



Environmental
Defenders Office

**Submission on the draft Climate Change (State Action)
Amendment Bill 2021 (Tas)**

16 November 2021

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

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Executive Summary

EDO has extensive experience across Australia in providing legal advice on climate and energy policy and law reform at the national, State and Territory levels.

Earlier this year, EDO provided a detailed submission¹ to the third independent review (the **Independent Review**) of the *Climate Change (State Action) Act 2008* (Tas) (the **Act**). EDO congratulates the consultancy Jacobs for the thorough community engagement in the Independent Review process and welcomes many of the Independent Review recommendations.²

The Government has committed to implement all of the Independent Review recommendations, either in full or in principle.³ This includes commitments to amend the Act to include a target of net zero greenhouse gas (**GHG**) emissions by 2030, and to require regular development of climate risk assessments and climate action plans.⁴ These commitments are, in turn, reflected in the draft Climate Change (State Action) Amendment Bill 2021 (the **draft Bill**) currently out for public consultation. However, it is noteworthy that the draft Bill has failed to incorporate the following key recommendations of the Independent Review:

- (a) Recommendation 3 - to amend the Act to include a set of principles to ensure that climate action is taken in accordance with the principles of sustainability and social equity; transparency and accountability; science; integrated decision-making; risk management; community engagement; and complementarity;⁵ and
- (b) Recommendation 4 - to amend the Act to require consideration of climate change targets and adaptation plans in relevant Government policy-making.⁶

At the very minimum, the draft Bill should be changed to incorporate these recommendations. The draft Bill should also be amended to properly reflect the full extent of the recommendations of the Independent Review that the Government committed to adopt.⁷ However, consistent with our submission to the Independent Review, EDO considers that the reform to the Act can and must go much further.

As the community consultation on the draft Bill was in progress, talks were underway in Glasgow for the 26th conference of the parties to the United Nations Framework Convention on Climate Change (**COP26**). It was said that COP26 represents humanity's "last best hope" to halt runaway

¹ EDO's Submission to the Independent Review of the Act dated 29 April 2021 can be accessed here: <https://www.edo.org.au/publication/submission-to-the-independent-review-of-the-climate-change-state-actions-act-2008-tas/>

² See Jacobs (2021) *Independent Review of the Climate Change (State Action) Act 2008: Final Report (Independent Review)* from p 69, accessed at: https://www.dpac.tas.gov.au/_data/assets/pdf_file/0008/586403/Independent_Review_of_the_Climate_Change_State_Action_Act_2008_-_Final_Report_2021.PDF

³ Tasmanian Climate Change Office, Department of Premier and Cabinet (2021) *Independent Review of the Climate Change (State Action) Act 2008: Tasmanian Government Response 2021*, at p 11 (**Response to Independent Review**) accessed at: https://www.dpac.tas.gov.au/_data/assets/pdf_file/0004/591520/1735_DPAC_TCCO_Response_to_Independent_Review_Draft_12.pdf.

⁴ Ibid at pp 11, 15 and 16.

⁵ Independent Review, Recommendation 3, at p 70.

⁶ Independent Review, Recommendation 4, at p 70.

⁷ Refer to **Appendix 1** of this submission for a detailed outline of the Independent Review recommendations that EDO recommends be incorporated into the draft Bill.

global heating and keep the world to the Paris Agreement target of 1.5° C above pre-industrial levels.⁸ Regrettably, Australia’s contributions to both the COP26 talks and to climate action has been clearly inadequate and incompatible with achieving the critical temperature goal of limiting increases to 1.5° C.⁹

The Black Summer fires provided a devastating vision of the reality of a rapidly heating planet. The latest contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) emphasised that with “every additional increment of global warming, changes in extremes, continue to become larger”, resulting in increased bushfire weather, floods, droughts, sea-level rise and heatwaves.¹⁰ Even a slight rise in global heating above 1.5° C above pre-industrial levels represents an existential threat to entire nations. There is now no doubt, that in order to avoid even worse impacts of climate change, there is urgent need for governments to set targets, but more importantly, to take action to substantially reduce our GHG emissions within the next decade.¹¹

Despite the overwhelming science and economic arguments weighing in favour of taking action now, the Australian Government has failed to respond to the climate crisis with the seriousness and urgency it deserves. The vague and uncertain “plan” produced by the Australian Government does not commit to any 2030 GHG emissions reductions targets, and entirely relies on the voluntary uptake of new or emerging technologies, such as the unproven technology of carbon capture and storage, to reduce Australia’s GHG emissions to below zero by 2050.¹²

Given the failure by the Australian Government to show leadership and take responsibility for Australia’s inequitable contribution to global warming,¹³ it is clear that it will be necessary for State and Territory governments to take the lead and set the pace for rapid climate action over the next decade and beyond.

Tasmania is in the prime position to lead Australia’s efforts in responding to climate change. In this context, EDO welcomes the opportunity to provide the following detailed submission in response to the draft Bill. A summary of our recommendations can be found below.

⁸ BBC News, 19 October 2021, *John Kerry says Glasgow COP26 is the last best hope for the world*, accessed at: <https://www.bbc.com/news/uk-scotland-58914524>

⁹ Australia is amongst the lowest ranking countries for GHG emissions, renewable energy, energy use, and climate policy, with its overall position in the Climate Change Performance Index slipping four places to 58th this year: see Burck *et al* (2021) *Climate Change Performance Index 2022*, Germanwatch, New Climate Institute & Climate Action Network, at p 7, accessed at : https://ccpi.org/wp-content/uploads/CCPI-2022-Results_2021-11-10_A4.pdf

¹⁰ IPCC, 2021: *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Cambridge University Press, at B.2.2 and C.2.4 accessed at <https://www.ipcc.ch/report/ar6/wg1/#SPM>. See also the IPCC *Sixth Assessment Report Regional Factsheet - Australasia*: https://www.ipcc.ch/report/ar6/wg1/downloads/factsheets/IPCC_AR6_WGI_Regional_Fact_Sheet_Australasia.pdf

¹¹ Climate Council (2021) *Aim High, Go Fast: Why emissions need to plummet this decade*, Climate Council, accessed at: <https://www.climatecouncil.org.au/resources/net-zero-emissions-plummet-decade/>

¹² Australian Government (2021) *Australia’s Long Term Emissions Reduction Plan*, accessed at <https://www.industry.gov.au/data-and-publications/australias-long-term-emissions-reduction-plan>

¹³ Australia has some of the highest per capita emissions in the world, being 3 times over the global average, higher than both the United States and Canada and over 160 times higher than Mali: See Hannah Ritchie and Max Roser (2020) *CO₂ and Greenhouse Gas Emissions*, accessed at <https://ourworldindata.org/co2-emissions>

Summary of recommendations

Recommendation 1: Tasmania's net zero (or lower) greenhouse gas emissions reduction target in the proposed new section 5(1) of the Act to be from 1 January 2022.

Recommendation 2: The draft Bill should incorporate a requirement for specific sector-based emissions reduction targets to be developed by 2022 to ensure that total GHG emissions are reduced to the greatest extent practicable.

Recommendation 3: Include in the draft Bill how Tasmania's GHG emissions removals will be measured for the purposes of Tasmania's net zero (or lower) emissions reduction target, and ensure that this methodology is consistent with IPCC GHG accounting guidelines.

Recommendation 4: The proposed new section 4 of the Act include the following objects:

- (a) To commit Tasmania to taking action consistent with limiting the increase in global heating to no more than 1.5°C above pre-industrial levels;
- (b) To require government policies and prescribed decisions to be made consistent with the legislated net zero greenhouse gas emissions target, climate change action plan and relevant sector-based transition plans.

Recommendation 5: Amend the Act to ensure prescribed Government decisions, and all relevant policies on climate change must demonstrably apply the guiding principles of sustainability and social equity; transparency and accountability; science; integrated decision-making; risk management; community engagement; and complementarity.

Recommendation 6: Amend the Act to include operative provisions requiring certain prescribed Government decisions and all relevant policies to be made consistent with the legislated GHG emissions reduction target, the climate change action plan and relevant sector-based emissions reduction and resilience plans.

Recommendation 7: Change the draft Bill to resolve the technical and legislative drafting issues outlined in **Appendix 1**.

Introduction - what is proposed in the draft Bill

The draft Bill proposes to amend the Act and the *Climate Change (Greenhouse Gas Emissions) Regulations 2012* (the **Regulations**) to:

- (a) change the objects of the Act¹⁴ consistently with recommendation 2 of the Independent Review;¹⁵

¹⁴ See proposed new section 4 of the Act, in clause 5 of the draft Bill.

¹⁵ See Jacobs (2021) *Independent Review of the Climate Change (State Action) Act 2008: Final Report (Independent Review)* at p 69.

- (b) set a new GHG emissions reduction target of net zero emissions or less from 2030¹⁶ consistently with recommendation 1 of the Independent Review;¹⁷
- (c) provide for preparation of a statutory climate action plan¹⁸ consistently with some (but not all) aspects of recommendation 5 of the Independent Review;¹⁹
- (d) provide for preparation of a statewide climate change risk assessment²⁰ consistently with some (but not all) of recommendation 6 of the Independent Review;²¹
- (e) provide for consultation to develop sector-based emissions reduction and resilience plans²² consistently with some (but not all) aspects of recommendation 7 of the Independent Review;²³
- (f) change matters relating to the measurement of greenhouse gas emissions.²⁴

EDO makes recommendations for improvements to the draft Bill in relation to the following:

1. Net zero GHG emissions reduction target should come into effect by 2022 and be supported by clear sectoral targets and clear methods for measurement
2. Objects to reflect commitments
3. Climate action driven by guiding principles
4. Enforceable and integrated mechanisms for climate action
5. Technical and drafting issues raised by the draft Bill

Further detail about each of our recommendations is provided below

1. Net zero GHG emissions reduction target should come into effect by 2022 and be supported by clear sectoral targets and clear methods for measurement

Based on available data, Tasmania is in the nationally unique position of having already achieved net zero emissions for several years.²⁵ Due to this achievement, the Independent Review found that setting a distant, future net zero target for Tasmania would not instill the urgency nor

¹⁶ See proposed new section 5 of the Act, in clause 6 of the draft Bill.

¹⁷ See Independent Review p 69.

¹⁸ See proposed new section 5A of the Act, in clause 6 of the draft Bill.

¹⁹ See Independent Review, p 71. Note that, contrary to recommendation 5 of the Independent Review, proposed new section 5A does not require the statewide climate change risk assessment or sector-based emissions reduction and resilience plans to be taken into account in preparing a climate action plan.

²⁰ See proposed new section 5B of the Act, in clause 6 of the draft Bill.

²¹ See Independent Review p 71. Note that, contrary to recommendation 6, the draft Bill does not require that the first climate change risk assessment be produced prior to July 2022, and then every 5 years after that date.

²² See proposed new section 5C of the principal Act, in clause 6 of the draft Bill.

²³ See Independent Review p 72. Note that, contrary to recommendation 7 of the independent review, the draft Bill provides for only one Minister to be responsible for all sector-based plans (rather than the Minister responsible for each sector developing the plan for that sector). Also, the draft Bill provides for plans for sectors that differ somewhat from the sectors mentioned in recommendation 7. Contrary to that recommendation, the draft Bill does not provide for the plans to be made public or for annual reporting on policies, initiatives and programs associated with the plans.

²⁴ See clause 7 and Part 3 of the draft Bill.

²⁵ Australian Government (2021) State and territory greenhouse gas inventories: annual emissions, accessed on 29 April 2021, at: <https://www.industry.gov.au/data-and-publications/national-greenhouse-accounts-2019/state-and-territory-greenhouse-gas-inventories-annual-emissions>

necessitate the further climate action called for by the Paris Agreement and the Tasmanian community.²⁶ The Independent Review also noted that setting an earlier net zero target was desirable both as means of driving emissions reductions, and to align Tasmania’s policy with the “best available climate science which suggests rapid decarbonisation is required to maximise prospects of avoiding dangerous climate change”.²⁷

While the Independent Review ultimately recommended that Tasmania adopt a target of net zero GHG emissions by 2030,²⁸ EDO considers that this target lacks the requisite ambition and force to drive the dramatic reductions of GHG emissions Tasmania should be seeking to achieve across all sectors of the economy. Setting a target of net zero many years in the future when that point has already been achieved does nothing to drive emissions reductions in Tasmania. Rather, it raises a real question as to whether the state’s GHG emissions will increase over the short to medium term.

As noted in the Independent Review, Tasmania’s current achievement of net zero GHG emissions is particularly vulnerable given it is entirely reliant on GHG offsets provided in the Land Use, Land Use Change and Forestry (**LULUCF**) sector.²⁹ This is because emissions offsets relied upon in the LULUCF sector can rapidly change. For example, a single large bushfire could substantially reduce the amount of carbon stored in our forests. Due to climate change, we can expect more of these large-scale fires in the future, which means our net zero status could be erased by one or a number of hot fire seasons.³⁰

Carbon stored in the LULUCF sector is also vulnerable to rapid change due to shifts in government policies. For example, as noted in EDO’s submission to the Independent Review, many of the Tasmanian Government’s current policies relating to agriculture, forestry, population, and land use and planning all pose a real and increasing threat to the ongoing achievement of net zero GHG emissions through reliance on the LULUCF sector.³¹ Without a meaningful target that requires GHG emissions reductions in other sectors now, the Tasmanian Government’s suite of policies risk committing the state to increased emissions over the next decade, making it far more difficult and costly to meet a 2030 net zero target.

The failure to set a target that will drive meaningful reductions across other sectors is also inconsistent with the Independent Review finding that Tasmania needs to accelerate the transition of all sectors to a low-carbon future to remain in step with both national and international climate action.³²

Therefore, it is EDO’s strong recommendation that the Tasmanian Government demonstrate a real commitment to leading both the nation and the world on climate change action, by setting a net zero target commencing from 2022.

²⁶ Independent Review p 69.

²⁷ Independent Review p 42.

²⁸ Recommendation 1, Independent Review at p 69.

²⁹ Independent Review pp 45-46.

³⁰ Ibid. See also Eccleston, R and Hyslop, S and Johnson, L and Parr, B and Meyer, A, and the Tasmanian Policy Exchange (2021) *Towards a climate-positive Tasmania: A discussion paper*, University of Tasmania, Australia, at p 22, accessed at: <https://www.utas.edu.au/community-and-industry/tpe/climate>

³¹ See EDO’s Submission to the Independent Review of the Act dated 29 April 2021, at [37], accessed at: <https://www.edo.org.au/publication/submission-to-the-independent-review-of-the-climate-change-state-actions-act-2008-tas/>

³² Independent Review at p 3.

Recommendation 1: Tasmania’s net zero (or lower) greenhouse gas emissions reduction target in the proposed new section 5(1) of the Act to be from 1 January 2022.

Further, the concept of “net zero” of itself fails to provide any limits on total amount of GHG emissions that Tasmania will be responsible for. “Net zero” emissions as an objective must be achieved in conjunction with actions to reduce GHG emissions to the lowest extent possible. EDO welcomes the guidance provided for the development of sector-based transition plans in Tasmania, but without requirements for interim and long-term targets in these plans, as recommended by the Independent Review,³³ Tasmania’s success in reducing total emissions cannot be guaranteed or assessed.

To reduce the risks associated with the use of LULUCF as offsets and to maximise the environmental outcomes from the draft Bill, an additional target or targets incorporating sectoral emissions reduction goals should be incorporated into the draft Bill. In its paper “Towards and Climate Positive Future”, the UTAS Tasmanian Policy Exchange has provided a range of options for the development of such sectoral GHG emissions reductions targets.³⁴ EDO supports the options presented in that paper to embed sectoral targets that minimise reliance on LULUCF to achieve net zero GHG emissions.

Recommendation 2: The draft Bill should be incorporate a requirement for specific sector-based emissions reduction targets to be developed by 2022 to ensure that total GHG emissions are reduced to the greatest extent practicable.

In the draft Bill, the period over which emissions and removals of GHGs are to be balanced to achieve net zero emissions is not clear.³⁵ It may be intended that the balance of GHG emissions and reductions are to be measured over the same period as is used in the most recently published Greenhouse Gas Inventory, i.e. over a fiscal year.³⁶ In that case, it is not clear how it can be determined whether “net zero, or lower, greenhouse gas emissions” are achieved from 31 December 2030, as currently proposed in the draft Bill.

Furthermore, none of the proposed amendments of the Act or the Regulations in the draft Bill indicate how the amount of GHG removed from the atmosphere is to be measured for the purposes of the balancing exercise in the proposed new section 5 of the Act. For example, is it intended that GHG removals are be determined on the same basis as in the most recently published Greenhouse Gas Inventory or will the Regulations prescribe another method? If another

³³ The Independent Review recommended that sectoral transition and resilience plans contain rolling five- and 10-year emissions targets and a 2050 emissions target for each sector. See Recommendation 7 of the Independent Review at p 72.

³⁴ Eccleston, R and Hyslop, S and Johnson, L and Parr, B and Meyer, A, and the Tasmanian Policy Exchange (2021) *Towards a climate-positive Tasmania: A discussion paper*, University of Tasmania, Australia, at pp 27-29.

³⁵ Refer to proposed section 5(2) of the draft Bill.

³⁶ The definition of “relevant year” in proposed new subregulation 5(1) of the Regulations suggests that period is a financial year (a year starting on 1 July). The 2019 Greenhouse Gas Inventory Report states it is reported against the fiscal year from 1 July 2018 to 30 June 2019 to maintain consistency with IPCC Guidelines and other reporting: Australian Government, Department of Industry, Science, Energy and Resources(2019) *National Inventory Report 2019* at p 3, accessed at: <https://www.industry.gov.au/sites/default/files/April%202021/document/national-inventory-report-2019-volume-1.pdf>

method is proposed to be prescribed, then it will need to be robust to ensure that any GHG emissions offset are from within Tasmania.

Greater clarity is required in the draft Bill on these issues to provide certainty for the Government, industry and community around how emissions removals will be calculated and therefore how we will know net zero (or lower) has been achieved and maintained.

Recommendation 3: Include in the draft Bill how Tasmania’s GHG emissions removals will be measured for the purposes of Tasmania’s net zero (or lower) emissions reduction target, and ensure that this methodology is consistent with IPCC GHG accounting guidelines.

2. Objects to reflect commitments

The Independent Review recommended that the objects of the Act be consolidated to provide “clarity on [the Act’s] purpose, a clear direction and narrative for climate action in the State, and a robust framework for evaluating such climate action and the effectiveness of the Act”.³⁷

While EDO is supportive of the proposed consolidation of the Act objects as set out in the Independent Review recommendation and reflected in the draft Bill, there are two further changes to the objects we consider would ensure the focus of the Act is where it should be.

Given that the setting of GHG emission reductions target is substantially driven by international agreement on the desirability of limiting warming from anthropogenic climate change to 1.5° C above pre-industrial levels, EDO recommends that the proposed new objects of the Act be changed to properly reflect this. For example, by changing proposed new section 4 (a) by inserting after “to support Tasmania to take action on climate change” the phrase “..., consistent with limiting the increase in global heating to no more than 1.5°C above pre-industrial levels, ...”.

The proposed new objects of the Act would also be markedly improved by inserting an object of requiring government policies and prescribed decisions to be made consistent with Tasmania’s statutory emissions reduction target set out in proposed new section 5 of the Act. How this object could be effect in the Act is addressed further under heading 4 below.

Recommendation 4: The proposed new section 4 of the Act include the following objects:

- (a) To commit Tasmania to taking action consistent with limiting the increase in global heating to no more than 1.5°C above pre-industrial levels;
- (b) To require government policies and prescribed decisions to be made consistent with the legislated net zero greenhouse gas emissions target, climate change action plan and relevant sector-based transition plans.

3. Climate action driven by guiding principles

The Independent Review recommended that the Act should be amended to include the following principles to guide the Government’s response to climate change:³⁸

³⁷ Recommendation 2, Independent Review at p 69.

³⁸ Recommendation 3, Independent Review at p 70.

Sustainable development and social equity	Climate action, and any government action that has a direct impact on climate change mitigation or adaptation efforts, should provide benefit to both current and future generations of Tasmanians. In particular, consideration of vulnerable communities and First Nations practices should occur.
Transparency and reporting	Reporting on climate action should be timely, transparent and accurate and made available to the public.
Science-based approach	Climate action taken should be scientifically substantiated and align with limiting global warming to no more than 1.5°C above preindustrial levels.
Integrated decision-making	Decision-making on climate action is integrated, addressing environmental, social and economic considerations over short-, medium-, and long-term timeframes.
Risk management	Climate action adequately reflects assessed risks, and risks of action and inaction are addressed.
Community Engagement	Proposed climate action takes into account the views of interested and relevant members of the community through appropriate engagement
Complementarity	Climate action should reflect an appropriate level of cohesion with relevant State, national, and international climate change developments.

EDO supports this Independent Review recommendation and considers that the Government’s commitment to adopt these principles in its “whole-of-government policy framework” is not sufficient to ensure that they will be applied.³⁹

The indication in its response to this recommendation that the Government desires “flexibility” in its future climate action raises a question as to whether some or all of these principles will simply be ignored, or used selectively or inconsistently.⁴⁰ This is deeply concerning considering the importance of the principles in ensuring climate action is ecologically sustainable, socially equitable, science-based, and transparent and accountable.

In the absence of any skills-based, independent statutory climate change advisory body with responsibility for advising Government and the Parliament on the best available science for climate mitigation and assessing and reporting on progress in relation to meeting targets and implementing adaptation plans,⁴¹ it is even more desirable that the Government to bind itself to act in accordance with these principles.

³⁹ Response to Independent Review, at p 14.

⁴⁰ Ibid.

⁴¹ As recommended in EDO’s Submission to the Independent Review of the Act dated 29 April 2021, at [41] – [42] and Recommendation 3.

The Bill should therefore include a new provision amending the Act so that it requires that the Government apply the seven guiding principles (as identified by the Independent Review) in taking climate action, such as the preparation of climate change action plans, state-wide risk assessments, and resilience planning

Recommendation 5: Amend the Act to ensure prescribed Government decisions, and all relevant policies on climate change must demonstrably apply the guiding principles of sustainability and social equity; transparency and accountability; science; integrated decision-making; risk management; community engagement; and complementarity.

4. Enforceable and integrated mechanisms for climate action

The Independent Review recommended that the Act be amended to require the consideration of climate change in the development of relevant government policies, planning, and strategies.⁴² The rationale for this recommendation was to ensure that Government policymaking supported the achievement of the Act's objectives and targets and that broader government action "does not inhibit progress on the target and objectives of the Act."⁴³

The Government responded to this recommendation by indicating, again, that it desired a more flexible approach, so that it would not be required through legislation to act in line with the legislated emissions reductions target and guiding principles put forward by the Independent Review.⁴⁴

EDO considers that the Government's preferred approach of having no statutory duties to consider climate change in decisions or policy-making is a recipe for inaction, and does not demonstrate a real commitment to Tasmania being world or even nation-leading in responding to climate change.⁴⁵ To avoid any tokenism or suggestions of greenwashing, EDO recommends that the new objects and targets must be effectively operationalised in the Bill, with clear requirements for relevant decision-makers and plan making processes.

By way of analogy, if the Bill does not include requirements for the Government to take account of the net zero target, climate risk assessments and resilience planning in relevant policy and decision-making, it is like setting a speed limit and road rules without any requirement that the limit and rules be observed by road users or enforced by police. While the present Government may be sincere in its intention to act in accordance with the climate change targets, risk assessments and resilience plans, there is no mechanism in the draft Bill to ensure that future Tasmanian governments will. This will result in uncertainty for industries, businesses, and the broader community when they are looking to make medium to long-term decisions to respond and adapt to climate change.

Therefore, it is EDO's strong recommendation that the draft Bill include a new provision in the Act requiring Government policy and certain prescribed decisions to be made consistently with the

⁴² Recommendation 4, Independent Review, at p 70.

⁴³ Ibid.

⁴⁴ Response to Independent Review, at p 15.

⁴⁵ Indeed, even the Victorian Government is at least required to "endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant by having regard to the policy objectives and the guiding principles": *Climate Change Act 2017* (Vic), s 20.

legislated GHG emissions target, the climate change action plan and relevant sector-based emissions reduction and resilience plans. This provision should be drafted to make it clear that these are mandatory considerations.⁴⁶

In its submission to the Independent Review, EDO provided a non-exhaustive list of statutory decisions which might be prescribed for the purposes of the new provision, including under the *Land Use Planning and Approvals Act 1994*, *Environmental Management and Pollution Control Act 1994*, *State Policies and Projects Act 1993*, *Water Management Act 1999*, *Mineral Resources Development Act 1995* and *Forest Practices Act 1985*.⁴⁷

Recommendation 6: Amend the Act to include operative provisions requiring certain prescribed Government decisions and all relevant policies to be made consistent with the legislated GHG emissions reduction target, the climate change action plan and relevant sector-based emissions reduction and resilience plans.

5. Technical and drafting issues raised by the draft Bill

Perhaps as a result of the speed of its preparation, the draft Bill raises a number of technical policy and drafting issues. These are discussed in more detail in Appendix 1 of this submission. The draft Bill should be changed to resolve the issues identified.

Recommendation 7: Change the draft Bill to resolve the technical and legislative drafting issues outlined in **Appendix 1**.

⁴⁶ The wording might include “must”, relying on paragraph 10A(1)(a) of the *Acts Interpretation Act 1931* (Tas).

⁴⁷ EDO submission to the Independent Review, at [45].

Appendix 1 - Technical and legislative drafting issues raised by the draft Bill

New objects of the Act - proposed new section 4 of the Act

Proposed new paragraphs 4(c), (d) and (e) of the Act are missing some words. Each of those paragraphs should start with the word “to” (cf. proposed new paragraphs 4(a) and (b) of the Act). Proposed new paragraph 4(c) also needs the word “and” at the end (cf. proposed new paragraphs 4(a), (b) and (d)).

The proposed new paragraph 4(d) of the Act refers to “climate change adaptation measures”, however, given the proposed new definition of “adaptation measures” (to be inserted in the interpretation section of the Act by clause 4(a) of the draft Bill), we suggest that the words “climate change” be deleted from proposed new paragraph 4(d).

Tasmania’s emissions reduction target - proposed new section 5 of the Act

The defined term “net zero greenhouse gas emissions” in the proposed new subsection 5(2) does not reflect the wording of the proposed new subsection 5(1) of the Act (which mentions “net zero, or lower, greenhouse gas emissions”). It is not explicit what is meant by “lower”, given that the definition of “net zero greenhouse gas emissions” refers to a balance.

Climate change action plan - proposed new section 5A of the Act

The Independent Review recommended that the statewide climate change risk assessment and sector-based emissions reduction and resilience plans be taken into account in preparing a climate action plan.⁴⁸ However, for an unknown reason, this recommendation has not been adopted in the drafting of proposed new section 5A. EDO assumes that this was an oversight and recommends that it be corrected.

In the proposed new subsection 5A(1) of the Act, “is to” should be changed to “must”, to reflect that the development of a climate action plan at least every 5 years is a mandatory requirement. Likewise, the phrase “is to” should be replaced by “must” in the proposed new subsection 5A(4) so as to ensure all those matters including Tasmania’s emissions reduction target, is taken into account in the formulation of the climate change action plan.

What is meant by the phrase “emissions reduction measures” in proposed new subsection 5A(2) of the Act is not clear. EDO recommends a definition be provided for this term including how it relates to “emissions offset programs” in section 3 of the Act.

There is a risk that the reference in proposed new subsection 5A(2) of the Act to Tasmania adopting measures could be read as a reference to only the Tasmanian Government adopting measures. A similar issue arises in proposed new paragraph 5A(3)(a) of the Act referring to Tasmania’s GHG emissions.

⁴⁸ Recommendation 5, Independent Review, at p 71.

The proposed new section 5A(3)(b) of the Act refers to “climate resilience”, when proposed new section 5C(2)(c) of the Act refers (in a similar context) just to “resilience”. These proposed new sections should be drafted consistently.

The “emissions reduction target” mentioned in proposed new section 5A(4)(b) of the Act is not clear. That paragraph should instead refer to “Tasmania’s emissions reduction target” (relying on the proposed new definition of “Tasmania’s emissions reduction target” to be inserted in section 3 of the Act by paragraph 4(b) of the draft Bill).

It is not clear whether “the latest greenhouse gas accounts for Tasmania”, mentioned in proposed new section 5A(4)(c) of the Act, is the same as the Greenhouse Gas Inventory to be used for measurement of GHG emissions for the purposes of Tasmania’s emissions reduction target under the Regulations. If it is intended that they are the same, we suggest that this be clarified, and that a new definition for Greenhouse Gas Inventory be included in section 3 of the Act.⁴⁹

The wording of proposed new section 5A(4)(e) of the Act describing consultation in the context of developing a climate action plan differs to and is potentially narrower than the wording of proposed new subsection 18(3) of the Act about who is to be consulted in reviewing the Act. The proposed new section 5A(4)(e) of the Act should be amended to “consultation with relevant business, scientific, environment and community bodies and a broad range of the Tasmanian community” to ensure that broad engagement with relevant organisations.

Statewide climate change risk assessment – proposed new section 5B of the Act

The Independent Review recommended that the first statewide climate change risk assessment be produced prior to July 2022.⁵⁰ However, for an unknown reason, this recommendation has not been adopted in the drafting of proposed new section 5B. EDO assumes that this was an oversight and recommends that it be corrected.

In the proposed new subsection 5B(1) of the Act, “is to” should be changed to “must”, to reflect that the preparation of a statewide climate change risk assessment at least every 5 years is a mandatory requirement. Likewise, the phrase “is to” should be replaced by “must” in the proposed new subsection 5B(2) so as to ensure all those listed matters must be taken into account.

Sector-based transition planning - proposed new section 5C of the Act

Many of the elements of Recommendation 7 of the Independent Review relating to sector-based decarbonisation and resilience plans have not been incorporated into the proposed new section 5C of the Act. In particular, proposed new section 5C of the Act does not contain any:⁵¹

- (a) requirement that plans for key sectors, State Government operations, energy, transport, agriculture, and industry be developed;

⁴⁹ This approach may also reduce any issues for the regulations of subdelegation of legislative power or incorporation by reference of documents that vary after the making of the regulations. Note that subsection 9(4) of the Act authorises the regulations to incorporate only codes, standards and guidelines (and not other documents, such as accounts of amounts of greenhouse gas emissions) as in force from time to time.

⁵⁰ Recommendation 6 Independent Review at p 71.

⁵¹ Recommendation 7, Independent Review at p 72.

- (b) deadline for the development of plan for those sectors by 2026;
- (c) requirement that plans are to contain rolling five- and 10-year emissions targets and a 2050 emissions target for the sector;
- (d) requirements that plans contain implementation planning and/or identifying research and development projects for emissions reduction opportunities (and their expected reduction potential);
- (e) requirement that the plans be tabled in Parliament and published;
- (f) requirement that annual reporting on policies and policies, initiatives, and programs that are developed to meet the objectives and targets of the plans is carried out; or
- (g) requirement that five-yearly review and reporting of the outcomes of each plan should be completed.

EDO strongly recommends that these matters be incorporated into the draft Bill.

Proposed new subsection 5C(1) of the Act is very unclear about who is required to develop sector-based emissions reduction and resilience plans. The subsection merely requires the Minister to consult, and does not provide any assurance that such plans will actually be developed and published. Recommendation 7 of the Independent Review envisaged that development of the plans would be a ministerial responsibility.⁵² Therefore it would seem appropriate for the subsection to require the relevant Minister (or Ministers) for each section to develop the plans in consultation with business and industry representatives. This would be consistent with the Independent Review recommendation.⁵³

Proposed new section 5C of the Act refers in various places (e.g. subsections 5C(1) and (3) and paragraph 5C(2)(a)) to emissions reduction without identifying the nature of the emissions). If the plans for which the section provides are to relate to GHG emissions, the section should be changed to reflect this.

It is unclear why the list of sectors mentioned in proposed new section 5C(1)(a) to (e) of the Act, differs from those listed in the proposed new regulations 4(a) to (e) of the Regulations. There seems little point in planning for reduction of a sector's emissions if it is unclear how those reductions will ultimately be measured. Also, proposed new paragraph 5C(1)(a) of the Act treats as one sector things that are treated in the Greenhouse Gas Inventory (within the meaning of the regulations) as two distinct sectors. As such, EDO recommends that proposed new section 5C(1)(a) to (e) be amended to reflect the Greenhouse Gas Inventory sectors (as amended from time to time).

It is unclear why proposed new paragraph 5C(1)(f) refers to sub-sectors, given that plans are to be sector-based.

⁵² Independent Review at p 72.

⁵³ Recommendation 7 Independent Review at p 72.

Consequential amendments required for section 7 of the Act

Subsections 7(1)(f) and (2)(e) of the Act should be amended or repealed consequentially on the amendment of section 7(1)(a), given that the proposed amendment of that section removes the definition of “baseline” that those paragraphs rely upon.