the Panel consider whether s 257 of the CFI Act could be amended to better ensure a broad membership that includes members with academic and scientific expertise in the principles of effective offsets schemes (to avoid, for example, a majority of members being from industry). This would also support the incorporation of broad and relevant expert advice, as set out above at recommendation C, as a contribution to better governance arrangements across the scheme; and
 - c. Further, consideration should be given to expanding provisions in the CFI Act that govern ERAC's procedures and require the disclosure of ERAC members' interests to include perceived, potential and actual conflicts of interest, given each of these situations will operate to undermine trust and integrity in the ability of ERAC to perform its independent advisory function. Specifically:
 - i. Amendment to s 262 of the CFI Act may be warranted to make clear what type of interests ought to be disclosed by ERAC members. In our view, this issue warrants consideration noting the potential tension between having 'expertise in a field' (see s 257) and industry interests that may be not directly pecuniary, but may nevertheless give rise to concerns about the independence of an ERAC member in advising on a particular method.
 - ii. We note that that the concept of an 'interest' as included in provisions similar to s 262 of the CFI Act, has been judicially described as 'vague and uncertain' and will be informed by various contextual considerations.²⁰ Further, a narrow 'interest' of the kind currently contemplated by s 262 can be difficult to prove as a matter of law, which risks undermining confidence in integrity in a high-risk scheme such as this.
 - iii. Accordingly, EJA recommends that that the concept of 'conflict of interest' in s 262 be expanded to include potential, perceived²¹ and actual conflicts

¹⁹ ABC News, *Labor to remake carbon credit committee after three controversial Coalition appointments resign* <<https://www.abc.net.au/news/2022-07-14/emissions-reduction-assurance-committee-members-resign/101238956>> (14 July 2022); Guardian Australia, *Labor to reshape carbon credit committee as Coalition-appointed members resign* <<https://www.theguardian.com/environment/2022/jul/14/labor-to-reshape-carbon-credit-committee-as-coalition-appointed-members-resign>> (15 July 2022).

²⁰ *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, 357 [54].

²¹ A concept which could be given content consistent with the principles of apprehended bias.

of interests. Such an amendment would ensure confidence that when discharging its functions in relation to a specific proposed method, ERAC will be constituted by members for whom a suggestion of impartiality cannot be reasonably perceived or raised.

Recommendations D and E

- D. That ERAC's scope should be limited to matters concerning the offsets integrity standards or matters directly incidental to ensuring those standards are met.
- E. That the Panel consider whether to amend s 262 to expand the concept of 'conflict of interest' to require the disclosure by ERAC members of potential, perceived and actual conflicts of interests arising in relation to a matter being considered or about to be considered by ERAC.

Improving transparency and accountability

Access to data and removing secrecy provisions

- 21. In order to restore confidence and integrity in the scheme, the processes by which methods are accredited, projects are approved ACCUs produced need to be open and transparent.
- 22. EJA supports calls to remove secrecy provisions from the CFI Act, and to impose a positive statutory duty on agencies involved in the administration of the scheme to regularly publish information on the performance of the scheme.²²

Merits and judicial review rights

- 23. Section 240 of the CFI Act contains a list of limited 'reviewable decisions' made under the CFI Act that able to be subject to internal review by the Clean Energy Regulator, and then merits review by the Administrative Appeals Tribunal.
- 24. It is apparent from this list that each reviewable decision comprises a right for a project proponent to seek review of a decision made against their interests, but no similar rights arise for any person seeking to challenge a decision made in a proponent's favour (for example, the declaration of a project to be eligible to produce ACCUs). EJA submits that this asymmetrical administrative review framework is inappropriate having regard to the

²² See eg Macintosh et al, *The Emissions Reduction Fund (ERF): Problems and Solutions* (April 2022) < https://law.anu.edu.au/sites/all/files/erf_-_problems_and_solutions_final_6_april_2022.pdf>; and Australian Conservation Foundation submission to the Independent Review of Australia Carbon Credit Units (26 September 2022) <https://assets.nationbuilder.com/auscon/pages/20911/attachments/original/1664233292/ACF_sub_to_Chubb_Review.pdf?1664233292>, p 3.

purpose and objectives of the ACCUs scheme,²³ especially given the integrity and governance concerns raised elsewhere in this submission.

25. EJA recommends that the CFI Act should be amended to provide for third party rights to seek reasons and administrative review of each key decision made under the scheme. EJA further submits that the CFI Act should provide for extended standing rules to enable relevant third parties to seek judicial review of decisions made under the CFI Act. To leave the framework for legal rights of review as it presently exists continues the risk that low-integrity methods and projects will receive accreditation under the scheme with very limited avenues for legal redress. This will potentially have a very poor effect on the quality of the scheme.

Recommendations F and G

- F. That secrecy provisions under the CFI Act are removed, and that the Act is amended to impose a positive statutory duty on agencies involved in the administration of the scheme to regularly publish information on the performance of the scheme.
- G. That the CFI Act be amended to provide for third party rights to seek reasons and administrative review of each key decision made under the scheme, as well as inserting extended standing provisions for third parties to seek judicial review under the CFI Act.

Integrity and governance deficiencies must not be duplicated in other proposed schemes

26. EJA notes that there are two separate legislative schemes in relation to which the Commonwealth is proposing law reform, each of which has highlighted a role for certain features of the current ACCU scheme:
- a. The Department of Climate Change, Energy, the Environment and Water (**DCCEEW**) has recently consulted in relation to proposed reforms to the Safeguard Mechanism which aims to require Australia's largest greenhouse gas emitters to keep their net emissions below a 'baseline' emissions limit. 'Safeguard' participants can currently surrender ACCUs as an alternative to reducing their on-site emissions. This feature is intended to continue under the reformed scheme.²⁴
 - b. The DCCEEW has also proposed a new 'Biodiversity Market' modelled on the ACCUs. The Clean Energy Regulator would administer many elements of this proposed framework.²⁵
27. Whilst the above proposals are outside the of the Panel's terms of reference in this Review, they highlight the critical importance of this Review and that it provides strong

²³ See further Baxter and Gilligan, 'Verification and Australians Emissions Reduction Fund: Integrity Undermined Through the Landfill Gas Method?' (2017) 4 *Australian Journal of Environmental Law* (2017), pp 25-26.

²⁴ DCCEEW, *Safeguard Mechanism Reforms: Consultation paper* (August 2022) 15.

²⁵ DCCEEW, Factsheet, *A Market for Biodiversity* (August 2022).

and actionable recommendations, to be addressed before problematic features of the ACCUs scheme are adopted or replicated elsewhere.

Conclusion

28. EJA thanks the Panel for its consideration of this submission and we welcome any questions or requests for further material arising from this submission.
29. We look forward to the Panel's report in due course, and to its recommendations for a more robust, integrity-driven and transparent carbon credit scheme to supplement the urgent emissions reduction and mitigation measures necessary to address the climate crisis.