

NSW EPA CLIMATE CHANGE LICENSEE REQUIREMENTS | CONSULTATION

Australian Energy Producers | 10 October 2025

Australian Energy Producers welcomes this opportunity to provide brief comments on the NSW EPA's proposed Climate Change Licensee Requirements. The domestic oil and gas industry is committed to helping Australia achieve its legislated target of economy-wide decarbonisation by 2050. With Australia's obligations under the Paris Agreement remaining the legal responsibility of the Commonwealth Government, Australian Energy Producers emphasises that state-based climate policies and measures should:

- Harmonise with and complement current federal policies, programs, mechanisms and schemes.
- Maximise compliance flexibility by avoiding regulatory overreach in facilitating net zero outcomes.
- Further streamline and accelerate regulatory approvals processes for large projects.
- Avoid duplication, inconsistencies and additional regulatory burdens to national obligations.

The EPA's proposed licensee obligations arguably extend beyond its statutory mandate, duplicates and conflicts with federal settings, and potentially imposes discriminatory, sector-specific obligations that risk prohibitive transition costs and presents unnecessary legal and commercial uncertainties. Climate policy is and should remain the remit of the NSW Parliament, guided by NSW's legislated *Climate Change (Net Zero Future) Act 2023* and coordinated with, and made complementary to, national climate and energy frameworks.

The EPA's new licensee requirements are proposed within the context of its Climate Change Action Plan 2023–2026 (Plan); noting the plan is not legally binding and should not be construed as a mandate for imposing additional legal obligations. The Plan functions as a strategic document, not a legislative instrument. It identifies indicative actions and priorities for the EPA and is to be given effect without legal force. Additional regulatory conditions must be explicitly supported by enabling NSW legislation. Treating the plan as a source of regulatory authority risks blurring the distinction between strategic guidance and statutory obligations.

The EPA's conditions arguably extend beyond the legislative intent of the *Protection of the Environment Operations Act 1997* (POEO). The POEO Act established and bestows on the EPA its statutory powers and functions. It is designed to regulate pollution, including air, water, waste, and noise, and was not intended as a vehicle for greenhouse gas reduction policy. Responsibility for legislating and overseeing climate targets and actions lies with the NSW Parliament under the *Climate Change (Net Zero Future) Act 2023*, supported by policy advice from NSW DCCEEW and the NSW Net Zero Commission, whose role is to provide independent advice to Government on policy settings aligned with legislated.

The EPA should prioritise alignment with Commonwealth frameworks such as the National Greenhouse and Energy Reporting (NGER) scheme, the Safeguard Mechanism (SGM), and the mandated climate-related financial disclosures. By contrast, the proposed Climate Change Mitigation and Adaptation Plans (CCMAPs) introduce duplicative and inconsistent reporting requirements that extend beyond existing Commonwealth compliance-based reporting and disclosure frameworks. Emissions reporting is comprehensively regulated at the national level: scope 1 under

the SGM, scopes 1 and 2 under NGER, and scopes 1, 2, and 3 under mandatory disclosure obligations.

The EPA's proposal risks further fragmentation of national climate policy, with NSW entities facing dual and conflicting compliance regimes, by giving the EPA discretion to define sectoral abatement options and feasibility. Such an approach risks imposing higher costs than would occur under nationally consistent, market-based mechanisms such as the SGM. The EPA's stated intention to establish targeted mitigation requirements on an industry-by-industry basis, mandating certain technologies, processes, and actions by prescribed dates, and the constraining of the use of Australian-wide offsets for compliance purposes, is a highly prescriptive framework.

The EPA's proposed regime adds duplicative and inconsistent requirements:

- By requiring facilities to provide separate and different reports from what is already reported at the Commonwealth level, introducing additional compliance costs without the EPA establishing what additional benefits would be expected from such conditions.
- The EPA's intention to mandate facility specific on-site abatement measures, absolute targets and licencing conditions risks undermining the operational efficiency of the SGM as a market-based scheme by overly constraining its compliance flexibility (i.e., ACCUs, SMCs, borrowing, banking) and ability to accommodate future production growth and expansion (i.e., emissions intensity defined production variables).
- By requiring facility-level CCMAPs, with ten-year forecasts, targets, schedules, and contingency measures; such a condition risks misalignment with standard corporate practices where climate strategies are generally set at the enterprise level such as under NGERS. Mandatory public disclosure of CCMAPs heightens concerns regarding commercial confidentiality.
- Neither NGERS or SGM require the reporting of mitigation and adaption plans, or the reporting of future emissions; such conditions potentially conflict with obligations under the *Corporations Act* should emissions assumptions prove inaccurate; also NGERS encourages the use of higher-order methods where it is cost-effective, but does not mandate their adoption (unlike the EPA proposal) recognising that higher-order methods do not necessarily deliver proportionate gains in accuracy or reporting benefits relative to the additional compliance costs incurred.
- The EPA references the \$305 million High Emitting Industry Fund, but eligibility applies only to facilities emitting more than 90 ktCO₂-e per year, leaving entities in the 25-90 ktCO₂-e range (as per the proposed threshold) without comparable financial support to help with EPA mandated transition pathways.

Australian Energy Producers cautions NSW EPA to keep all viable transition pathways available in both NSW's and Australia's transition journey to net zero by 2050. This includes the efficient fostering of all current and future technologies, including carbon capture, utilisation and storage (CCUS), and the use of high-integrity offsets generated Australia-wide to not only assist emissions reductions in the agricultural sector but regulatory compliance in the rest of the economy.