Environmental Defenders Office

Submission on the NSW EPA Climate Change Licensee Requirements

7 October 2025

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EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

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Submitted to:

NSW Environment Protection Authority
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Acknowledgement of Country
The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Introduction

EDO welcomes the opportunity to provide feedback on the EPA's draft *Climate Change Licensee Requirements*, draft *Climate Change Mitigation and Adaptation Plans: Mitigation Requirements*, and draft *Greenhouse Gas Mitigation Guide for NSW Coal Mines* (**Draft Requirements**).

For 40 years, EDO has provided legal advice and representation to communities in NSW on public interest environmental matters, including clients who are concerned about the environmental, health, social and economic impacts of the fossil fuel sector in NSW. This submission is informed by this work.

NSW's latest greenhouse gas emissions projections have borne out and quantified the finding of the NSW Net Zero Commission's 2024 Annual Report that NSW will not meet the 2030, 2035, or 2050 targets enshrined in the *Climate Change (Net Zero Future) Act 2023* (**Net Zero Act**) without faster and more significant action.

As the most recent NSW State of the Environment Report noted, climate change is having an impact on all aspects of the NSW environment: "[c]limate change is already affecting NSW communities. Impacts to human health, the environment, water resources, the economy, properties and infrastructure will continue to increase."[1]

EDO welcomes the EPA's progress on developing the Draft Requirements to encourage mitigation of greenhouse gases by licensees, and in particular coal mines. However, we have serious concerns with the proposed timeframe for implementation and enforcement of all components of the Draft Requirements, as well as potential loopholes and exemptions.

In providing this feedback, EDO reminds the EPA of its statutory duty to develop environmental quality objectives, guidelines and policies to ensure environment protection from climate change,[2] and its statutory objective 'to reduce the risks to human health and prevent the degradation of the environment' by 'taking action in relation to climate change'.[3]

Summary of recommendations

Our key recommendations are:

1. **Recommendation 1:** The EPA must require in each of the Draft Requirements that GHG mitigation measures be taken immediately, consistent with the critical need to address climate change as early as possible (as recognised by the Guiding Principles of the Net Zero Act).
2. **Recommendation 2:** A binding sectoral emissions reduction pathway for the coal sector must be developed and implemented. This pathway must be consistent with NSW

[1] NSW EPA, NSW State of the Environment 2024 'Climate Change', 'Impacts', https://www.soe.epa.nsw.gov.au/all-themes/climate/climate-change#impacts-overview
[2] *Protection of the Environment Administration Act 1997* (NSW) (**POEA Act**), s 9(1)(a); *Bushfire Survivors for Climate Action Inc v Environment Protection Authority* [2021] NSWLEC 92.
[3] POEA Act, s 6(1)(b).

achieving its 2030, 2035 and 2050 emissions reduction targets and with the purpose and Guiding Principles of the Net Zero Act. The consistency with the pathway must be binding on all coal mines in NSW.

3. **Recommendation 3:** A particular focus on the Draft Requirements (and especially the Coal Mine GHG Mitigation Guide) should be the immediate reduction of methane emissions.
4. **Recommendation 4:** The EPA should impose limits on methane emissions in environment protection licences (**EPLs**) and treat unauthorized release of methane as an air pollution offence under the *Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**).
5. **Recommendation 5:** The mitigation and other measures proposed by the Draft Requirements must be mandatory, for example through integration into Regulations or EPLs. These must be imposed as soon as possible.
6. **Recommendation 6:** Feasibility considerations in the Draft Requirements must be defined and must only refer to technical (not financial) feasibility.
7. **Recommendation 7:** The Draft Requirements must not provide for exemptions. However, if exemptions are to be permitted, there should be very clear and strict criteria for these exemptions.
8. **Recommendation 8:** The Coal Mine GHG Mitigation Guide should directly address scope 3 emissions, and articulate the key avoidance and mitigation measures that will ensure the protection of NSW from climate change.
9. **Recommendation 9:** The Coal Mine GHG Mitigation Guide must be applied to mines in care and maintenance, as well as the active closure and rehabilitation phase.

1. Timeframes for implementation are not consistent with the Net Zero Act

On 26 June 2025, the NSW Government released its latest GHG emissions projections. It found that on current policy settings, NSW will not meet any of its legislated emissions reduction targets, with projected emissions reductions of 46% (rather than the 50% target) below 2005 levels by 2030 and 62% (in contrast to the 70% target) by 2035.[4]

Its modelling forecasts that, on current policy settings, the abatement gap to reaching the 2030 target is 7.2 Mt CO2-e, while the abatement gap to achieving the 2035 target is 12.6 Mt CO2-e. In 2050, there are 18.0 Mt CO2-e of residual emissions projected. [5]

[4] NSW greenhouse gas emissions projections 2024, https://www.environment.nsw.gov.au/sites/default/files/2025-06/nsw-greenhouse-gas-emissions-projections-2024-250104_0.pdf.
[5] NSW greenhouse gas emissions projections 2024, p 14.

In April 2024, the Minister called for a "redoubling of effort" to meet these targets.[6]

The guiding principles of the *Climate Change (Net Zero Future) Act 2023* (**Net Zero Act**) include that (our emphasis):

- there is a **critical** need to act to address climate change, which is a serious threat to the social, economic and environmental wellbeing of New South Wales;
- that action to address climate change **should be taken as early as possible** to minimise the cost and adverse impacts of climate change; and
- that the Government of New South Wales is responsible for **urgently developing and implementing** strategies, policies and programs to address climate change, and ensuring the Government of New South Wales pursues best practice in addressing climate change.

In this context, the timeframes set out in the Draft Requirements are concerning.

In particular, it is extremely concerning that the Draft Requirements state that any proposal to place GHG emissions limits on licensees is a "[l]onger-term requirement, subject to emissions measurement, sector-based greenhouse gas budgets and CCMAPs being in place,"[7] particularly in light of the EPA's own Independent Expert Review Panel finding on the Coal Mine GHG Mitigation Guide that:

> *While the draft mitigation guide is a good starting point for regulating greenhouse gas emissions at NSW coal mines, the panel's view is that it will be hard for the EPA to ensure mines actually reduce emissions in the absence of emission limits.*[8]

The Draft Requirements excessively accommodate licensees, who have been on notice about the proposed required climate change mitigation and adaptation plans since at least January 2023 (and on notice as to the imperative to reduce GHG emissions much earlier than that) - at the risk of compromising the efficacy of the scheme itself in achieving its desired goals.

Recommendation 1: The EPA must require in each of the Draft Requirements that GHG mitigation measures be taken immediately, consistent with the critical need to address climate change as early as possible (as recognised by the Guiding Principles of the Net Zero Act).

1.1. Draft CCMAP Mitigation Requirements

The timeframes proposed in the Draft Requirements also fall substantially short of the existing timeframes set out in the EPA's Climate Change Action Plan. For example, with respect to the draft *Climate Change Mitigation and Adaptation Plans: Mitigation Requirements*, in its **January 2023**

[6] NSW Government Environment and Heritage, Media Release, Emissions projections show NSW needs to redouble climate efforts to meet targets, 23 April 2025, https://www.environment.nsw.gov.au/news/emissions-projections-show-nsw-needs-to-redouble-climate-efforts-to-meet-targets

[7] Proposed Climate Change Licensee Requirements: Consultation Draft – July 2025, p 17.

[8] Independent Expert Review Panel Report, https://hdp-au-prod-app-nswepa-yoursay-files.s3.ap-southeast-2.amazonaws.com/3917/5452/8440/independent-expert-review-panel-report.pdf, p 6.

Climate Change Action Plan 2023-26, the EPA set out its Action 5(b) in almost identical terms to that proposed by the draft CCMAP Mitigation Requirements:

> "Action 5(b) Progressively require and support our licensees to prepare, implement and report on climate change mitigation and adaptation plans". [9]

The timeframe specified for delivery of this action was 12- 24 months. That is, it is already overdue. There is no credible reason to further delay this requirement.

1.2. Draft Coal Mine GHG Mitigation Guide

With respect to the *Greenhouse Gas Mitigation Guide for NSW Coal Mines*, timeframes provided for all the mitigation measures to be phased in, as set out in Tables 1, 2, 10, 11, and 13, are too far in the future and do not reflect the scientific reality that the majority of emissions reductions must take place this decade in order to avoid the worst effects of climate change. The measures do not reflect the recommendations of the Independent Expert Review Panel Report.

Action 16 of the EPA's Climate Change Action Plan required the EPA to develop emissions reduction targets for key industry sectors **by 2024** and to track the performance of those sectors against those targets. Such a target has yet to be set in relation to the coal sector, despite the sector having been identified as a high priority for the EPA and the Net Zero Commission.

The EPA should set an emissions reduction target for the coal sector that is consistent with NSW achieving its 2030, 2035 and 2050 emissions reduction targets and with the guiding principles of the Net Zero Act, and refer to this in the Coal Mine GHG Mitigation Guide.

Recommendation 2: A binding sectoral emissions reduction pathway for the coal sector must be developed and implemented. This pathway must be consistent with NSW achieving its 2030, 2035 and 2050 emissions reduction targets and with the purpose and Guiding Principles of the Net Zero Act. The consistency with the pathway must be binding on all coal mines in NSW.

2. Methane must be a key focus for immediate emissions reductions

The Federal Climate Change Authority's Sector Pathway Review found that reported fugitive emissions from coal mining in Australia are predominantly methane emissions (95%), and that fugitive emissions account for almost half of the resources sector's reported emissions, with 25% from coal mining.[10]

[9] EPA Climate Change Action Plan, https://www.epa.nsw.gov.au/sites/default/files/23p4265-climate-change-action-plan-2023-26.pdf, p 18.
[10] Climate Change Authority, *Sector Pathways Review 2024*, https://www.climatechangeauthority.gov.au/sites/default/files/documents/2024-09/2024SectorPathwaysReview.pdf , p 4.

Methane is responsible for around 30% of the rise in global temperatures since the industrial revolution. The concentration of methane in the atmosphere is increasing at a rate faster than in any period since record-keeping began.[11]

Given its short atmospheric lifetime, acting now to rapidly reduce methane emissions will result in rapid reduction of warming, making the reduction of methane emissions one of the best ways of limiting warming in this and future decades. The United Nations Environmental Program's 2021 Global Methane Assessment found that "mitigation of methane is very likely the strategy with the greatest potential to decrease warming over the next 20 years."[12] This view is supported by the International Energy Agency which has stated that rapid and sustained reductions in methane emissions is critical to limiting near-term warming.[13]

The Climate Change Authority acknowledged in its 2035 Targets Advice that "[l]imiting fugitive methane sources represents the most significant and economically viable opportunity to cut methane emissions in Australia."[14]

As such, a particular focus on the Draft Requirements (and especially the Coal Mine GHG Mitigation Guide) should be the immediate reduction of methane emissions. A number of options are discussed in EDO's May 2025 Report *Improving coal mine methane regulation in NSW*, which examines the current regulation of coal mine methane emissions in NSW and makes a number of recommendations for improvement.

Recommendation 3: A particular focus on the Draft Requirements (and especially the Coal Mine GHG Mitigation Guide) should be the immediate reduction of methane emissions.

2.1. Methane must be regulated as the air pollutant it is

Methane emissions fall within the definition of air pollution in the Protection of the Environment Operations Act 1997 (**POEO Act**), and there is no reason in principle why methane should be treated differently from other air pollutants and a strong public policy argument that it should, given its potency as a GHG.

The EPA should impose limits on methane emissions in environment protection licences (**EPLs**) and treat unauthorized release of methane as an air pollution offence under the POEO Act.

[11] International Energy Agency, *Global Methane Tracker 2025*, https://www.iea.org/reports/global-methane-tracker-2025, p 16; Intergovernmental Panel on Climate Change, *Chapter 02 Changing State of the Climate System*, in *Climate Change 2021: The Physical Science Basis, Contribution of the Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, 2021, Gulev, S.K., et al. (eds). Table 2.2 p. 302

[12] United Nations Environment Programme & Climate & Clean Air Coalition, *Global Methane Assessment: Benefits and Costs of Mitigating Methane Emissions*, https://www.unep.org/resources/report/global-methane-assessment-benefits-and-costs-mitigating-methane-emissions, p 21.

[13] IEA Global Methane Tracker 2025, p 16.

[14] https://www.climatechangeauthority.gov.au/sites/default/files/documents/2025-09/2035 Targets Advice.pdf

Recommendation 4: The EPA should impose limits on methane emissions in EPLs and treat unauthorized release of methane as an air pollution offence under the POEO Act.

3. Climate change requirements must be mandatory and enforceable to be effective

In order to make a meaningful impact on GHG emissions, the Draft Requirements must be clear, mandatory, enforceable, and enforced in practice.

Currently, the Draft Requirements phrase measures as "expectations" rather than requirements. This should be rectified in order to make clear that the measures are mandatory. The Draft Requirements (once finalised) must be incorporated into Regulations or EPLs in order to be concrete requirements that the EPA can require compliance with, rather than policy guidance which is not itself enforceable.

As set out above at sections 1 and 2, this must be done as soon as possible to have any impact on the achievement of NSWs emissions reduction target for 2030. The availability of financial incentives to industry is a wholly inappropriate reason to delay making these measures mandatory. As set out above, industry has been on notice since at least the release of the January 2023 EPA Climate Change Action Plan of the intent to require emissions reductions, and in many respects, of the specific requirements. The timeframes set out in that Plan for the imposition of those requirements have in many respects been exceeded, and industry has therefore already been given more time than anticipated to make these arrangements. It would be unreasonable and arguably contrary to the Guiding Principles of the Net Zero Act and the EPA's statutory duties to delay the implementation of these measures due to the financial interests of polluters.

Recommendation 5: The mitigation and other measures proposed by the Draft Requirements must be mandatory, for example through integration into Regulations or EPLs. These must be imposed as soon as possible.

3.1. Feasibility considerations should only be technical, not commercial

The Draft Requirements qualify certain proposed measures by their "feasibility". This is not defined in the Draft Requirements, and should be. It must only be by reference to technical feasibility, not financial.

Feasibility must not be determined on the basis of financial considerations. Feasibility considerations must only be predicated on a technical basis, for example due to particular characteristics of a site or a particular measure being technically impossible, and not that the proponent considers that it is too expensive. Currently, where conditions of consent require "all reasonable and feasible" measures to be implemented to minimise the emission of GHGs, regulators have been too willing to accept the assertions of proponents as to any emissions reduction measures not being financially feasible, thereby rendering the relevant requirement impotent.[15]

[15] See the discussion of this in EDO's May 2025 Report *Improving coal mine methane regulation in NSW*,

A principle of Ecologically Sustainable Development as defined in the NSW planning system by the POEA Act is improved valuation, pricing and incentive mechanisms, including polluter pays - that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement.[16]

Delaying the imposition of pollution control requirements due to the financial implications for proponents would be inconsistent with the polluter pays principle.

Recommendation 6: Feasibility considerations must be defined and must only refer to technical (not financial) feasibility.

3.2. Exemptions are not appropriate

The Draft Requirements provide for proponents to apply for exemptions. The granting of these exemptions appear to be entirely discretionary, without clear criteria or hard limits, thus undermining the requirements. Preferably, no exemptions to the requirements should be allowed. If licensees cannot meet the requirements they should be required to cease emitting activities, as is required in respect of other pollutants (e.g. through Trigger Action Response Plans in EPLs). However, if exemptions are to be permitted, there should be very clear and strict criteria for these exemptions.

Recommendation 7: The Draft Requirements must not provide for exemptions. However, if exemptions are to be permitted, there should be very clear and strict criteria for these exemptions.

3.3. Climate Change Mitigation and Adaptation Plans: Mitigation Requirements

EDO considers that clarity and enforceability of CCMAP requirements is key to proper implementation by licensees, strong enforcement by the EPA, and adequate scrutiny by the community. All these ingredients are crucial to ensuring the EPA's policies do in fact ensure the protection of the environment from climate change.

Initiatives designed to reduce duplication for licensees such as having CCMAPs cover multiple licensees or allowing licensees to submit documents to fulfil CCMAP requirements that are not purpose-made will detract from the achievement of these aims and represent serious flaws that should be rectified.

Rather than reducing the regulatory burden on licensees, the EPA's chief focus in developing these policies should be on making real reductions in greenhouse gas emissions in accordance with NSW's legislated net zero targets.

4. Emissions limits should be placed on EPLs and set out in Regulations

EDO considers that the EPA can impose emissions limits on EPLs following the first five-year review, even where an emissions limit may be inconsistent with the approved development consent. We note that there is only a statutory requirement for an EPL to be granted consistently with a development consent if that development consent is for a State Significant Development,

[16] POEA Act, s 6(2)(d)(i).

and that this requirement does not apply after the first review of the EPL.[17] There is no statutory impediment to imposing additional conditions on EPLs at or following the first review of the EPL.

In any event, the imposition of specified GHG mitigation measures or limits as conditions on EPLs for coal mines would not be inconsistent with current approvals for the majority of NSW coal mines.

Most current development consents for coal mines require the proponent to take all reasonable and feasible measures to minimise the GHG emissions from the project (or words to a similar effect). These conditions of consent have been standard for many years. Conditions in EPLs requiring limits on GHG emissions would be consistent with such conditions.

Further, EDO notes that development consents are now being progressively amended to defer to the EPA in relation to GHG emissions. For example, the most recent consents for Mt Arthur Mod 2 (condition 24C), Tahmoor Mod 3 (condition B18A), HVO North Mod 8 (condition 6A), and Ulan Mod 6 (condition 22A) all require the proponent to "prepare a Greenhouse Gas Mitigation Plan in consultation with the EPA". It appears that development consents are being drafted to ensure that the EPA is the agency that regulates GHG emissions under the NSW planning and environmental regulatory framework. The imposition of numeric limits on GHGs as air pollution under EPLs is entirely consistent with this approach.

EPL-specific emissions limits and other standard GHG mitigation requirements should be undergirded by Regulation. Enshrining standard mitigation requirements for coal mine operators in regulations will provide a robust basis for such requirements and limit any backsliding from such requirements. Unlike regulations, EPL conditions can be readily varied subsequently, and licensees are also able to undertake merit appeals in respect of particular licence conditions under s 287 POEO Act. Regulations may be made under section 323 POEO Act. Subsections (5) and (5A) of that section make clear that the regulations would provide a secure baseline for GHG mitigation requirements across NSW that would not prevent more ambitious measures being imposed via EPL conditions. Requirements could be contained in a new regulation specifically addressed to GHG mitigation requirements, or coherently integrated into the existing POEO regulations.

5. Specific commentary on the Greenhouse Gas Mitigation Guide for NSW Coal Mines.

EDO welcomes the development of the draft Coal Mine GHG Mitigation Guide. However, EDO considers that there are key weaknesses in the Mitigation Guide that must be addressed if it is to bring about meaningful emissions reductions in the coal sector. In addition to the matters set out above, we note the below.

[17] Environmental Planning and Assessment Act 1979, s 4.42(2)(c). We note that this is also the case for approvals granted under the former Pt 3A of the EP&A Act – see former s 75V(3)(c).

5.1. Avoidance is part of the mitigation hierarchy: NSW cannot meet its emissions reduction targets with an expanding fossil fuel resources sub-sector

Avoidance measures should be explicitly included: The Mitigation Guide does not currently include measures to avoid scope 1, 2, and 3 greenhouse gas emissions. Such measures need to be included in order to ensure the Mitigation Guide reflects the mitigation hierarchy,[18] which requires the proponents to first avoid, then reduce, substitute, and, as a last resort, offset emissions. For example, an immediate and proven measure to avoid fugitive emissions from open cut coal mines would be to avoid mining methane-rich domains in the mine site. Requiring drainage and flaring is not the same as avoiding the areas in the first place. Including such measures as explicit considerations would complement the existing Guide for Large Emitters, which refers to avoidance measures at a high level but, given it is intended to apply to multiple sectors, does not specify the particular avoidance measures available to the coal sector.

5.2. Scope 3 emissions

EDO welcomes the inclusion of a section on scope 3 emissions in the Mitigation Guide. However, the section is tentative and does not go far enough. There is no limitation in the EPA's statutory duty under s 9(1)(a), as interpreted in BSCA v EPA,[19] that prevents the EPA from engaging in regulatory activity that would have an impact on downstream emissions. In contrast, proper fulfilment of this duty requires the EPA's policies to ensure the meaningful reduction of scope 3 emissions.

Climate change is having and will continue to have impacts on the NSW environment. The scope 3 emissions from the NSW coal industry, which represent the vast majority of greenhouse gas emissions from the industry, will exacerbate climate change and its impacts in NSW. The NSW Productivity Commission has undertaken analysis demonstrating that limiting NSW coal exports would be expected to raise global coal prices, which emerging evidence suggests would accelerate the global transition away from coal and therefore lower emissions.[20] The guiding principles under the Net Zero Act contemplate the consideration of scope 3 emissions.[21] As such, the Mitigation Guide should, firstly, directly address scope 3 emissions, and, secondly, articulate the key avoidance and mitigation measures that will ensure the protection of NSW from climate change, including but not limited to scaling back coal production and bringing forward mine closures..

Such measures should be explicitly included as options for consideration in the Mitigation Guide and the EPA should be providing advice on such measures to the Department of Planning during the planning assessment process.

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[18] As set out in the EPA's Guide for Large Emitters, p 15, and referenced on p 34 in relation to coal mining fugitive emissions.

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

[20] NSW Productivity Commission, Achieving Net Zero (March 2025), pp 40-41.

[21] See Net Zero Act, ss 8(5), (6), (8)(b), (h)-(j).

Recommendation 8: The Coal Mine GHG Mitigation Guide should directly address scope 3 emissions, and articulate the key avoidance and mitigation measures that will ensure the protection of NSW from climate change.

5.3. Guide must apply to mines in care and maintenance, as well as the active closure and rehabilitation phase

The Coal Mine Requirements must be applied to mines in care and maintenance, which can generate a huge amount of GHG emissions. See, for example, the Appin Mine Case Study in EDO's *Improving Regulation of Coal Mine Methane in NSW* Report.[22]

Recommendation 9: The Coal Mine GHG Mitigation Guide must specify mitigation measures be applied to mines in care and maintenance, as well as the active closure and rehabilitation phase.

[22] At pp37-38. See also ABC News, *Methane leaking out of old mining site in Dharawal National Park near Sydney that closed decades ago*, 21 July 2024, https://www.abc.net.au/news/2024-07-21/methane-gas-leaking-mine-appin-nsw-climate-change/104029280.