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using the law to protect the natural and built environment

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Dear Dr Connarty

PT 2 REVIEW OF CLIMATE CHANGE (STATE ACTION) ACT 2008

The Environmental Defenders Office is a non-profit, community based legal service specialising in environmental and planning law. We welcome the opportunity to provide input into the second part of the review of the *Climate Change (State Action) Act 2008* (the **Climate Change Act**).

EMISSIONS REDUCTION

The EDO strongly supports retention of an emissions reduction target in the legislation, as a clear reference point for the Tasmanian Government's commitment to action on climate change.

The current target is conservative and, based on the work undertaken in the Wedges report, achievable. Given the different baselines used in the recently introduced national legislative framework (which refers to reductions of 80% below 2000 levels), it is unclear whether the current Tasmanian target is less onerous than the national target. We would support reconsideration of the Tasmanian target, in light of current science, to determine a 2050 target that will ensure Tasmania's contribution to stemming global temperature rise at 2 degrees.

Interim targets

We also support the introduction of interim targets, such as the 40% reduction on 1990 levels proposed in the Minister for Climate Change's private members bill, *Climate Change (State Action) Interim Targets Amendment Bill 2011*. Interim targets provide a mid-term goal and opportunity to reflect on progress and adapt policy responses accordingly.

In addition to a Statewide interim goals, it may be appropriate for the government to liaise with industry to determine sector-specific reduction targets. We do not see any benefit in making such targets legislative, but would support incentives for achieving industry based targets, such as:

- reviewing the likely emission reduction contributions of industry when reviewing budget allocations or assessing development proposals or grant applications;
- offering some sort of 'preferred business' accreditation to businesses that can demonstrate that they are contributing positively to the achievement of targets within their sector.

Offsets

At present, there is no rigorous framework for the calculation, assessment and regulation of emissions offsets in Tasmania. We would not support the use of offsets to meet Tasmania's interim or final emissions targets until a rigorous and transparent framework is adopted.

Even if a rigorous framework is implemented, it is important that offsets not be used to distract from mitigation efforts and allow emissions to continue at the current rate. We would support the introduction of policies to ensure that:

- No more than 20% of emissions reduction towards the Tasmanian target is achieved through offsetting; and
- Offsetting activities undertaken outside of Tasmania are not counted in the measurement of reduction efforts.

ADAPTATION

We recognise the need for actions on both mitigation and adaptation in order to ensure Tasmania is best placed to deal with climate change impacts. "Adaptation" needs to be considered in terms of the adaptive capacity of the State, the community and the environment. This includes considerations ranging from economic diversity, agricultural resilience, costs of living, public health and transport planning to ecosystem health and decreased range and quality of threatened species' habitat.

It is critical that State government agencies have power to undertake work in both areas in their response to climate change. However, a considerable body of good work is already being undertaken in Tasmania in relation to adaptation and managing risks associated with climate change. In our view, there is sufficient scope in the current Climate Change Act to authorise such work and no amendments are necessary to facilitate this.

INTERGRATED CONSIDERATION OF CLIMATE CHANGE ISSUES

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. Unless the objectives of the Climate Change Act are reflected in other relevant resource management legislation, the capacity to effect meaningful emissions reduction and adaptation strategies will continue to be hampered. In particular, it is essential that decisions made within the planning system are empowered (and required) to take into account climate change impacts.

In the long term, we would support a review of all resource management legislation to ensure consistency with the objectives of the Climate Change Act. In the interim, we recommend that the Climate Change Act be amended¹ to require decisions made under the legislation listed below to have regard to:

- the potential impacts of climate change on the matter under consideration (including direct, indirect and cumulative environmental, health, social and economic impacts); and
- the potential contributions that the matter under consideration may make to Tasmania's emissions and / or capacity to adapt to climate change impacts. Decisions which would be subject to this consideration range from purchasing government car fleets, refurbishment decisions, assessment of development proposals, funding and budget decisions and transport planning.

Where a proposal will compromise achievement of our reduction target, the decision maker must be satisfied that emissions are minimised to the greatest extent possible, and that there is no feasible alternative to the proposal.

¹ Similar to the provision in s.14 of the Victorian *Climate Change Act 2010*.

The key pieces of legislation under which decisions must take into account climate change impacts include:

- *Land Use Planning and Approvals Act 1993* (decisions relating to planning schemes, interim planning schemes and planning directives, assessment of development applications and projects of regional significance);
- *Environmental Management and Pollution Control Act 1994* (assessment of Level 2 activities, development of environmental management plans and site management plans, and interpretation of “environmental harm” and “environmental nuisance”);
- *Local Government (Building and Miscellaneous Provisions) Act 1993* (consideration of subdivision design to take into account transport planning);
- *State Policies and Projects Act 1993* (development of State Policies and assessment of projects of State significance);
- *Major Infrastructure Development Approvals Act 1997* (assessment of major infrastructure developments);
- *Water Management Act 1999* (allocation of water licences, interpretation of emergency provisions, assessment of dam applications and development of water management plans);
- *Marine Farming Planning Act 1995* (development of marine farming development plans and assessment of amendments to those plans);
- *Threatened Species Protection Act 1995* (declaration of threatening processes and development of threat abatement plans (in particular, recognising the need for protection of retreat habitat for species to recolonise in the event of climate-change induced habitat losses));
- *Forest Practices Act 1985* (assessment of forest practices plans and development of *Forest Practices Code*, particularly biodiversity management provisions);
- *Mineral Resources Development Act 1995* (assessment of mining lease applications, development of codes of practice);
- *Fire Service Act 1979* (development / approval of bushfire management plans).

This is far from an exhaustive list, and a range of other legislation should be identified through a comprehensive review of the suite of relevant legislation in Tasmania.

We also recommend that the *Subordinate Legislation Act 1992* be amended to require regulatory impact statements to consider climate change impacts. Government policies on the development of legislation and procurement decisions should also be amended to require explicit consideration of climate change issues in the decision-making process.

The EDO appreciates the opportunity to make these comments. Please do not hesitate to contact us to discuss any issue raised in this submission.

Kind regards,

Environmental Defenders Office (Tas) Inc

Per:



Jess Feehely
Principal Lawyer