

EPA GREENHOUSE GAS EMISSIONS ASSESSMENT GUIDANCE – CONSULTATION (10 June 2019 – 2 September 2019)

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RESPONSE ID	BHLF-1TDB-D549-H		Yes, I am authorised to submit feedback on behalf of an organisation

**What information should be required by the EPA for Environmental Impact Assessment?**

**How should the emissions associated with a proposal be considered by the EPA?**

**What constraints on potential emissions mitigation conditions should the EPA recognise?**

**Additional comments**

**Attachments**

Yes



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# **Woodside submission: Environmental Protection Authority background paper on greenhouse gas assessment guidance**

2 September 2019

## **1. Executive summary**

In this response to the Environmental Protection Authority's (EPA) *Background paper on greenhouse gas assessment guidance*, Woodside explains its view of:

- The role of the State in effective greenhouse gas policy frameworks;
- Key reasons why the EPA's rescinded Guideline was not appropriate and should not be restored; and
- Specific feedback on the four questions posed by the EPA as part of the consultation process to guide a way forwards.

On March 7<sup>th</sup> 2019, the EPA released two documents: an "Environmental Factor Guideline: Greenhouse Gas Emissions" and a "Technical Guidance: Mitigating Greenhouse Gas Emissions" (collectively 'the Guidelines') and rescinded them a week later due to the absence of consultation about them, noting significant concern about their content. It is important to note that these were not draft documents, but had been adopted by the EPA with immediate effect.

Climate change is a global challenge. Trillions of dollars of investment in new technology and cleaner industrial infrastructure are needed as part of a global response<sup>1</sup>. In order to marshal such investment policymakers need to offer stable and consistent settings, in response to which business can effectively plan. The case against the Guidelines is therefore environmental, as well as economic. Even if well intended, poor policies and unclear jurisdictional arrangements damage climate action just as much as they damage jobs and investment, because without clear and consistent policy frameworks the task of planning and undertaking emissions reduction investments becomes significantly harder.

On August 28<sup>th</sup>, the Government of Western Australia published its Greenhouse Gas Emissions Policy for Major Projects, which acknowledges the Commonwealth Government's target of reducing greenhouse gas emissions by 26 to 28 per cent by 2030 and commits to working with the Commonwealth to achieve this goal. The State's policy also acknowledges the obligations of Australia's Safeguard Mechanism upon relevant businesses in WA.

The EPA should therefore consider providing advice that assists the State to work in complementarity with the Federal Government, which has the responsibility to set the national emissions reduction trajectory as part of the Paris Agreement, and which also has a broader suite of policy levers at its disposal to achieve the trajectory than the EPA does. In the case of regulating industrial emissions, the Safeguard Mechanism of the Emissions Reduction Fund, is the relevant regulatory instrument and should not be duplicated by the EPA.

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<sup>1</sup> International Energy Agency "World Energy Investment 2019" <https://www.iea.org/wei2019/>

## **2. Greenhouse Gas policy frameworks and the relative role of the State**

The global response to climate change has been agreed by the 197 countries that are party to the United Nations Framework Convention on Climate Change and the subordinate Paris Agreement (see Inset Panel below for key features). Australia's initial "nationally determined contribution" (NDC) under the Paris Agreement has been submitted to the UN and is a 2030 target of 26-28% reduction from 2005 levels. The Australian Government has recently reported upon the status of its progress towards meeting this NDC, and its plan to achieve the outstanding task, in its Climate Solutions Package (February 2019)<sup>2</sup>.

Woodside acknowledges that whilst the Government's plan is clear, it is also true that the level of ambition in the current NDC remains contested within the political debate. This contest is expected to continue for the foreseeable future, creating a challenge for industry which needs climate policy to be stable across electoral cycles in order to be able to plan and invest. It is therefore essential that policymakers and regulators distinguish their debating of the level of ambition that the country should adopt, as being distinct from debating the correct institutional and jurisdictional arrangements for adopting them. Whilst the political contest over the former may continue, stability on the latter is a pre-requisite for effective long-term action on climate change and should not be undermined.

**Key elements of the Paris Agreement** should be understood as context to the discussion of the Guidelines.

1. The Paris Agreement sets a goal of limiting global temperature change "to well below 2°C" and "pursuing efforts to limit it to 1.5°C"<sup>3</sup>.
2. The Agreement is to be "implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities."<sup>4</sup>
3. Each Party to the Agreement is to prepare a "nationally determined contribution" and is to pursue domestic measures to meet it.<sup>5</sup>
4. Successive NDCs are to each "represent a progression" beyond the last, with Developed Countries to undertake "economy-wide absolute emission reduction targets".<sup>6</sup>
5. The "importance of the engagements of all levels of government and various actors" is recognised, explicitly "in accordance with respective national legislations."<sup>7</sup>

When it published the Guidelines in March 2019, the EPA made a number of statements justifying them on the basis that it lacked confidence that Australia's policies were meeting the Paris objectives (for example "*in the absence of being able to rely on the Commonwealth doing its job and doing the heavy lifting in a way which is equitable across industries and states and territories, the EPA here feels we have to advise the government to do something*"<sup>8</sup>).

This revealed a misunderstanding of both the current NDC and the nature of the Paris Agreement in setting course to the "below 2°C" goal through a series of successively tightening NDCs. The Federal Government has been clear about its plan for achieving the current NDC<sup>9</sup>, and whilst the EPA may contest whether it is adequate, this contest does not create a proper basis for usurping the role of the national government in target setting, any more than if a WA Treasurer is dissatisfied with monetary policy settings pursued by the Reserve Bank of Australia they should set an independent Western Australian interest rate. The EPA Board could have chosen to offer advice to the Federal Minister in order to assist his formulation of the NDC. But instead, the Guidelines set up an alternative regulatory structure and target that was different to the Paris Agreement and the national approach, and so undermined and confused the policy framework when considered as a whole.

Where the EPA correctly recognised that the current NDCs in themselves will not complete the task of achieving the globally agreed goal of keeping global temperature change to well below 2 degrees, it failed to explain that the Paris Agreement is designed to increase ambition over time as economies change course. The Paris Agreement contains a mechanism for countries to increase their ambition through 5-yearly global

<sup>2</sup> Climate Solutions Package. Australian Government Department of the Environment and Energy, 25 February 2019: <http://www.environment.gov.au/climate-change/climate-solutions-package>

<sup>3</sup> Paris Agreement 2015, Article 2.1(a)

<sup>4</sup> *Ibid.* Article 2.2

<sup>5</sup> *Ibid.* Article 4.2

<sup>6</sup> *Ibid.* Articles 4.3 and 4.4

<sup>7</sup> *Ibid.* Preamble.

<sup>8</sup> "EPA Chairman Tom Hatton defends carbon emissions plan." The West Australian 8<sup>th</sup> March 2019

<sup>9</sup> Climate Solutions Package, *op cit*

stocktakes and updates to NDCs. The next round of NDCs are due to be submitted in 2020 and are a matter for the Federal Government to address.

It is important to note that the EPA itself does not bring forwards proposals or make investments that reduce emissions: under Part IV of the *Environmental Protection Act 1986* ('the Act') its role is to be an assessor of proposals brought forwards by others. The EPA is clear that it does not consider economic outcomes in the formulation of its advice, which is appropriate under its Act. But economics are not just an outcome of environmental policy, they are an essential input to its success or failure. The ability of the private sector to bring forwards proposals that contribute to reducing emissions in line with the national target is to some extent impacted by the clarity, consistency and effective design of policy frameworks. Importantly from the perspective of the investor, it is the aggregation of policy frameworks applying across both state and federal levels that impacts upon them. When the federal and state levels pursue different approaches, the result is simply confusion, even if each layer had acted with the intent to provide clarity within its own sphere. Given that effective action to reduce greenhouse gas emissions requires policies that are stable and soundly designed from an economic perspective, this confusion is highly counterproductive not just to economic goals but to the environmental goal of responding to the challenge of climate change too.

It is helpful therefore, that on August 28<sup>th</sup> 2019, the Government of Western Australia published its Greenhouse Gas Emissions Policy for Major Projects, which acknowledges the Commonwealth Government's target of reducing greenhouse gas emissions by 26 to 28 per cent by 2030 and commits to working with the Commonwealth to achieve this goal. The State's policy also acknowledges the obligations of Australia's Safeguard Mechanism upon relevant businesses in WA.

This does not mean that there is no role for the State of Western Australia in responding to the challenge of climate change – on the contrary, there is a very significant one. Whilst the Federal Government sets the emissions reduction target, there are a range of actions that the State can take to help achieve those reductions in practice. For example, the State has direct control of assets that are significant emitters (for example, State owned buildings, power generation assets, and the public transport system) and it can chart a path for decarbonising them. The State is also responsible for setting building and energy efficiency standards across the whole community, for attracting investment in new industries and technologies such as biosequestration or hydrogen, and for supporting research and development. These matters, and many more, should be addressed in the review of climate change policy that the State Government has said that it will complete by early 2020, and will be most effective when complementing the Federal Government's role rather than usurping it.

### **3. The Guidelines as issued in March 2019**

The problems with the Guidelines, and why they should not be readopted, include:

#### **1. Misalignment with Paris Agreement trajectory**

a. The Paris Agreement goal of “below 2°C” is typically associated with a “net zero by 2050” or “net zero in the second half of the century” trajectory. The EPA’s proposal was dramatically different: an immediate “net zero”, point forwards, for all major projects that come before it.

b. Whilst we note that the EPA’s subsequent Background Paper (to which this submission is a response) says that there was merely

*“the potential to recommend offsetting of all residual direct emissions”<sup>10</sup>,*

the contemporaneous Guidelines were absolute:

*“proponents... will be required to offset any residual (net) direct emissions associated with the proposal... ideally, offsets should align with residual emissions in the relevant year.”<sup>11</sup>.*

The EPA’s secret briefing note to its Minister’s Office, subsequently released under Parliamentary Privilege, removes any doubt that this was the EPA’s conscious intention:

*“for projects going forwards, the EPA will be seeking proposals with zero net emissions.”<sup>12</sup>*

c. Where the Paris Agreement approaches the significant and complex global challenge of climate change by recognising that the trajectory of industrial development needs to be changed through a series of successively tightened NDCs, the Guidelines sought instantly to achieve a bar without knowing how to reach it.

#### **2. Deepening distortions in the regulatory framework**

a. Few experts dispute that the most efficient way to achieve a concerted global response to climate change would be the establishment of a long term, global carbon price. Efforts to achieve this have failed however, and the Paris Agreement falls back to creating a single global framework in which individual countries define both their NDCs and the domestic policy mechanisms to achieve them.

b. Reliance on national policies introduces the risk of distortions across borders that alter investment signals and trade, and increase the cost of climate action. Regulations in one jurisdiction that increase costs can result in economic activity shifting to another jurisdiction. Where this results in greenhouse emission sources relocating with that economic activity, it is commonly called carbon leakage. Since this tends to move emissions from jurisdictions with high environmental standards, to those with lower standards, this can paradoxically lead to an increase in global emissions. Imposing onerous conditions for Western Australian projects, exacerbates this problem of carbon leakage.

c. Irrespective of carbon leakage concerns, national approaches also disrupt the ability to maximise the emissions reduction achievable for a given economic cost, by preventing actors from accessing the lowest cost abatement opportunities if those opportunities are overseas. (Businesses desire lowest cost abatement; regulators might express this as “highest abatement per cost”, but it is the same thing). In Australia, where a single economy-wide carbon price has been replaced by a national sector-by-sector approach, there is also the risk of distortion between sectors. These distortions are not just economically harmful, they also make climate action less efficient than it might otherwise be and so create an additional hurdle to meeting environmental outcomes. The current Australian policies are already some distance away from a single economy wide carbon price, to the detriment of efficient and effective climate action.

<sup>10</sup> “Background paper on greenhouse gas assessment guidance”, WA Environment Protection Authority, June 2019.

<sup>11</sup> “Technical Guidance: Mitigating Greenhouse Gas Emissions”, WA Environment Protection Authority, March 2019

<sup>12</sup> Parliament of Western Australia Tabled Paper 2568: EPA briefing to the Office of the Minister for the Environment, February 2019.

d. Unnecessarily, the Guidelines would have added a number of additional distortions that worsened this challenge, and reduced the level of abatement for any given cost. Because they only operated at a State level, they would have created a sub-national boundary distortion. They deepened the sectoral distortion by only applying to major industrial proposals and not to other parts of the economy. And perversely, they also added a temporal distortion because only new projects (or those referred back to the EPA for new assessment) were to be captured. Thus an existing industrial plant that operated (for example) on coal fired electricity constructed in the 1970s would not be regulated; but the exact same plant where it sought to invest in reducing its emissions by switching to a new source of state-of-the-art natural gas and solar electricity would have been penalised.

### 3. Increasing uncertainty

The Guidelines contributed to increased uncertainty in several ways.

- a. Regulatory uncertainty. A particularly dangerous element of the EPA's proposed Guidelines was that they were not drafts but came into immediate effect on the day they were published. Proposals that had been many months (indeed years) in the making and which had completed lengthy impact assessment processes were nevertheless to be judged against a Guideline that the proponents had never known the existence of, at the EPA's next Board Meeting just days after the Guidelines were published.

This created (and continues to create) ongoing uncertainty for all proponents on whether they can rely on the EPA to establish reliable 'rules of the game' against which they should conduct their assessments. The rescindment of the Guidelines has not remedied this damage to confidence in the EPA regime.

- b. Engineering uncertainty. Environmental specialists and engineers begin to design the physical and financial characteristics of industrial proposals many months, and in some cases years, before they are submitted to the EPA for consideration. Clear and stable policy intent (of the kind intended by the Paris Agreement and undermined by the Guidelines) is essential to help business managers plan effectively. Instead the EPA offered a Guideline that could not have been achieved, and thus effectively offered no planning guidance at all.
- c. Political uncertainty. The EPA has relied upon the fact that it is an adviser to the Minister, not a decisionmaker, and that the Minister would negotiate a final outcome with proponents. But the Guidelines left the proponent subject to increased political risk, relative to a situation in which a combination of precedent and the prevailing guidelines might have provided them with a reasonable basis on which to plan and to reasonably expect Ministers to make decisions.

The Guidelines were so clearly misaligned with effective greenhouse policy frameworks that the Government's rejection of them was both obvious and necessary, and thus the EPA's action forced a situation leading to something of a vacuum. Even where a Minister made a clear statement of intent, this would only be effective for the short duration of the political cycle, and subject to its vicissitudes.

These uncertainties would of course have been deeply harmful to WA's economy and the incomes of its working families. But more importantly from the EPA's point of view, they harmed the investment certainty that is essential to bringing forwards new and cleaner industrial projects. In doing so, they set back the conditions needed for effective climate change action.

#### **4. Response to EPA questions in the background paper**

1. The information that should be required by the EPA for Environmental Impact Assessment
  - information on greenhouse gas emissions and their mitigation which the EPA should expect and consider in making any advice on a proposal
  - information the EPA should expect on how a proposal aligns with Australia's emissions reduction targets
  - the need for, and any reasonable constraints on, transparency in emissions data and proposed mitigations
2. How emissions associated with a proposal should be considered by the EPA
  - the scope of emissions to be considered
  - the relevance and context for considering indirect (scope 3) emissions
  - the relationship to national or state emissions targets and regulation
  - consistency with the EPA's duty to use its best endeavours to protect the environment

Consistent with the State's Greenhouse Gas Emissions Policy for Major Projects, the role of Australian states and territories should be complementary and not duplicative of the federal arrangements. Logically the EPA should not take a role in the regulation of greenhouse emission limits at all, provided that the Federal Government's Clean Energy Regulator confirms the project is operating in accordance with its Baseline in the Safeguard Mechanism.

However, for simplicity the EPA could require sufficient information to enable benchmarking of proposals against best practice, including:

- Description of scope 1 and 2 emissions;
- Description of measures taken in the design process to reduce scope 1 emissions;
- Description of plans to improve scope 1 emissions performance over time consistent with the State's policy.

The EPA should rely on existing federal datasets (such as those under the National Greenhouse Energy Reporting Act) for data, rather than creating additional reporting requirements which place a burden both on the proponent and upon government administration.

Scope 3 emissions should not be included by the EPA in their approvals, because a project's Scope 3 emissions are the Scope 1 emissions (and the responsibility) of the project's customer and should be regulated as such. It is true that Western Australia has an important role to play in supplying natural gas to the world, and this can contribute to global decarbonisation by supporting other countries to transition their energy systems. This has been empirically demonstrated (e.g. in 2018, coal-to-gas switching helped avert 95MT of CO<sub>2</sub> emissions, according to the International Energy Agency<sup>13</sup>). However, this does not bring the emissions of those customers within the jurisdiction of the EPA and so cannot be part of approvals. It does however provide the case for policymakers to take an appropriately measured approach to the regulation of Scope 1 and 2 emissions at Australian LNG projects.

3. The constraints on potential emissions mitigation conditions the EPA should recognise
  - the appropriateness and practicability of measures to mitigate greenhouse gas emissions, including nature and level of planned reductions or offsets
  - the timing of planned reductions or offsets
  - the kinds or size of proposals to which the guidelines should apply

The EPA should recognise the federal Safeguard Mechanism and should not play any role in regulating project emissions reduction targets or offsets itself. It may however encourage proponents to provide a description of any additional voluntary measures that the proponent is undertaking.

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<sup>13</sup> [www.iea.org/geco/emissions/](http://www.iea.org/geco/emissions/)

**4. Any other advice related to the assessment of greenhouse gas emissions by the EPA that would further clarify or improve the guidelines.**

Reporting obligations placed on projects should not duplicate reporting requirements under NGER.

Any EPA guidelines should be consistent with the State Policy regarding the development of proposed greenhouse gas management plans.

Any EPA guideline should clearly articulate the limits of its applicability including that it does not apply to projects or emissions arising in federal waters.

EPA guidelines and requirements should not be retrospectively applied. As such, any new guidance should only apply to projects that have not yet commenced their assessment process. They should also not apply to already approved components of revised proposals.

Assuming the approach advocated in this paper is adopted by the EPA, proponents of projects with legacy conditions that take a different approach should be offered the opportunity to bring their conditions into alignment through applying for an EPA review which is limited to such a purpose.

Whilst neither the EPA nor the State of Western Australia has a role in setting emissions reduction targets or the mechanisms to enforce them, there are many steps that the State Government should be taking to help Western Australia to transition its economy in accordance with the national targets. For example, the State Government controls assets in the energy and transport sector, sets standards for building and energy efficiency, can influence consumer choices, and can attract investment and research capabilities. The EPA might wish to consider offering advice to the State Government on the development of a whole of government climate change policy, which could give greater confidence that the State is undertaking its proper role in concert with, but not in duplication of, the Federal government.