

# Amending the *Climate Change (State Action) Act 2008*

## Discussion Paper

October 2018

Amending the *Climate Change (State Action) Act 2008*: Discussion Paper

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Tasmanian Climate Change Office

Department of Premier and Cabinet

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# MINISTER'S FOREWORD



The *Climate Change (State Action) Act 2008* (the Act) sets the Tasmanian Government's legislative framework for action on climate change and guides our response to climate change mitigation and adaptation in Tasmania.

The Act requires an independent review be conducted every four years. Based on the outcomes of the most recent independent review, we are taking the opportunity to strengthen our legislative framework for action on climate change by amending the Act.

The benefits of amending the Act include consistency with national and international agreements, improved capacity to respond to climate change risks and opportunities, and better guidance to assist our decision makers address the critical issue of climate change.

The release of *Climate Action 21: Tasmania's Climate Change Action Plan 2017-2021* (Climate Action 21) in June 2017 demonstrates our commitment to taking action on climate change.

The Tasmanian Government has committed \$3 million in new funding to support the implementation of Climate Action 21. This builds on over \$400 million already invested by the Tasmanian Government to support action on climate change, including a significant investment in irrigation, infrastructure and the Tasmanian Energy Efficiency Loan Scheme.

The Tasmanian Government also has a strong commitment to advancing Tasmania's renewable energy capability. In August 2017, we committed to making Tasmania renewable energy self-sufficient and announced a target of an additional 1,000 gigawatt hours of renewable energy generation in Tasmania by the end of 2022, to replace power imports via Basslink. This target will enhance Tasmania's place as the renewable energy battery of the nation and improve energy security.

In 2016, our net emissions declined by 100 per cent from 1989-90 levels, down to -0.01 mega-tonnes of carbon dioxide equivalent. This means that Tasmania is proudly the first jurisdiction in Australia to achieve zero net emissions ahead of our target date of 2050.

This Discussion Paper outlines the Tasmanian Government's proposed amendments to the Act in response to the 2016 independent review, and seeks input from the community on these proposed amendments. It highlights the Tasmanian Government's commitment to responding to the risks and opportunities of climate change in an informed and practical manner.

I look forward to hearing your views.

Hon Elise Archer MP  
**Minister for Environment**

# INTRODUCTION

## Purpose

The purpose of this Discussion Paper is to provide information on the Tasmanian Government's proposed amendments to the *Climate Change (State Action) Act 2008* (the Act), and to seek input from the community.

## *Climate Change (State Action) Act 2008*

The Act sets the Tasmanian Government's legislative framework for action on climate change and guides the State's response to climate change mitigation and adaptation. The Divisions of the Act establish a framework for climate change action through an emissions reduction target and regulation-making powers.

The *Climate Change (Greenhouse Gas Emissions) Regulations 2012* (the Regulations) were enacted in 2013 to support the Act and require the responsible Minister to publish the State's annual greenhouse gas emissions.

The Regulations prescribe the method for measuring emissions for the purpose of setting the 1990 baseline as well as methods for measuring reductions in emissions. Tasmania's greenhouse gas emissions reporting is based on data in the *State and Territory Greenhouse Gas Inventories*, which draws from the Australian Government's *National Inventory Report*, which is the nation's annual submission to the United Nations Framework Convention on Climate Change.

The Act establishes a greenhouse gas emissions reduction target to reduce Tasmania's emissions to at least 60 per cent below 1990 levels by 31 December 2050.

Together, the Act and the Regulations support Tasmania to address the challenges of climate change and contribute to the broader national and international efforts.

## Independent review

The Act requires an independent review of its operation every four years. The first review of the Act was completed in 2012 and Jacobs Australia Pty Ltd completed the most recent review in 2016.

The Act requires, under subsection 18(1), that the independent review address:

- the extent to which the objects of the Act are being achieved; and
- the extent to which any additional legislative measures are considered necessary to achieve the targets set by the Act within the periods contemplated by the Act.

In addition, the scope of the 2016 independent review included consideration of the appropriateness of Tasmania's current target to reduce greenhouse gas emissions by 60 per cent on 1990 levels by 2050, and how the Act could be strengthened to drive action on climate change.

In undertaking the independent review, Jacobs Australia consulted with the Tasmanian community including industry, non-government organisations, individual community members, and state and local government. Jacobs Australia released a discussion paper in June 2016, which received 20 written responses. The independent review also took into consideration the consultation and findings of the previous review in 2012 and the submissions to the draft of Tasmania's Climate Change Action Plan in 2016.

## Findings

The independent review made the following five recommendations for amending the Act:

1. Set a new aspirational long-term emissions reduction target of zero net greenhouse gas emissions by 2050;
2. Consolidate the objects of the Act around four themes;
3. Require Tasmanian Government agencies to consider the target, objects and proposed principles of the Act in relation to relevant decisions;
4. Include a set of principles to give greater effect to the target and objects of the Act, and provide a clear set of expectations for decision making on climate change; and
5. Continue to prepare a plan for mitigating and adapting to climate change, and make it a statutory requirement for the Tasmanian Government to have a climate change action plan.

The independent review also highlighted key considerations relevant to the Act and action on climate change in Tasmania more generally. These include:

- a need to take action across all sectors to reduce emissions; and
- using an adaptive management framework to inform climate change action.

## Tasmanian Government Response

In May 2017, the Tasmanian Government released its response to the independent review. In this response, the Tasmanian Government indicated its support for the recommendations from the 2016 review, noting that recommendations three and five were supported in-principle due to the need for additional consultation and analysis.

There have been a number of significant changes in the two years since the Review, most notably the release in February 2018 of the Australian Government's *State and Territory Greenhouse Gas Inventories 2016* (STGGI).

The STGGI showed that in 2016 Tasmania was the first jurisdiction in Australia to achieve zero net emissions, with total emissions of -0.01 mega-tonnes of carbon dioxide equivalent, which is a 100 per cent decrease from the 1990 baseline level.

This recent development has prompted the Tasmanian Government to undertake a comprehensive review of the State's future emissions trajectory to model the potential long-term trajectories and our ability to maintain our zero net emissions status.

A summary of the Tasmanian Government's proposed amendments to the Act in response to the recommendations of the independent review, and the 2016 STGGI, are summarised in Table 1.

Table 1. The Tasmanian Government's proposed amendments to the Act in response to the independent review and the 2016 STGGI.

Independent review recommendation	Proposed amendments to the Act	Rationale
1. Set a new aspirational long-term emissions reduction target of zero net greenhouse gas emissions by 2050.	Amend Section 5 – The State's 2050 target.	A new target consistent with the Paris Agreement for more ambitious emissions reductions efforts. Other state governments are also committing to more contemporary targets.
2. Consolidate the objects of the Act around four themes.	Amend Section 4 – Objects of Act – by replacing the existing 10 objects with four new objects.	To clarify the purpose and intent of the Act.
3. Require Tasmanian Government agencies to consider the target, objects and proposed principles of the Act in relation to relevant decisions.	Amend the Act to insert a new section stating that State agencies should consider the target, objects and proposed principles of the Act in relation to relevant decisions.	To ensure government decision making supports the 2050 emissions reduction target and manages climate change risks.
4. Include a set of principles to give greater effect to the target and objects of the Act, and provide a clear set of expectations for decision making on climate change.	Amend the Act to include a set of principles that provide a clear set of standards for decision making on climate change.	To provide guidance for decision makers and promote consistent decision making across government.
5. Continue to prepare a plan for mitigating and adapting to climate change, and make it a statutory requirement for the Tasmanian Government to have a climate change action plan.	No amendment to be made to the Act in response to this recommendation, recognising the Tasmanian Government's policy commitment to a climate change action plan through the release of Climate Action 21.	Maintaining a policy commitment reflects the flexible and long-term approach required to take action on climate change.

# PROPOSED AMENDMENTS TO THE ACT

## Zero net emissions by 2050

### Recommendation I

**That Tasmania set a new aspirational long-term emissions reduction target which is achievable and consistent with international ambitions to avoid dangerous climate change. Based on best available science, this target should be to achieve zero net greenhouse gas emissions by 2050.**

Under the Paris Agreement, zero net emissions will need to be reached during the second half of this Century if global warming is to be limited to below two degrees Celsius above pre-industrial levels. The Paris Agreement highlights the important role of sub-national governments in addressing the challenge of climate change.

Other jurisdictions have committed to a zero net emissions target by 2050 including New South Wales, Queensland, Victoria, the Australian Capital Territory and South Australia. This means that 80 per cent of Australia's emissions are subject to a zero net emissions target.

The Tasmanian Government is committed to supporting international efforts to meet this global challenge and limit our greenhouse gas emissions. Establishing a new long-term emissions reduction target reflects this commitment and aligns with the State's clean, green branding.

Tasmania's achievement of zero net emissions in 2016 is a significant milestone for the State and demonstrates the important role of states and regions in meeting the Paris Agreement to limit global warming to well below two degrees Celsius.

The Tasmanian Government is commissioning an emissions pathway review to explore the factors that are likely to influence the State's future emissions and model the potential long-term trajectories across different sectors of the economy and identify a likely timeframe for Tasmania to maintain its zero net emissions status, noting that there are many factors which will influence Tasmania's emissions pathway to 2050.

Factors that are likely to influence Tasmania's emissions profile over the coming years include changes to national and state government policies, advances in technologies, and changes to Tasmania's population and economic profile. Ongoing emissions reduction efforts will be required across different sectors of the economy to ensure zero net emissions is maintained.

### **Proposed amendment**

Amend Section 5 (The State's 2050 target) of the Act to establish a new long-term emissions reduction target consistent with international agreements. Given Tasmania achieved zero net emissions in 2016, the Tasmanian Government is commissioning an emissions pathway review to model the potential long-term trajectories across different sectors of the economy and maintain Tasmania's zero net emissions.

## Consolidate the objects of the Act

### Recommendation 2

That the objects of the Act are consolidated around four themes, to provide clarity on the purpose for having the legislation and a robust framework for evaluating its effectiveness, namely:

- targets and reporting;
- actions to reduce greenhouse gas emissions;
- adaptation to projected climate change; and
- complementarity with national and international climate change initiatives.

The objects of an Act are designed to provide the intended purpose of the legislation. In its current form, the Act has 10 objects (see Appendix 1) that cover multiple themes and, in some instances, similar themes are addressed in multiple objects. The independent review concluded that this contributes to a lack of clarity around the purpose of the Act.

The independent review recommended consolidating the objects of the Act around the four themes listed above, to provide greater clarity on the purpose for having the Act. The independent review noted that if the objects of the Act are restructured and simplified to focus on these four key themes, the rationale and narrative for action on climate change would be improved.

The Tasmanian Government, in response to the independent review, acknowledges the value of consolidating the objects of the Act.

### Proposed amendment

Amend Section 4 (Objects of Act) of the Act to replace the existing 10 objects with the following:

The objects of the Act are:

- a. to set a target to reduce greenhouse gas emissions in the State;
- b. to monitor, evaluate and report on progress made in relation to the target;
- c. to respond and adapt to the impacts and projected impacts of climate change; and
- d. to complement national and international climate change initiatives.

## Statutory requirement to have regard to climate change

### Recommendation 3

That the Act is amended to require State agencies and Departments to consider the target, objects and proposed principles of the Act in relation to relevant decisions. Specifically, decisions should consider:

- risks from climate change; and
- implications for the State's emissions and potential to achieve Tasmania's legislated emissions target.

The Tasmanian Government acknowledges the importance of considering climate change in relevant government decision making.

The Tasmanian Government notes that climate change is one of many considerations agencies should take into account when making decisions, alongside other factors such as community wellbeing and economic growth. Considering climate change as part of government decision making can have benefits, including:

- ensuring appropriate due diligence around government decision making is carried out;
- identifying potential risks climate change poses for a decision, policy, plan, strategy or program and ensuring those risks are appropriately managed; and
- considering the potential contributions to the State's emissions reduction target.

Considering climate change is particularly important for decision making around projects, policies and strategies with longer timeframes and implications.

There is growing recognition of climate-related risks and liabilities for organisations, partly as a result of increasing stakeholder demand for the identification, disclosure and management of climate change risks and opportunities, and a legal liability associated with failing to incorporate climate change in decision making.

Recent developments include:

- International credit ratings agencies, including Standard & Poor's and Moody's, are now factoring climate risk in to credit rating assessments;
- In 2017, the Australian Prudential Regulation Authority (APRA) announced that financial institutions need to consider climate risk as a financial risk and stress test their operations; and
- Work by the Centre for Policy Development, an Australian independent policy institute, suggests that company directors who ignore or mismanage climate-related risks could be held personally liable for breaching their legal duties under the *Corporations Act 2001* (Cth).

There are various ways to ensure climate change is considered in government decision making. The Department of Premier and Cabinet's Tasmanian Climate Change Office (TCCO) will work with Tasmanian Government agencies to determine the best way to support climate change consideration in decision making.

### Proposed amendment

Amend the Act to insert a new section stating that Tasmanian Government agencies should consider the target, objects and proposed principles of the Act in relation to relevant decisions.

## Principles to guide decision making

### Recommendation 4

That the Act is amended to include a set of principles to give greater effect to the target and objects of the Act and provide a set of expectations for decision making on climate change. These principles should give priority to:

- abatement in sectors and through initiatives where the greatest emission reductions can be cost-effectively achieved;
- opportunities that deliver social and economic benefits from Tasmania's position as a low carbon economy; and
- adaptation in areas with communities at greatest risk from the projected impacts of climate change.

The independent review found that the inclusion of principles in the Act would provide an appropriate framework for decision makers to consistently consider climate change in Tasmania.

The Tasmanian Government supports in principle including, within the Act, a set of principles to give greater effect to the target and objects of the Act. It is intended that the proposed principles, listed below, would:

- provide meaningful guidance for decision makers on what to consider when making decisions;
- promote consistent decision making across government;
- accommodate greater flexibility and responsiveness in decision making;
- facilitate a long-term strategic approach;
- set a clear standard for consideration of climate change in decision making; and
- support an adaptive management approach to action on climate change.

The principles below will be considered in decision making processes which includes decisions, policies, programs and processes.

### Proposed amendment

Amend the Act to include the following set of principles:

In seeking to give greater effect to the target and objects of this Act, and to set a clear standard for decision making on climate change, consideration should be given to the following principles:

- a) decision making processes take into account their possible contribution to Tasmania's greenhouse gas emissions reduction target;
- b) complementarity with national policies, programs, initiatives, standards or commitments relating to climate change is considered;
- c) decision making processes take into account the best available science and information about climate change and its potential impacts that are relevant to the decision, policy, program or process under consideration;
- d) the potential climate change risks associated with the decision, policy, program or process under consideration are assessed; and

- e) an adaptive management approach is desirable to allow for evaluation of the decision, policy, program or process and to encourage continual improvement.

## Climate Change Action Plan

### Recommendation 5

That the Government continue to prepare a plan for mitigating and adapting to climate change, and that the Act is amended to make the Climate Change Action Plan (CCAP) a statutory requirement. The CCAP should include a clear timeframe for preparation, implementation and evaluation that, wherever possible, follows the four-yearly parliamentary terms and legislative review cycle under the Act.

In developing the CCAP, the State should take account of the:

- long-term greenhouse gas emissions target under the Act;
- revised objects of the Act, and principles proposed for the Act;
- latest greenhouse gas accounts for the State, and best-available science on projected impacts of climate change on Tasmania; and
- evidence on the effectiveness of existing initiatives to mitigate and adapt to climate change.

Climate Action 21 was released in June 2017, demonstrating the Tasmanian Government's commitment to taking action on climate change. Climate Action 21 is the Tasmanian Government's \$3 million, five-year plan to ensure Tasmania continues to play its role in the global response to climate change. It reaffirms Tasmania's position of leadership in responding to climate change and leveraging off our natural strengths, particularly in the area of renewable energy development.

The independent review recommended consideration be given to incorporating an adaptive management framework to inform action on climate change. Through the release of Climate Action 21, the Tasmanian Government has put this consideration into action. Climate Action 21 is underpinned by an adaptive management framework and is informed by ongoing monitoring and evaluation.

In response to the independent review's recommendation that a climate change action plan should be a statutory requirement, the Tasmanian Government considers the ongoing preparation, implementation and evaluation of climate change action plans is better considered as a policy commitment rather than a statutory requirement.

Linking the preparation of a climate change action plan to the electoral cycle could prove difficult in practice. Under section 23 (Four year Parliaments) of the *Constitution Act 1934*, the Tasmanian House of Assembly expires every four years from an election. A four-yearly electoral cycle is not always guaranteed and could impede the ability to fully implement an action plan.

Furthermore, action on climate change is an ongoing and long-term issue, requiring long timeframes for results to be realised which extend beyond the electoral cycle timeframe. Maintaining a policy commitment to the preparation, implementation and evaluation of action plans reflects the long-term timeframes and flexibility required to respond to and plan for climate change.

### Proposed amendment

No amendment to be made to the Act in response to this recommendation, recognising the Tasmanian Government's policy commitment to a climate action plan through the release of Climate Action 21.

# YOUR FEEDBACK

## Submissions

The feedback received in response to the questions below will help inform the Tasmanian Government determine how the Act can be improved to ensure Tasmania continues to be a genuine leader in taking action on climate change.

Feedback is requested to be provided in writing by 7 November 2018, either by email or mail to:

Email: [climatechange@dpac.tas.gov.au](mailto:climatechange@dpac.tas.gov.au)

Post: Tasmanian Climate Change Office  
Department of Premier and Cabinet  
GPO Box 123  
HOBART TAS 7001

Please note that an additional opportunity for feedback will be available during the public consultation for the draft amendment Bill. For further information please visit the [TCCO website](#) or contact the Division on (03) 6232 7173.

Submissions will be published on the TCCO website. If you would like your submission to be kept confidential, please note this in your submission. No personal information other than your name or the organisation making a submission will be published.

We are committed to ensuring Government information is accessible and easily understood by people with diverse communication needs. Where possible, please write your submission in plain English.

## Questions

1. Do you support the proposed revised objects of the Act? If not, what other objects should be considered?
2. Do you support the proposed principles to guide decision making? Are there other principles that should be included? If so, why?
3. Do you have any other comments or suggestions relating to the proposed amendments to the Act?

# APPENDIX I

## Current objects of the Act

- a) To help Tasmania respond to the challenges of climate change by addressing issues associated with that phenomenon and, in particular, by providing for the setting of a target for the reduction of greenhouse gas emissions in the State as part of the national and international response to climate change.
- b) To promote a commitment to action on climate change issues in Tasmania by providing for the development of:
  - i. interim State targets for the reduction of greenhouse gas emissions in the State; and
  - ii. suitable targets and interim targets, having the same aim, for specific sectors of the State's economy.
- c) To help Tasmania take advantage of the new social, economic and environmental opportunities that climate change will present.
- d) To provide for reporting and Parliamentary oversight of progress being made towards achieving the State's 2050 target and other targets.
- e) To promote energy efficiency and conservation.
- f) To promote research and development in the development and use of technology for reducing or limiting greenhouse gas emissions or for dealing with, and adapting to, the expected consequences of climate change, including technology for removing greenhouse gases from the atmosphere.
- g) To promote and facilitate business and community consultation and early action on climate change issues.
- h) To identify, promote and support measures to help Tasmania deal with, and adapt to, the expected consequences of climate change.
- i) To promote a Tasmanian response to climate change issues that is as far as practicable consistent with national and international schemes addressing those issues, including any schemes for emissions trading and emissions reporting.
- j) To enhance Tasmania's willingness and capacity to contribute and respond, constructively and expeditiously, to national and international developments in climate change issues.

## Proposed objects of the Act

- a) To set a target to reduce greenhouse gas emissions in the State;
- b) To monitor, evaluate and report on progress made in relation to the target;
- c) To respond and adapt to the impacts and projected impacts of climate change; and
- d) To complement national and international climate change initiatives.



Tasmanian  
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