

28 April 2021

Submission to the Independent Review of the *Climate Change (State Action) Act 2008 (Tas)*

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**UTAS Student Environment
and Animal Law Society**

About the Student Environment and Animal Law Society

The Student Environment and Animal Law Society ('SEALS') is a group of law students studying at the University of Tasmania. The society is dedicated to using the law to protect the environment as well as animals, and it uses its collective voice to engage in issues of public concern and makes submissions to the government where necessary. The society aims to equip its members with the legal skills to make a difference in the fields of environmental and animal law. It achieves this aim through workshops, education, seminars and practical training.

Contributors

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Summary of Recommendations

SEALS appreciates the opportunity to comment on this review of Tasmania's *Climate Change (State Action) Act 2008* ('Act'). Our society welcomes this important and timely review. Tasmania has some of the most unique ecosystems in the world, and it has an opportunity to be a national, and global, leader on climate action. While Tasmania has reached its target of 0% net emissions before 2050 for the past four years, Tasmania should take leadership role in enacting a carbon-neutral target for all sectors of the economy by 2050, including interim and sectoral based targets, improving accountability of decision-making, and improving community participation under the *Act*.

This submission consists of three sections: mitigation, accountability and community participation. Each section includes recommendations based on the terms of reference of this review, the consultation paper, and the provisions of the *Act* (in particular, s 18(2) of the *Act* and pages 3-4 of the terms of reference).

1. Mitigation

SEALS recommends that the *Act* be amended to:

- 1.1. Include a target of **carbon neutrality in all sectors of the economy by 2050**,
- 1.2. Include an obligation to set and actively seek to achieve three-yearly **interim targets** which requires the Government to consult with independent experts at least once in a four-year term, and
- 1.3. Include mandatory **sectoral interim targets**.

2. Accountability

SEALS recommends that the *Act* be amended to:

- 2.1. Achieve **whole-of-government responsibility** for climate targets,
- 2.2. Reinststate an **independent body on climate change**, and
- 2.3. Establish either a new independent **Climate Commissioner** or a new statutory function of the **Tasmanian Ombudsman**.

3. Community Participation

SEALS recommends that the *Act* be amended to:

- 3.1. Ensure that the reinstated independent body on climate change includes statutorily mandated representatives from the **Tasmanian indigenous community** and the **Premier's Youth Advisory Council**, and
- 3.2. Require a **citizens' assembly** every ten years.

1. Mitigation

1.1. SEALS Recommends That the *Act* Be Amended to Include A Target of Carbon Neutrality in All Sectors of The Economy By 2050

Tasmania's current emissions reduction target is to reduce greenhouse gas emissions to 60% below 1990 levels by 31 December 2050. Tasmania has already reached its target of 0% net emissions before 2050 for the past four years, decades before the deadline. Therefore, a new, more ambitious target is needed to continue progressing the objects of the *Act*. The 2016 independent review of the *Act* recommended setting a target of net zero emissions by 2050. The Tasmanian Government accepted this recommendation and the target of net 0% emissions by 2050 was incorporated in the Tasmanian Government's Climate Change Action Plan (2017-2021). However, this existing target is not incorporated in the *Act*.¹

SEALS recommends the Tasmanian Government legislate a target for carbon neutrality in all sectors of the economy by 2050. This target will be enforceable and central to the task of responding to climate change. In addition, a statutory mechanism for researching, funding, and deploying carbon-negative approaches should be used whenever possible. Sector-based interim targets are discussed at 1.3.

1.1.1. Context

The Intergovernmental Panel on Climate change ('IPCC') states that the global community cannot meet its 1.5 or 2-degrees Celsius warming target without the rapid development of negative emission approaches.² Negative emissions, as understood by the IPCC, include practices or technologies that remove carbon dioxide from the atmosphere. This can be achieved by enhancing existing natural processes that remove carbon from the atmosphere.³ Tasmania, with its rich abundance of ocean and land, has an opportunity to produce a win/win outcome for the environment and the economy. By investing in blue carbon, reforestation, afforestation or habitat restoration, Tasmania can achieve 'negative emissions' and ensure it benefits from the expected future implementation of a national carbon market or emissions reduction scheme. SEALS submits that any reforestation efforts must not permit the continued destruction of old growth forests. Ancient trees store a significant amount of carbon and they cannot be replaced by young, monoculture tree plantations. Instead, reforestation and vegetation restoration should be carefully monitored and conducted in a manner that is consistent with a healthy, biologically diverse environment which preserves Tasmania's unique wilderness.

Tasmania was previously a forerunner in setting ambitious emissions targets, however, it has now fallen behind other Australian and international jurisdictions. Since the Tasmanian target was set in 2008, advancements in climate science have clarified the urgent need to reduce greenhouse gas emissions. When Tasmania adopted its target of 60% below 1990 emissions in 2008, it was the most ambitious target of its kind in Australia. This is no longer the case. While Tasmania has committed to net-zero by 2050, it has only done so in non-binding policy

¹ *Climate Change (State Action) Act 2008* (Tas) ('*Act*').

² 'What are Carbon Dioxide Removal and Negative Emissions?' *IPCC* (Webpage, 2021) 4.2 <<https://www.ipcc.ch/sr15/faq/faq-chapter-4/>>.

³ *Ibid.*

documents. In contrast, Victoria and the Australian Capital Territory have entrenched their net 0% emission targets in legislation.⁴

1.1.2. Key Considerations: Sector-based Targets to Counter LULUCF Dependency, and Considerations for Setting a New Target

Tasmania's ability to significantly reduce its emissions has been largely due to reductions in emissions from the land use, land use change, and forestry sector ('LULUCF'). However, this means that Tasmania's ability to continue achieving 0% net emissions, or becoming carbon-negative, is dependent on continued emission reductions in the LULUCF sector. Uncertainty in the LULUCF sector means that Tasmania's current emission levels are insecure. The LULUCF sector is subject to forest policy, forest product market conditions, and extreme weather events such as bushfires. The government should adopt a range of specific sector-based targets to ensure stability and security in carbon sequestration. In setting a more ambitious emissions target, the Tasmanian Government should consider the following factors:

- **Ambition:** is the target, in the context of Tasmania's economy, ambitious enough to drive carbon sequestration? Does it reflect the urgency of climate change impacts, and does it reflect community expectations?
- **Achievability:** is the target achievable, keeping in mind the urgency and importance of addressing climate change impacts in Tasmania, and globally?
- **Costs:** what are the short-term and long-term costs of the target? What opportunities and benefits are created by the target for Tasmania in the long-term?
- **Aligned with science:** does the target appropriately reflect the best available science?
- **Alignment with national and global developments:** is the target equivalent to, or more ambitious, than emission targets/budgets in comparable jurisdictions?

SEALS submits that the Tasmanian Government should consider the 'potential "Best-fit" emissions reduction opportunities for Tasmania', as provided in the 'Net zero emissions pathway options for Tasmania – Background Paper'.⁵

1.1.3. Emissions Target Conclusion

SEALS recommends that the Tasmanian Government should legislate a target for carbon neutrality in all sectors of the economy by 2050. Tasmania's already low level of emissions means this ambitious target is needed to drive carbon sequestration. The current target is not legislated, and it does not reflect Tasmania's brand as a 'clean and green island'. If the Tasmanian government enacted the proposed target of reaching negative emissions in all sectors of the economy by 2050 it would become a national and global leader and set an example for other jurisdictions. Further, the proposed target is robust and defensible as it aligns with climate science. SEALS acknowledges that this target requires significant investment, research and development to support businesses in their transition to a low-emissions economy, and that some stakeholders may see the target as difficult or costly. However, in the face of the urgent and dangerous climate crisis, SEALS submits the Tasmanian Government should take a leadership role in mitigating climate change impacts.

⁴ Jacobs, *Discussion Paper on Tasmania's Climate Change Act* (Discussion Paper, March 2021) 14, 16 ('2021 Jacobs Discussion Paper').

⁵ *Ibid.*

1.2. SEALS Recommends That the Act Include an Obligation to Set and Actively Seek to Achieve Three-Yearly Interim Targets Which Requires the Government to Consult with Independent Experts At Least Once in A Four-Year Term

1.2.1. Context

Interim targets provide clear guidance for businesses, convey a sense of urgency, and provide a more tangible goal for gauging climate action progress,⁶ and incentivising emissions reductions than purely a long-term target.⁷ Although s 7(c) of the *Act* provides that regulations ‘may prescribe interim state targets’, it does not create a binding obligation on the Tasmanian Government to do this and no interim targets are specified elsewhere in the *Act*. SEALS recommends the enactment of mandatory interim targets, including sectoral interim targets (discussed below). SEALS recommends that the targets themselves be set out in a separate, enforceable statutory instrument such as a Direction or Declaration, provided the process of setting targets is subject to consultation and scrutiny from Parliament. These additional legislative measures will provide greater certainty to the public and support the *Act* being achieved.

1.2.2. Illustrative Considerations for Setting Interim Targets

1.2.2.1. Victoria

The Victorian *Climate Change Act 2017* (*Victorian Act*) requires five-yearly interim targets to provide a ‘clear and compelling signal to community, investors and the economy regarding the need for sustained and significant climate change action’.⁸ Section 14 of the *Victorian Act* requires the Premier and the relevant Minister to consider a list of climate change related matters when determining interim emissions reduction targets. These matters include advice from one or more independent experts,⁹ who will factor in considerations including up-to-date climate science,¹⁰ economic circumstances including the competitiveness of particular economic sectors,¹¹ and social circumstances.¹² Section 14 of the *Victorian Act* provides that the Premier and the Minister ‘*must* have regard to’ (emphasis added) specified matters when determining interim emissions reduction targets. This includes a mandatory consideration that the interim target ‘constitutes a greater reduction in greenhouse gas emissions than any previous interim emissions reduction target’.¹³ SEALS submits that given Tasmania’s success in achieving net 0% emissions for the past four years, well ahead of the stipulated 2050 target, it should aim for a target for carbon neutrality in all sectors of the economy by 2050 driven by informed interim targets.

1.2.2.2. New Zealand And the United Kingdom

⁶ Environmental Defenders Office Tasmania, Submission, Parliament of Tasmania, *Independent Review of the Climate Change (State Action) Act 2008* (7 November 2018) 1 (*2018 EDO Submission*).

⁷ *2021 Jacobs Discussion Paper* (n 4) 16.

⁸ The State of Victoria Department of Environment, Land, Water and Planning, *Climate Change Act 2017: Emissions Reduction Targets* (Fact Sheet, 2017) 1.

⁹ *Climate Change Act 2017* (Vic) s 12(1) (*Victorian Act*).

¹⁰ *Ibid* s 12(3)(b).

¹¹ *Ibid* s 12(3)(d).

¹² *Ibid* s 12(3)(e).

¹³ *Ibid* s 14(2).

The New Zealand Parliamentary Commissioner for the Environment, Simon Upton, in a submission on the *Climate Change Response (Zero Carbon) Amendment Bill* which is now enacted into law (*New Zealand Zero Carbon Act*), stated that the timing of interim targets needs to be protected from the ‘short-term ebb and flow of politics’.¹⁴ A method to protect interim targets from ‘short-term’ politics is to enact a timeline which requires each government to consider interim emissions targets at least once during their parliamentary term.

The United Kingdom *Climate Change Act 2008* sets both long-term and short-term targets, which provides ‘clear long-term direction of travel and short-term milestones that are meaningful over the planning horizon of decision-makers’.¹⁵ However, as Upton argues, based on evidence from UK officials, a five-year gap between policy reviews is too long, as it requires the process to be started afresh every time there is a review.¹⁶

1.2.3. Interim Targets Conclusion

SEALS submits that the Tasmania Government should enact a provision in the *Act* which requires new interim targets to be set every three years, as well as specific provisions that make expert advice for setting targets a mandatory consideration. Furthermore, these provisions should ensure that each new interim target requires a greater reduction in greenhouse gas emissions, or % of sequestration, than previous interim targets (similar to s 14(2) of the *Victorian Act*).

1.3. SEALS Recommends That the *Act* Be Amended to Include Mandatory Sectoral Interim Targets

SEALS submits that the Tasmanian Government should enact sectoral interim targets for all sectors contributing to greenhouse gas emissions in Tasmania, with incentives and enforcement action for high emission sectors. This will assist Tasmania reaching a legislated target of carbon neutrality for all sectors of the economy by 2050. As stated by the Environmental Defenders Office (‘EDO’) ‘sector-specific reduction targets... ensure that all areas are contributing to emissions reduction (rather than continued reliance on reductions through carbon sequestration in the forest sector)’.¹⁷

Tasmania needs strong legislated sectoral interim targets because net emissions have declined mainly as a result of ‘reductions in native forest harvesting’.¹⁸ Heavy reliance on changed behaviour solely in the LULUCF sector for emissions reductions is not a sustainable long-term strategy. This is demonstrated by the fact that the ‘main contributor to [the increase in

¹⁴ Parliamentary Commissioner for the Environment, Submission to the Environment Committee, Parliament of New Zealand, *Climate Change Response (Zero Carbon) Amendment Bill* (July 2019) 10 (‘NZ Commissioner Submission’); *Climate Change Response (Zero Carbon) Amendment Act 2019* (New Zealand) s 5N (‘New Zealand Zero Carbon Act’).

¹⁵ Alina Averchenkova et al, ‘The Impact of Strategic Climate Legislation: evidence from expert interviews on the UK Climate Change Act’ (2020) 21(2) *Climate Policy* 251-263, [5].

¹⁶ NZ Commissioner Submission (n 14) 10.

¹⁷ Environmental Defenders Office Tasmania, Submission, Parliament of Tasmania, *Independent Review of the Climate Action Plan 2016-2021* (25 March 2016) 4 (‘2016 EDO Submission’).

¹⁸ ‘State and territory greenhouse gas inventories: annual emissions’ *Australian Government Department of Industry, Science, Energy and Resources* (Web Page, 2019) <<https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/state-and-territory-greenhouse-gas-inventories-annual-emissions>>.

Tasmania's emissions between 2016-17] was the LULUCF sector, with lower rates of sequestration and re-growth in previously harvested native forests and plantations.¹⁹

For example, the latest figures published in the *State and Territory Greenhouse Gas Inventories: 2019* demonstrate that between 1990-2019, Tasmania's emissions from the energy and industrial sectors have increased by 4.9% and 19.5% respectively. The energy and industrial sectors are therefore priority sectors for sectoral interim targets, as without mandated interim targets, reductions achieved in the LULUCF sector will be undermined. SEALS recommends that in the process of setting sectoral targets the Government should include incentives for sectoral compliance.

1.3.1. Sectoral Targets Conclusion

As stated by Dr John Hunter,²⁰ although LULUCF emissions have reduced, reaching negative nine megatons per year, Tasmania's gross emissions have barely changed, owing to uncontrolled (and growing) emissions in other sectors. Further, as stated by Hannah Ritchie and Max Roser, to work out how to efficiently reduce emissions, 'and what emissions can and cannot be eliminated with current technologies, we need to first understand where our emissions come from'.²¹ SEALS recommends that the Tasmanian Government be proactive in regulating emissions from all sectors using interim sectoral targets.

2. Accountability

2.1. SEALS Recommends That the *Act* Be Amended to Achieve Whole-of-Government Responsibility for Climate Targets

At present the only accountability mechanism in the *Act* is a requirement for a statutory review every four years.²² As stated by EDO 'the most critical failure of the existing legislation is its failure to implement a consistent, integrated framework for consideration of climate change issues in government decision-making'.²³ Further, the EDO states that 'it is essential that decisions made within the planning system are empowered and required to take into account climate change impacts'.²⁴ Integrated decision-making would require Tasmanian Government agencies to consider the target/s and objects of the *Act* when making decisions under relevant legislation.

SEALS recommends that incorporating an integrated decision-making provision into the *Act* is preferable to implementing separate provisions in different pieces of legislation because it would impose a clear, consistent and general obligation on public officials to turn their mind

¹⁹ 'Tasmanian Greenhouse Gas Emissions Report' *Department of Premier and Cabinet* (Web Page, 2021) 10 <http://www.dpac.tas.gov.au/__data/assets/pdf_file/0005/473774/Tasmanian_Greenhouse_Gas_Emissions_Report_2017.pdf>.

²⁰ 'Is Tasmania really a world leader in climate action?' *Climate Tasmania* (Web Page, 31 July 2020) <<https://www.climate Tasmania.org/is-tasmania-really-a-climate-leader/#more-2166>>.

²¹ 'Emissions by sector' *Our World Data* (Web Page, 2019) <<https://ourworldindata.org/emissions-by-sector>>.

²² *Act* (n 1) s 18(1).

²³ Environmental Defenders Office Tasmania, Submission, Parliament of Tasmania, *Independent Review of the Climate Change (State Action) Act 2008* (8 August 2012) 2 ('2012 EDO Submission').

²⁴ *Ibid*.

to climate considerations when making climate related decisions. Further, it would provide an effective mechanism for ‘mainstreaming’ adaptation and mitigation considerations, without the need for Parliament to employ time and resources to conduct major reviews or reforms.

SEALS recommends that the Tasmanian Government statutorily require (similar to s 14 of the *Victorian Act*) that decisions made under relevant legislation are made with regard to the following matters:²⁵

- The objects of the *Act*,
- The potential risks of climate change,
- The potential for mitigating climate impacts,
- The implications for Tasmania’s greenhouse gas emissions, and
- The potential for Tasmania to achieve its legislated target of carbon negative by 2035, interim targets, and sectoral targets.

For the purpose of integrated decision-making, ‘relevant legislation’ includes, but is not limited to: the *Land Use Planning and Approvals Act 1993*, *Major Infrastructure Development Approvals Act 1997*, *Water Management Act 1999*, *Threatened Species Protection Act 1995*, *Environmental Management and Pollution Control Act 1994* and the *Forest Practices Act 1985*.²⁶

2.1.1. Integrated Decision-Making Conclusion

SEALS recommends that the *Act* be amended to incorporate mandatory integrated decision-making. In addition, SEALS recommends a review of relevant legislation to ensure that other statutes are consistent with the *Act*.²⁷ As found in the first review of the *Act*, ‘better integration of climate change considerations across government decision-making... [is] an opportunity to spread ownership and minimise the risk of locking in undesirable levels of greenhouse gas emissions’.²⁸ Further, mandatory integrated decision-making may assist decision-makers when there is a conflict between the *Act* and other policies,²⁹ for example, to resolve potential conflict between target/s and objects of the *Act* and Government policies to assist population growth and the forestry industry.³⁰

The *Act* should also mandate that where a government official makes a decision under relevant legislation that does not conform with the target/s and objects of the *Act*, they must provide reasons for the deviation in order to improve accountability. This could function similarly to ss 31(1), (3) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) which prescribes that if a Bill does not meet the standards of the Charter, the Minister who introduces the Bill with an ‘override declaration’ must explain the exceptional circumstances which justify the inclusion of such a declaration.

2.2. SEALS Recommends That the *Act* be Amended to Reinstate an Independent Body on Climate Change

²⁵ Jacobs, *Final Report of the Independent Review of the Climate Change (State Action) Act 2008* (October 2016) 9 (‘2016 Final Report’).

²⁶ 2012 EDO Submission (n 23) 3.

²⁷ Ibid 2.

²⁸ 2016 Final Report (n 25) 3.

²⁹ Ibid 9.

³⁰ Ibid.

At present, there is a ‘Tasmanian Climate Change Office’ (TCCO) which operates as a division of the Department of Premier and Cabinet. However, the TCCO is insufficient as it is not independent from the government and it is poorly resourced. The independent statutory advisory body, the ‘Tasmanian Climate Action Council’ (‘TCAC’), was abolished by the Tasmanian government in 2014. Prior to being abolished, the TCAC’s role was to provide the Minister with independent advice on climate change issues.³¹

The Tasmanian Government claimed that the abolition of the TCAC was due to budget restrictions. However, a new, independent statutory body should be reinstated given the cost of the TCAC in 2013-14 amounted to the reasonable sum of \$152,000 for all nine members and expenses.³² Former members of TCAC and new members reformed as ‘Climate Tasmania’ in 2014, with the aim to ‘provide timely, independent and authoritative advice to Tasmanian business, government and community leaders on climate change and appropriate policy responses’.³³ However, Climate Tasmania has no legal status, legislative functions, protections, or funding. A skilled independent advisory body entrenched in statute would assist in achieving the objectives of the *Act* by consulting with experts, business and the community, thereby reducing overall costs on Government.

The United Kingdom ‘Committee on Climate Change (CCC)’ was established over ten years ago, in 2008.³⁴ As stated by Averchenkova et al, ‘long-term predictability can be strengthened by delegating responsibilities for climate policy away from politicians to independent bodies tasked with policy assessment and/or implementation’.³⁵ Further, ‘an independent institution, led by technical experts, may be better equipped to take a long-term view than politicians’.³⁶ People have described the CCC as ‘an incredibly powerful voice’ and a body which introduced ‘a new degree of analytical honesty and rigour.’³⁷ Further, Dr Jan Wright, a former Commissioner of New Zealand’s ‘Climate Change Commission’, stated that ‘climate change is the ultimate intergenerational issue, and governments change.’³⁸ Further, as noted by the current Commissioner, Simon Upton, it is important that the Commission avoids being ‘caught up in an endless cycle of reporting’.³⁹

2.2.1. Reinstating an Independent Statutory Body Conclusion

SEALS adopts Climate Tasmania’s proposal that a statutorily mandated independent body should be re-inserted into the *Act* called the ‘Committee on Climate Change’, and it should be made up of the present members ‘Climate Tasmania’.⁴⁰ The *Act* should require that the

³¹ *Climate Change (State Action) Act 2008* (Tas), repealed Division 3 s 12, (‘*Climate Change Act*’).

³² Peter Boyer, ‘Talking Point: Dedicated group of volunteers rises from the ashes of TCAC’ *The Mercury* (Webpage, December 9 2014).

³³ ‘A National Climate Change Act’ *Climate Tasmania* (Webpage, 1 March 2021) <<https://www.climatetasmania.org/a-national-climate-change-act/>>.

³⁴ Alina Averchenkova et al, ‘The Impact of Strategic Climate Legislation: evidence from expert interviews on the UK Climate Change Act’ (2020) 21(2) *Climate Policy* 251-263, [1].

³⁵ *Ibid* [3.1]

³⁶ *Ibid* [3.3]

³⁷ *Ibid* [4.3]

³⁸ *NZ Commissioner Submission* (n 14) 1.

³⁹ *Ibid* 2.

⁴⁰ ‘Drafting Instructions: Climate Change Act’ *Climate Tasmania* (Web page, 18 September 2019) <https://www.climatetasmania.org/wp-content/uploads/Drafting-instructions_-_Climate-Change-Bill-V1-18-Sep-19.pdf> (‘*Climate Tasmania Drafting Instructions*’).

Tasmanian Government engage with and refer to advice provided by the Committee on Climate Change in decision-making. Functions of the independent body could be based on the ‘Committee on Climate Change’ (CCC) in the United Kingdom, and the ‘Climate Change Commission’ in New Zealand. Further, SEALS recommends the TCCO should continue monitoring and reporting on Tasmania’s greenhouse gas emissions, and the Government should implement Climate Tasmania’s recommendation that a new ‘Energy Transition Authority’ be enacted, to achieve a fair and equitable transition from fossil fuels to renewable energies.

The Committee on Climate Change should be adequately funded and staffed by experts as suggested by Climate Tasmania.⁴¹ Further, the role of the new Committee on Climate Change should be to provide formal advice on emissions targets (every 3 years),⁴² and to report to parliament with Tasmanian climate change risk assessments (every 6 years).⁴³ The *Act* should also mandate that if a government officer makes a decision that does not conform with advice or recommendations provided by the new Committee on Climate Change, they must justify their decision.

2.3. SEALS Recommends That the *Act* Be Amended to Establish Either A New Independent Climate Commissioner or A New Statutory Function of The Tasmanian Ombudsman

SEALS recommends that the *Act* be amended to create the position of ‘Commissioner’ to report to the Tasmanian Premier on Government processes, and to hold the Government to account on whether targets have been reached, or are on track to be reached.⁴⁴ The Commissioner’s functions could be based on the New Zealand ‘Parliamentary Commissioner for the Environment’,⁴⁵ and the statute should prescribe that the advice provided to the Government by the Commissioner must be independent and evidence-based, as required by the *New Zealand Zero Carbon Act*.⁴⁶ The role of the Commissioner in New Zealand demonstrates the importance of an unbiased and independent outlook on Government action.

In the alternative, the *Act* should be amended to require the Tasmanian Ombudsman to fulfil this role as one of its statutory functions. The Ombudsman acts impartially of the Government to improve the standard of public administration.⁴⁷ The role of the new Commissioner or the Ombudsman should include a statutory mandate to review whether intragenerational and intergenerational equity is being achieved under the *Act*.

⁴¹ Ibid.

⁴² *NZ Commissioner Submission* (n 14) 10.

⁴³ ‘First national climate change risk assessment for New Zealand’ *Ministry for the Environment* (Web page, April 2021) <<https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/adapting-to-climate-change/first-national-climate-change-risk-assessment-for-new-zealand/#:~:text=The%20Climate%20Change%20Response%20>>.

⁴⁴ ‘Advice to Government’, *Parliamentary Commissioner for the Environment* (Web Page, 2021) <<https://www.climatecommission.govt.nz/our-work/advice-to-government-topic/>>.

⁴⁵ ‘Our Purpose’, *Climate Change Commission* (Web Page, 2021) <<https://www.climatecommission.govt.nz/who-we-are/our-purpose/>>.

⁴⁶ *New Zealand Zero Carbon Act* (n 14) s 5N.

⁴⁷ ‘About Us’ *Ombudsman Tasmania* (Web page 2021) <https://www.ombudsman.tas.gov.au/about-us#:~:text=Our%20role,are%20lawful%2C%20reasonable%20and%20fair>>.

In addition to the *Act* being amended to create a new Commissioner, or a new statutory function of the Tasmanian Ombudsman, the *Act* should be amended to require all executive integrity bodies to have a climate change portfolio. Further, to improve accountability the Premier should be statutorily required to justify decisions under relevant legislation which are contrary to recommendations or advice from the Commissioner or the Ombudsman.

3. Community Participation

3.1. SEALS Recommends That the *Act* Should be Amended to Ensure That the Reinstated Independent Body on Climate Change Includes Statutorily Mandated Representatives from The Tasmanian Indigenous Community and The Premier's Youth Advisory Council

Community engagement and participation are crucial to effective climate legislation. As climate change is an issue that people care deeply about, communities must be able to meaningfully participate and engage in the decision-making process. Community engagement is a central feature of climate legislation, both nationally, and internationally. Both the *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT) and the *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA) mandate the operation of a Climate Change Council.⁴⁸ Under both Acts, the relevant Council consists of up to ten representatives from different sectors of the society. The Councils provide advice to the relevant Minister about the impact of climate change on all sectors of the community. The use of a Council incorporating community views is a key mechanism for ensuring community engagement. This principle should be reflected in Tasmania's *Act*.

The TCAC previously provided a mechanism for engaging members of the Tasmanian community and incorporating views from a diverse range of sectors. However, the abolition of the TCAC has resulted in limited opportunities for public participation. The *Act* does not include any provisions requiring public consultation in the decision-making process, apart from s 18(3) of the *Act* which requires the Minister to consult with 'relevant business, scientific, environment and community bodies' at each four yearly review.⁴⁹ Section 4(g) of the *Act* states that a central object is to 'promote and facilitate business and community consultation and early action on climate change issues'.⁵⁰ Due to a lack of statutory mechanisms, the *Act* is not achieving this object. As stated in part 2.2 of this submission, an independent body on climate change should be reinstated to increase community engagement.

3.1.1. Indigenous Representation

The Committee on Climate Change should provide a mechanism for participation from First Nations Peoples. The First Nations community has a special connection to the land, and it is important that this connection is honoured and substantively recognised by the reinstated independent body. First Nations cultural heritage is particularly vulnerable to the adverse effects of climate change, such as rising sea levels, and the increased likelihood of severe weather events.

⁴⁸ *Climate Change and Greenhouse Gas Reduction Act 2010* (ACT); *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA).

⁴⁹ *Act* (n 1) s 18(3).

⁵⁰ *Ibid* s 4(g).

The inclusion of First Nations peoples is evident in climate change legislation internationally and, in particular, in the *New Zealand Zero Carbon Act*. This *Act* states that expressions of interest from organisations representing Indigenous peoples must be considered for membership.⁵¹ While this is an inclusive step, SEALS recommends that the Tasmanian Government provide for direct First Nations representation in the reinstated independent body under the *Act*. This reform would be a significant step to ensuring that First Nations peoples have adequate representation and participation in decision-making.

Further, while it is crucial that the reinstated independent body includes specific First Nations' representation, it is also important that the body takes steps towards developing a collective understanding of First Nations culture, custom and practices, specifically the spiritual connection First Nations peoples have to the land and the ways in which climate change can and will impact the land. This idea of collective understanding is also reflected in the *New Zealand Zero Carbon Act*, where decision-makers are required to have a collective understanding of Indigenous customs.⁵²

SEALS recommends that the new independent body under the *Act* includes a voice from First Nations people through membership to ensure that members have sufficient knowledge and understanding of First Nations culture and practices, and to ensure inclusive engagement with, and representation from, their communities.

3.1.2. Youth Representation

It is also important that young people are represented in climate change related decisions. The principle of intergenerational equality is a central element of ecologically sustainable development, as articulated in s 2 of the *Environmental Management and Pollution Control Act 1994* (Tas) and as evident within the national environmental framework (*Environment Protection and Biodiversity Conservation Act 1999*). This principle should be reflected in Tasmania's *Act*. It is important that younger generations are considered and represented in the decision-making framework of the *Act* as the implications of climate change will have the largest impact on future generations. It is clear from recent movements, such as 'School Strike 4 Climate', that young people need to have a voice in climate change decision-making.⁵³ Organizations such as the United Nations have recognized the important role of young people in climate related decision-making and SEALS recommends that the Tasmanian Government also recognise the importance of young people.⁵⁴

SEALS recommends that the reinstated independent statutory body should have a representative from the Premier's Youth Advisory Council, or another suitable student representative under the age of 25. This will assist the *Act* in upholding the principle of intergenerational equality and it will ensure that younger generations are represented and involved in decision-making about climate change in Tasmania.

3.1.3. Statutorily Required Community Participation Conclusion

⁵¹ *New Zealand Zero Carbon Act* (n 14) s 5G.

⁵² *Ibid* s 5H.

⁵³ United Nations Joint Framework Initiative on Children, Youth and Climate Change, 'Youth and Climate Change', *United Nations* (2013)

<<https://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-climatechange.pdf>>.

⁵⁴ *Ibid*.

SEALS recommends that the reinstated independent body require mandatory representation from the First Nations community and the Tasmanian youth population to ensure that s 4(g) of the *Act* is upheld. This would improve consistency with other state legislation as it would reflect the mechanisms of community engagement in the ACT and South Australian Acts. Furthermore, even if the Tasmanian Government chooses not to reinstate an independent body, SEALS submits that it should nevertheless ensure that the *Act* requires the mandatory consultation of both First Nation and young people in decision-making.

3.2. SEALS Recommends That the *Act* be Amended to Require A Citizens’ Assembly every ten years

In order to ensure broad community engagement, SEALS recommends that the *Act* include a statutory obligation to conduct a ‘citizens’ assembly’ every ten years. A ‘citizens’ assembly’ or ‘citizen parliament’ is ‘a representative group of members of the public who come together to learn about and debate issues and come to conclusions on the best solutions’.⁵⁵ This mechanism is becoming increasingly prominent globally, as demonstrated by citizens’ assemblies in the United Kingdom, and Scotland.⁵⁶ A citizens’ assembly can provide an effective means for a community to engage in important issues and to provide timely and wide-ranging advice to their government representatives.

3.2.1. Citizen’s Assembly Conclusion

SEALS recommends that a citizens’ assembly be statutorily mandated to take place every ten years, to be coordinated by the reinstated independent statutory body on climate change. The citizens’ assembly should have an open-ended mandate on climate change, with a focus on facilitating community discussion and disseminating key information about climate impacts. On completion of the citizens’ assembly the independent body should provide a report detailing the outcomes of the assembly and its recommendations to the public and the Tasmanian Government. Further, SEALS recommends the enactment of a provision in the *Act* which requires the Minister to ‘consider and respond to’ advice obtained from the citizens’ assembly. A citizens’ assembly will fulfil the object in s 4(g) of the *Act* as it will improve consultation with, and participation from, all members of the Tasmanian community. In the alternative, the requirement to hold a citizens’ assembly once every ten years should be contained in Tasmania’s Climate Action Plan.

⁵⁵ Damian Carrington, ‘UK citizens’ assembly on climate emergency announced’ *The Guardian* (20 July 2019).

⁵⁶ See Scotland’s Climate Assembly, *Interim Report* (March 2021) <<https://www.climateassembly.scot/sites/default/files/inline-files/SCA%20APS%20Interim%20Report.pdf>>.