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131 Macquarie Street
Hobart TAS 7000

tel: (03) 6223 2770
email: edotas@edotas.org.au

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Sophie Muller
Tasmanian Climate Change Office

By email: climatechange@dpac.tas.gov.au

Dear Sophie

AMENDING THE CLIMATE CHANGE (STATE ACTION) ACT 2008

EDO Tasmania has a continuing interest in ensuring that Tasmania has an ambitious and effective framework for regulating the State's contribution and response to climate change. We therefore welcome the opportunity to comment on the Discussion Paper on Amending the *Climate Change (State Action) Act 2008* (the **Act**).

These comments briefly address the following:

- Emissions targets
- Proposed revised objects and principles to guide decision making
- Integrated decision making – considering climate principles for “relevant decisions”

EMISSIONS TARGET

EDO Tasmania strongly supports the Act adopting an aspirational long-term emissions reduction target. Achieving net zero emissions is commendable and Tasmania must aim to maintain this position, even with increased population and economic activity, as a minimum.

In response to the recent call by Mike Cannon-Brookes for Australia to go beyond net zero emissions and become a net exporter of renewable energy, BNEF's Mr Bhavnagri said:

This isn't grandstanding, this is vision. Future economic competitiveness will be underpinned by the strength of a country's renewable resources. Australia can be a new energy superpower, we just need some clarity and focus to get there.

The same is true of Tasmania's emissions profile – we have natural advantages and proven technical expertise and should aim for an aspirational target of negative emissions.

We support the intention to establish “targets for more ambitious emissions reductions efforts”, and look forward to the release of the modelled trajectories work being undertaken by government. Critically, models should look to going beyond stationary energy and facilitate transition away from fossil fuel dependence in the transport sector.

Further, reliance on land use and land change (principally, forestry) to achieve net zero emissions masks poor reduction efforts in other sectors. We recommend that any long term goal be supported by both interim targets (to gauge progress) and sector-specific reduction targets. As in the Victorian Climate Change Act 2017, targets should be informed by independent, expert advice.

Industry could be encouraged to achieve targets by making contribution to reduction targets a relevant consideration when reviewing budget allocations or assessing development proposals or grant applications (see “Relevant Decisions” below). Government procurement processes could also be adapted to offer ‘preferred business’ accreditation to operations that can demonstrate that they are contributing positively to the achievement of targets within their sector.

OBJECTIVES AND PRINCIPLES

We support the consolidation of objectives, as recommended by the Jacobs review of the Act. However, we recommend the following:

- The objectives should be framed to recognise the urgency of action on climate change;
- The reporting and analysis objective should extend to any other targets, to allow for interim targets, sectoral targets, renewable energy targets or adaptation targets adopted in support of the main emissions reduction target. Objective (d) in the current Act recognises that other targets may be subject to reporting and oversight;
- Retaining the objective of promoting energy efficiency and conservation;
- Including an explicit objective of promoting a transition to a low carbon economy.

We also support the introduction of Climate Principles to aid in the implementation of the objectives of the Act. However, we recommend that the approach adopted in Part 4 of the *Climate Change Act 2017* (Vic) be followed more closely. In particular, the principles should explicitly reflect the value of community consultation, intragenerational and intergenerational equity, and the precautionary principle.

INTERGRATED CONSIDERATION OF CLIMATE CHANGE ISSUES – RELEVANT DECISIONS

The most critical failure of existing laws is the failure to implement a consistent, integrated framework for consideration of climate change issues in government decision-making. Unless the objectives and principles of the Act are reflected in other relevant resource management legislation, the capacity to effect meaningful emissions reduction and adaptation strategies will continue to be hampered.

We strongly support the recommendation in the Review to “Require Tasmanian Government agencies to consider the target, objects and proposed principles of the Act in relation to relevant decisions.” We are concerned that the proposed amendment weakens this recommendation by providing only that “State agencies should consider the target, objects and proposed principles” and urge the government to make such consideration mandatory.

The Discussion Paper does not propose to clarify the scope of “relevant decisions” which must have regard to the climate target, objects or principles. While this approach may avoid narrowing the scope, we consider that it would be preferable to specify a non-exhaustive list of “relevant decisions”. In the absence of such a list, it will fall to third parties to argue on a case by case basis about whether a particular decision is “relevant” for the purposes of the climate principles. This undermines the purpose of the Act, will result in inconsistent decision-making, and has the potential to increase the number or length of legal proceedings to challenge whether decisions were required to have regard to the climate principles.

Section 17 and Schedule 1 of the *Climate Change Act 2017* (Vic) set out relevant decisions for the purposes of that Act, while allowing other decisions to be prescribed in future. We strongly support a similar approach being adopted in the Tasmanian Act. A list of the decisions we consider should be characterised as “relevant decisions” is set out in Attachment 1 to this submission. Each of those decisions should 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.

Where a proposal will compromise achievement of emissions reduction targets, 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.

In addition, the *Subordinate Legislation Act 1992* and s.156A of the *Local Government Act 1993 (Tas)* should be amended to require regulatory impact statements for statutory instruments or by-laws to address the climate objectives and principles. 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.

As noted in the Discussion Paper, it will be necessary to support government agencies to consider climate change in decision making. Consistent with ss18 and 21 of the Victorian Act, the legislation should provide for the government to publish guidelines outlining how climate change principles can be considered, and for those guidelines to be adhered to by decision-makers.

To encourage implementation, a provision similar to s.733 of the *Local Government Act 1993 (NSW)* could provide an exemption for liability for any decision-maker who can show that they have followed the decision-making guidelines.

EDO Tasmania appreciates the opportunity to make these comments. Please do not hesitate to contact us to discuss any issue raised.

Kind regards,
Environmental Defenders Office (Tas) Inc

Per: 
Jess Feehely
Principal Lawyer

ATTACHMENT 1: "RELEVANT DECISIONS"

- **Land Use Planning and Approvals Act 1993**
 - decisions to declare or amend Statewide Planning Provisions and Local Provisions Schedules;
 - review of Statewide Planning Provisions and Regional Land Use Strategies;
 - assessment of development applications and projects of regional significance;
- **Environmental Management and Pollution Control Act 1994**
 - assessment of Level 2 activities (including climate impacts in the terms of reference for an Development Proposal and Environmental Management Plan);
 - granting of environmental licences (in particular, for salmon aquaculture);
 - declaration of finfish farming exclusion zones;
 - development of environmental management plans and site management plans;
 - determination of "environmental harm" and "environmental nuisance";
- **State Policies and Projects Act 1993**
 - development of State Policies;
 - assessment of Projects of State Significance;
- **Water Management Act 1999**
 - allocation of water licences
 - interpretation of emergency provisions
 - assessment of dam applications
 - development or amendment of water management plans;
- **Marine Farming Planning Act 1995 & Living Marine Resources Management Act 1995**
 - development and amendment of marine farming development plans;
 - declaration of emergency leases;
 - development of Sustainable Industry Growth Plan;
- **Threatened Species Protection Act 1995**
 - declaration of threatening processes and critical habitat;
 - 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 & Forestry (Rebuilding the Forest Industry) Act 2014**
 - certification of forest practices plans;
 - development of three year harvesting plans;
 - development and review of the *Forest Practices Code*;
 - setting of minimum sawlog quotas;

- **Fire Service Act 1979**
 - development and approval of bushfire management plans;
 - declaration of fire seasons;

- **Nature Conservation Act 2002 & National Parks and Reserves Management Act 2002**
 - identification of potential reserve areas;
 - development of management plans;
 - reserve activity assessments and assessing licence applications