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using the law to protect the natural and built environment

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25 July 2016

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Dear Sophie,

Review of Climate Change (State Action) Act 2008

EDO Tasmania is a non-profit, community based legal service specialising in environmental and planning law. We appreciate the opportunity to make these brief comments on the review of the *Climate Change (State Action) Act 2008* (the **Act**).

EDO Tasmania welcomes this independent review and commends the consultants for the measured analysis provided in the Discussion Paper. In particular, we welcome the recognition of the essential role played by State and local governments in building community resilience, the acknowledgement that achievement of the current target "largely reflects changes in greenhouse gas accounting rules", and highlighting the risk that policies for significant population growth and reinvigoration of the forest industry may undone previous emission reduction gains.

Our submission on the draft Climate Change Action Plan ([attached](#)) canvassed many of the issues raised in the Discussion Paper and outlined a range of proposed legislative changes to improve the efficacy of both the Act, and its interrelationship with other statutory decision making processes. This submission will not restate the proposals made in the earlier submission, but will briefly address a number of the specific questions raised in the Discussion Paper.

- 2. How successful do you think the Act has been in influencing action on climate change within Tasmania?**
- 4. How do you think the Act can provide a narrative which helps to protect Tasmania's clean-green-liveable brand?**

As noted in the Discussion Paper, with the exception of LULUCF emissions, Tasmania's emissions profile has not markedly changed since 1990 – small gains in the waste and agricultural sectors have been offset by increased emissions from energy generation and industrial processes.

This indicates that the Act has had negligible influence over climate action. Recognition must be given to government efforts to improve energy efficiency, both in government workplaces and through energy efficiency support programmes for low income houses and a number of small businesses. However, most reductions since the introduction of the Act have been achieved in response to external economic factors, rather than driven by the targets set by the Act.

The introduction of the Act was a significant catalyst for internal government activities, such as efficiency audits and nominating Departmental climate champions. However, in the absence of more ambitious targets, complementary national policies, and better integration of climate considerations across government decision-making processes, this initial activity has waned.

Despite this, the Act plays an important role in keeping the government accountable for emissions reduction activities and ensuring accurate reports on Tasmania's emissions profile are available. This review presents opportunities to strengthen the Act to increase its influence on climate action and convert the rhetoric of 'clean and green' into genuinely world-leading activity.

Other States and Territories (particularly SA, Victoria and the ACT) are already making bold commitments to establish themselves as global leaders in renewable energy, and Tasmania would do well to follow their lead and re-establish its credentials in this field.

5. How important is it that the Act supports the achievement of national and international targets for climate change?

Irrespective of the source of emissions, the impacts of climate change will be felt globally. It is therefore critical that the Act be explicitly recognised as Tasmania's key instrument for contributing to national and global efforts to curb emissions and adapt to the impacts of a changing climate.

Equally, Tasmania's renewable energy capacity and extensive carbon sinks present opportunities for Tasmania to capitalise on national and international efforts by attracting businesses seeking to leverage an advantage from renewable energy use (whether through reduced power costs, or appealing to a broader customer base) or providing well-regulated carbon offsets (see below). Linkages to national and international targets will assist Tasmania to "sell" our emissions reduction capacity.

3. What amendments may the Act require to further drive action on climate change?

8. How can the Act facilitate action on climate change at State and local levels and among businesses and the broader Tasmanian community?

14. What do you consider might be appropriate principles to guide government decision-making which influences climate risks and greenhouse gas emissions?

As outlined in our attached submission, a key factor in improving the Act to drive further climate action is better integration of climate change considerations into a range of government decision-making processes. This can be achieved through:

- Re-establishing an independent climate advisory body
- Explicitly requiring consideration of climate change under a number of resource management and planning statutes
- Requiring agency climate plans, with 'carbon budgets' set annually for each agency and allocation of finances affected by whether or not an agency meets its budget
- Improving public reporting against emissions reduction targets so the public is able to determine how well government policies and business initiatives are working.

Climate advisory body

Part 1 of the 2012 review of the Act (the **Ramsay review**) commended the inaugural Tasmanian Climate Action Council (**TCAC** - established by the Act) for the range, volume and calibre of advice it provided to the Minister for Climate Change. The Ramsay review noted that TCAC's experience had shown climate change was rarely considered comprehensively, if at all, by government agencies without direct responsibility for climate assessments. The Ramsay review made a number of recommendations to allow TCAC advice to more strongly influence Ministers and agencies across Government through greater engagement.

The majority of recommendations were adopted, and the second term of TCAC saw delivery of a Blueprint for Climate Action, numerous engagement activities, biennial performance reports, targeted responses on key government activities, including development of Climate Smart Tasmania (and the supporting issues papers) and comments on climate-relevant instruments including the draft Coastal Policy, review of bushfire hazards assessment and the proposed moratorium on fracking. These activities served to improve climate awareness amongst government decision-makers and to hold such decision-makers to account.

The Climate Change Office undertakes an impressive range of work given its small staff, and we commend its situation within DPAC as an indicator of whole-of-government support. However, a strong, broad-based, independent advisory body can provide a range of different perspectives to government regarding policy proposals, on-ground feedback and community engagement, and increase the capacity of the Tasmanian Climate Change Office. As outlined below, such a body could also take on an advisory role in relation to the assessment of activities likely to impact, or be impacted by, climate change, and could review agency pledges as part of departmental climate action plans.

We strongly recommend that such a body be established.

Integrated decision making

We have previously advocated for amendments to the Act to adopt an approach similar to that of s.14 of the *Climate Change Act 2010* (Vic), requiring climate principles to be addressed in all listed decisions. Our attached submission highlights a range of decisions for which climate change impacts should be considered.

In Part 2 of the first review of the Act (the **SKM review**), the Department of Primary Industries, Parks, Water and Environment considered that its current legislation (primarily, the *Environmental Management and Pollution Control Act 1994*) and the general objectives of the Resource Management and Planning System adequately provided for climate considerations.

As noted above, the Ramsay review identified a concern that climate considerations were far from 'mainstream' in government decision making. This is consistent with our experience.

Evidence from local government planners appearing at the recent Commission hearings into the State Planning Provisions has consistently demonstrated that planners require an explicit head of power in order to be able to consider an issue such as climate change, and to refuse a development proposal on the basis of that consideration. Therefore, it is preferable for explicit climate principles to be introduced into the Act (or embedded across the suite of RMPS legislation, in the same manner as the existing sustainable development objectives), rather than relying on a broad interpretation of the existing objectives. There is also merit in establishing the climate advisory body as a referral agency to provide recommendations on development proposals likely to have climate consequences – the role of the referral agency would be akin to the EPA or the Heritage Council under the *Environmental Management and Pollution Control Act 1994* or *Historic Cultural Heritage Act 1995*.

We support the recommendation made in the SKM Review to explicitly include greenhouse gas emissions as a pollutant and waste product, and to embed the need to consider climate change in impact assessments carried out under s.74 of EMPCA.

The ongoing reform of the planning system also provides opportunities to better embed climate considerations in planning and development decisions. However, the draft State Planning Provisions do not take advantage of this opportunity – some minor exemptions are introduced to facilitate small scale wind energy projects and several Codes require risks TO a development from climate hazards to be considered in building siting and design, however very little has been included to require the impact OF a development on climate change to be considered, or to encourage public transport or integrated infrastructure planning.

We understand that the Planning Policy Unit has recently commenced a project to develop a series of planning policies to guide planning and decision-making across the State. This will be a welcome addition to the suite of planning tools (though would be most helpful if finalised before the State Planning Provisions). It will be critical for the suite of policies on population / settlement, coastal development, infrastructure and transport, to have regard to climate change impacts.

Agency climate plans

We support the approach adopted in the ACT, and proposed for Victoria, of setting departmental targets / pledges, to be reported against. We would support a climate advisory body reviewing pledges and targets to ensure they are both realistic and sufficiently ambitious to drive departmental change. To provide incentive, allocation of funding from the annual government budget should be influenced by how successfully an agency meets its pledges / targets.

Reporting

Progress against departmental targets should be transparently reported, generally through an agency's annual report.

Given the increasing adoption of "carbon budgets", and the proposed target of carbon neutrality by 2050, it may be more appropriate to report progress on the basis of how close we are to that goal (i.e. annual reports showing net emissions) rather than continuing to report against the 1990 baseline.

9. To what extent should Tasmania rely on LULUCF emissions to achieve its emissions reduction targets?

The emissions reduction attributable to the LULUCF sector to date has masked a lack of significant action in other sectors. Reliance on further LULUCF reductions will not be adequate to address climate change because:

- Various government policies may compromise the continued sequestration benefits – these include reinvigoration of the forest sector, biomass projects (in the absence of clear regulation of the source of biomass, such projects may encourage additional clearing), and the further deferral of the phasing out of broadscale clearing on private land.
- Increase bushfire risks reduce the sequestration security of existing carbon sinks
- There is still no “strong and transparent accounting framework to support the development of both offsets and biofuels opportunities for emission reductions opportunities”, as flagged in the SKM review.

Despite this, Tasmania’s forest and agricultural sectors will clearly continue to be critical to our climate change response. LULUCF emissions should continue to contribute towards reduction efforts, however:

- All accounting reports should clearly distinguish between total reduction and non-LULUCF reductions
- Reliance on offsets to achieve reductions should be capped for various sectors
- A rigorous offsets policy must be introduced – this may be developed as part of the suite of planning policies, but would benefit from a consistent, enforceable legislative scheme.

11. Should Tasmania’s targets account for emissions and abatement associated with its importation and export of electricity?

Yes. As stated above, the origin of emissions is ultimately irrelevant to the impact of climate change. Therefore, a system that accounts for importation and exportation will more accurately reflect Tasmania’s contribution to national and international emissions reduction efforts.

Explicit accounting for export and imports will also allow Tasmania to maintain awareness of our energy security (given the recent Basslink outage), and to more effectively market any excess renewable energy most effectively. Allowing exported renewable energy to contribute towards our targets may also provide incentives to increase renewable energy generation to such an extent as to allow for net-export by 2050.

12. What other types of emissions reduction targets should be considered?

Interim targets

Both the SKM review and the Discussion Paper note the significant changes in national policy that have occurred since the introduction of the Act. We believe that the volatility of national climate policy confirms the importance of strong, transparent State commitments regarding emissions reduction. At a recent National Environmental Law Association conference, Martijn Wilder, chair of the independent review of the Victorian Act, also emphasised the role of the States in providing the policy certainty currently lacking at the Federal level.

In his second reading speech when introducing the Act in August 2008, then Premier David Bartlett said:

Tasmania is only the second jurisdiction in Australia, following South Australia, to introduce legislated greenhouse gas emissions reduction targets. Tasmania’s legislation goes further than South Australia’s by setting out very clearly the path for establishing interim and sector-based targets, and establishing a clear process for monitoring progress towards, and reviewing, all of our targets.

...

Tasmania’s interim and sector-based targets will be set in 2009 when the results of the wedges analysis and the Garnaut Climate Change Review are known and when we will fully understand what the carbon pollution reduction scheme means for Tasmania.

While the circumstances have changed many times since then, the clear intent when the Act was introduced was to provide for interim targets to be set, based on the best available information, to measure progress towards the 2050 target. EDO Tasmania strongly supports the introduction of interim targets for this purpose.

A series of interim targets, set 10 years in advance, will provide business confidence, with sufficient flexibility to ensure that targets are achievable, consistent with national policy (to avoid duplication) and informed by the best available science.

Renewable energy target

The SKM review stated:

While Tasmania has an abundant renewable energy resource and this may be developed in the future, there is not an apparent market value or equity or benefit/cost basis for introducing a separate target for the renewable sector. As pointed out by stakeholders, the RET and carbon price already provide the incentive to develop renewable energy in Australia. From an efficiency of resource development perspective, these frameworks should drive the best outcomes from a national perspective.

The experience of the renewable energy sector since then has shown that reliance on national policy has not provided the anticipated certainty.

A recent Climate Council report, *Game On: The Australian Renewable Energy Race Heats Up*, assigned Tasmania a B grade, despite our State having a vastly higher percentage of stationary energy derived from renewable sources than other states. The key determining factors in this score were the lack of an explicit renewable energy target to drive investment and relatively low uptake of domestic scale solar. Even with our natural advantages, South Australia and the ACT have taken strong steps to encourage renewable energy investment in recent years. Victoria has also recently increased its targets, now aiming for 25% by 2020 and 40% by 2025.

We strongly support the introduction of a Tasmanian renewable energy target of 100% by 2050, as proposed in the draft Climate Action Plan and the Tasmanian Energy Policy. We also strongly support the aspiration of exceeding 100% and becoming a net exporter of renewable energy from at least 2050.

We are supportive of Hydro Tasmania's proposal to introduce rolling 5 yearly targets to account for annual fluctuations in supply.

If the government's policies for population growth and attracting energy intensive businesses are effective, significant new renewable energy capacity will be required to meet the 100% target. We urge the government to consider the use of reverse auctions, following the lead of the ACT and Victoria, to secure investment in innovative projects that will position Tasmania to meet increased demand (and, potentially, to export any excess).

Thank you for the opportunity to make these comments. If you would like to discuss or clarify anything in this submission, please do not hesitate to contact Jess Feehely on 6223 2770.

Kind regards,

EDO Tasmania



Jess Feehely
Principal Lawyer

Attach: EDO Tasmania submission on draft Climate Change Action Plan (March 2016)

EDO Tasmania thanks Catlin Buckerfield for her assistance in preparing this submission.