

Submission to the NSW Climate Change Licensee Requirements

7 October 2025

Dear New South Wales Environment Protection Authority,

The Australian Conservation Foundation (‘ACF’) welcomes the opportunity to make a submission to the NSW EPA Climate Change Licensee Requirements consultation, reviewing *Climate Change Licensee Requirements*, *Climate Change Mitigation and Adaptation Plans: Mitigation Requirements* and the *Greenhouse Gas Mitigation Guide for NSW Coal Mines*. The following submission provides overarching feedback on the above draft documents.

At the outset, ACF emphasises that NSW is not on track to meet its legislated 2030 or 2035 climate targets. The NSW Net Zero Commission has emphasised that emissions reduction from the coal sector is critical for the achievement of NSW’s targets, and that projected declines from this sector are at risk if appropriate mitigation technologies are not comprehensively adopted.¹ The three documents being consulted on must go further to address this issue in order to align the NSW coal sector with the State’s required decarbonisation trajectory to 2030 and 2035.

It is unacceptable that the NSW EPA’s explicit commentary indicates that it may be slowing down the rollout of climate change licensee requirements to enable more time for major polluters to “access NSW and Commonwealth grants and accrue carbon credits” ahead of regulations coming into force (page iv of the *Proposed Greenhouse Gas Mitigation Guide for NSW Coal Mines Consultation Draft*).

The physical impacts of climate change are rapidly increasing as global heating approaches critical atmospheric tipping points, leaving many NSW communities in the firing line of worsening and more frequent climate disasters.² As these impacts worsen, NSW cannot afford to tinker with gradual implementation of greenhouse gas mitigation measures. Government agencies responsible for pollution control must respond with the urgency appropriate for the climate change impacts NSW communities and environments are enduring now.³

Recommendations regarding Climate Change Licensee Requirements

¹ NSW Net Zero Commission, *Submission to the inquiry into emissions from the fossil fuel sector* (August 2025).

² Australian Climate Service, *Australia’s National Climate Risk Assessment* (September 2025), 35.

³ *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* [2021] NSWLEC 92.



ACF welcomes the introduction of climate change-related requirements to licences issued pursuant to the *Protection of the Environment Operations Act 1997* (NSW), and we support the core principles underpinning the integration of climate requirements into licences (set out at page 5 of the *Proposed Climate Change Licensee Requirements Consultation Draft*). We further welcome and agree with the NSW EPA's assessment that the Commonwealth's Safeguard Mechanism, as a market-driven mechanism that only applies to facilities emitting over 100,000 tonnes of CO₂-e per year, is insufficient to drive maximum feasible emissions mitigation and contribute to the achievement of NSW's climate targets (page 8 of the *Consultation Draft*).

It is deeply concerning that the NSW EPA currently proposes to implement greenhouse gas emissions licence limits over the longer term in vague terms (page 15 of the *Consultation Draft*). ACF recommends that enforceable gross emissions limits are set, that exclude the use of carbon offsets, on all new licences, effectively from the commencement of the climate change licensee requirements framework.

Furthermore, similarly enforceable gross emissions limits, that exclude the use of carbon offsets, should also be set for all existing licences within the timeframes already established in the *Consultation Draft* such that all licensees emitting over 100,000 tonnes of CO₂-e per year and all coal mines emitting over 25,000 tonnes of CO₂-e per year should be required to meet emissions limits from 31 October 2026, at the latest.

Recommendations regarding the Climate Change Mitigation and Adaptation Plans: Mitigation Requirements.

ACF supports the establishment of Climate Change Mitigation and Adaptation Plan ('CCMAP's) as a framework for enforcing climate change licensee requirements and the NSW EPA's focus on mitigation as a priority.

As the regulator, the EPA has an essential role to play in ensuring that CCMAP reporting accurately reflects implementation and is fully compliant with best practice. CCMAP reporting must be mandated at the earliest opportunity and no later than the timelines proposed in the consultation documentation provided.

The claim by licensees that the disclosure requirements for CCMAP reporting risk revealing commercially sensitive information should be rejected. Extractive industries benefit commercially from public resources, and their activities result in public consequences. It is appropriate and important for the regulation of greenhouse gas emissions at a state level, that the emissions profile and mitigation activities of major polluters is reported and available for public scrutiny and accountability.



To further strengthen CCMAPs and ensure the effective regulation of mitigation measures at coal mines sites, ACF recommends:

- CCMAP reporting should be mandatory across all coal and gas operations from 2026 onwards, and should be based upon annual emissions reports that are required to estimate Scope 3 emissions;
- CCMAPs should be subject to a ratcheting mechanism, such that new CCMAP submitted every 3 years are demonstrably more ambitious than the previous CCMAP. This could be implemented by requiring licensees to explain how each new CCMAP is more ambitious than the last; and
- The mitigation hierarchy should be applied to CCMAPs with appropriate restrictions on the use of offsets. Furthermore, as Safeguard Mechanism Credits are not legally recognised as carbon offsets,⁴ the surrender of SMCs should not be an eligible mitigation activity under a licensee's CCMAP (page 17 of the *Climate Change Mitigation and Adaptation Plans: Mitigation Requirements*).

Recommendations regarding Greenhouse Gas Mitigation Guide for NSW Coal Mines

It is appropriate and welcome that the NSW EPA has prioritised the assessment of onsite mitigation measures at NSW coal mines, especially given the high global warming potential of methane.

However, ACF cautions against the NSW EPA striving to wholesale solve and drive the adoption of onsite mitigation measures at privately-owned coal sites. It is not for the regulator to solve all the technicalities of onsite mitigation, rather – by setting clear and ambitious greenhouse gas emissions limits – the NSW EPA should be pushing for industry innovation and ensuring the onus remains on industry to comply with NSW's legislated climate targets.⁵

ACF provides the following feedback on the specific mitigation measures outlined in the guide:

- Gas drainage and utilisation is a well-established mitigation measure in NSW and should be required in 2026 rather than from mid-2027 onwards, aligning with the timeline for the publication of the first CCMAPs;
- The management of leakage from abandoned underground coal mines, including via drainage, should also be required from 2026 onwards;

⁴ Clean Energy Regulator, "Safeguard Mechanism Credit Units" (CER Web-Page, 20 August 2025), <<https://cer.gov.au/schemes/safeguard-mechanism/safeguard-mechanism-credit-units>>.

⁵ See further Igor Bagayev et al, "Does environmental regulation drive specialisation in green innovation?" (2025) 130 *Journal of Environmental Economics and Management* 103101.



- All operational flaring at coal mine sites should be banned, and only permissible in emergencies;
- The NSW EPA should require gas drainage at open cut coal mines and provide a clear timeline for the implementation of this obligation; and
- Exemptions should not be granted for any of the mitigation requirements canvassed in the guide. Coal mines that are non-compliant should face enforcement action.

Finally, ACF recommends that the NSW EPA be empowered to consider and require licensees to demonstrate how they are mitigating the impacts of the Scope 3 emissions associated with their operations. Mitigating emissions through decreases in coal production should be encouraged and included as a mitigation action within the scope of this guide.

Recommendations regarding emissions monitoring, reporting and verification

The inclusion of annual emissions reports to the regulator is a sensible evidential foundation for the regulation and enforcement of pollution limits and mitigation measures (page 9 of the *Proposed Climate Change Licensee Requirements Consultation Draft*).

However, ACF emphasises that current reporting standards for coal mine methane emissions, particularly open cut coal mine methane estimation methods set out under the National Greenhouse and Energy Reporting (Measurement) Determination 2008 (Cth), are inaccurate and result in significant potential under-reporting from facilities.⁶ Current monitoring, reporting and verification (MRV) does not meet global best practice, does not occur in real time, and lacks transparency about the coal sampling data and factor-based methodologies that many coal mines use to report their greenhouse gas emissions. Independent verification of fossil methane emissions is largely left to civil society and other non-industry sources.

ACF supports a fossil methane MRV approach of site-specific measurement and reporting complimented by regional emissions monitoring networks. This approach should combine direct measurement at coal and gas sites with measurement, remote sensing and inverse modelling capabilities for regional networks to ensure the highest level of accuracy in monitoring and reporting fossil methane emissions, including:

- At industry expense, it should be a requirement that all coal projects across NSW install best practice MRV at each facility, in line with the *UNECE Best Practice Guidance for Effective Management of Coal Mine Methane at National Level: Monitoring, Reporting, Verification and Mitigation*;⁷

⁶ International Energy Agency, *Global Methane Tracker 2025* (May 2025), 5.

⁷ UNECE, *Best Practice Guidance for Effective Management of Coal Mine Methane at National Level: Monitoring, Reporting, Verification and Mitigation*, December 2021.



- Emissions data, including core sampling results and other data used to develop emissions factors for reporting coal mine methane, should be publicly accessible and uploaded in regular time through an EPA administered portal to improve transparency;
- Fossil methane measurement and reporting should be periodically verified by third-parties that are independent to the licensee;⁸ and
- The scope of emissions data should be extended to Scope 3 combustion emissions, particularly for coal mines, given the necessity of considering these emissions in government decision-making.⁹

While ACF welcomes the requirement for continuous measurement of methane emissions at underground coal mines, we are concerned and oppose the carveout of the Western Coalfields from these measurement obligations and the exemption for mines due to close within 2 years of these requirements coming into force (page 13 of the *Proposed Climate Change Licensee Requirements Consultation Draft*).

It is ACF's view that there should be no exemptions or exceptions for coalfield monitoring by size, mining method, perceived emissions intensity, operating status or location. Emissions must be measured and mitigated for all greenhouse gas intensive operations statewide.

Recommendations regarding enforcement and non-compliance penalties

ACF is concerned that the current consultation drafts are unclear regarding the NSW EPA's proposed enforcement of climate change license requirements and proposed non-compliance penalties. In addition to implementing the highest possible standard of methane measurement, abatement and mitigation, and reporting, it is critical that any penalties for breaches by licensees at mine sites serve as an effective deterrent against future compliance failures.

For further information, please contact, [REDACTED]
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⁸ See further RystadEnergy, *Methane Tracking Technologies Study* (Final Report commissioned by EDF, October 2023).

⁹ See, e.g., *Denman Aberdeen Muswellbrook Scone Healthy Environment Group Inc v MACH Energy Australia Pty Ltd* [2025] NSWCA 163.

