

**Suggested amendments to the
Environment Protection and Biodiversity Conservation**

Extracted from the people's Climate Protection Bill
www.climatemovement.org.au/ClimateProtectionBill

November 25, 2008

Schedule 1 – Amendment of the Environment Protection and Biodiversity Conservation Act 1999

1 Section 3 Objects of Act

Insert after section 3(1)(e)

(ea) reduce greenhouse gas emissions from Australia and to assist with global efforts to stabilise and reduce human derived greenhouse gas concentrations in the atmosphere.

Insert after section 3(2)(e)(i)

(ia) includes provisions to ensure that projects having an adverse impact on the climate system are assessed and approved by the Commonwealth.

2 Section 3A Principles of ecologically sustainable development

Insert after section 3A(a)

(aa) Decision making processes should consider and where possible minimise the adverse impact of climate change on the environment.

3 After section 22A in Subdivision E of Division 1 of Part 3

22A offenses relating to nuclear power reactors

(1) A person is guilty of an offense if the person constructs or expands a nuclear power reactor.

(2) An offense against subsection (1) is punishable on conviction by imprisonment for a term not more than 30 years, a fine not more than 20,000 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum

amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offense against this section may also be guilty of

an offense against section 495.

4 After Subdivision E of Division 1 of Part 3

Insert:

Subdivision EA – Protection of the environment from greenhouse gas emissions

22C Requirement of approval for certain greenhouse gas emissions

(1) A person must not take an action which:

- a. Regulations provide is a prescribed development for the purpose of this clause, or
- b. Is the construction of a new coal fired power station;
- c. Is the construction of a new coal mine ; or
- d. Is an expansion of an existing coal mine; or
- e. Is otherwise, directly or indirectly, including by change in land use or land clearing, likely to result in the emission of more than 125,000 tonnes of carbon dioxide equivalent into the atmosphere in any 12 month period.

Civil Penalty

- a. for an individual—5,000 penalty units;
- b. for a body corporate—50,000 penalty units.

(2) Subsections (1)(a) (d) and (e) do not apply to an action if:

- a. an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- b. Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- c. there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- d. the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

22D offenses relating to greenhouse gas emissions

(1) A person is guilty of an offense if the person intentionally or recklessly:

- a. Carries out development prescribed by the regulations for the purpose of this clause; or
- b. Constructs a new coal mine; or
- c. Carries out the expansion of an existing coal mine; or
- d. Takes an action which directly or indirectly, including by change in land use or land clearing, is likely to result in the emission of more than 125,000 tonnes of carbon dioxide equivalent into the atmosphere in any 12 month period.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) An offense against subsection (1) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note 1: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the

maximum amount the court could fine a person under this subsection.

Note 2: An executive officer of a body corporate convicted of an offense against this section may also be guilty of an offense against section 495.

(3) Subsections (1) (a), (c) and (d) do not apply to an action if:

- a. an approval of the taking of the action by the person is in operation under Part 9 for the purposes of this section; or
- b. Part 4 lets the person take the action without an approval under Part 9 for the purposes of this section; or
- c. there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- d. the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in this subsection.

See subsection

13.3(3) of the *Criminal Code*.

22E Prohibition of logging in old growth forests

(1) A person is guilty of an offense if the person conducts logging activities in any forest that is ecologically mature and / or where the upper stratum or overstorey is in the late mature growth phase.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) An offense against subsection (1) is punishable on conviction by imprisonment for a term not more than 7 years, a fine not more than 420 penalty units, or both.

Note : Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

5 Part 23 Division 2 section 528 Definitions

Insert in alphabetical order

Adverse effects of climate change means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

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

Greenhouse gases means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and reemit infrared radiation, and include carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydro fluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆). For the purposes of this Act, the definition of greenhouse gases does not include water vapour.

Greenhouse gas emissions means emissions of greenhouse gases measured in tonnes of carbon dioxide equivalents

Old growth forest means any forest that is ecologically mature and / or where the upper stratum or overstorey is in the late mature growth phase.

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