

**Submission  
No 34**

## **INQUIRY INTO CLIMATE CHANGE (NET ZERO FUTURE) BILL 2023**

**Organisation:** Environment and Planning Law Association (NSW) Inc

**Date Received:** 24 October 2023

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Ms Sue Higginson MLC

Chair

Portfolio Committee No.7 – Planning and Environment

Dear Ms Higginson

**Submission on the Climate Change (Net Zero Future) Bill 2023 by the Environment and Planning Law Association (NSW) Inc.**

1. The Environment and Planning Law Association (NSW) Inc (EPLA) welcomes the opportunity to comment on the Climate Change (Net Zero Future) Bill 2023 (the Bill). In addition, EPLA is grateful for the briefing it was provided on the Bill by Matt Floro, Senior Adviser to the Minister for Climate Change, the Hon Ms Penny Sharpe.
2. EPLA is an organisation whose members are drawn from many environmental disciplines including the fields of planning, environment, architecture, local government and the legal profession. Its membership is drawn from city and country regions, in government and private enterprise. As such its members, and Committee, are well placed to offer constructive comments on the Bill.
3. EPLA broadly welcomes the Bill which sets targets for reducing net greenhouse emissions in New South Wales, initially by 30 June 2030, and subsequently by 30 June 2050 (cl 9). EPLA particularly supports the target to reduce net greenhouse gas emissions in NSW to zero, which is an important milestone in ensuring that Australia is able to meet its commitments in the Paris Agreement on Climate Change to which Australia is a signatory. Article 2 of the Agreement seeks to strengthen the global response to climate change by holding the increase in global average temperature to 2 degrees Celsius above pre-industrial levels and by pursuing efforts to limit that increase to 1.5 degrees Celsius. The Bill offers a clear, unambiguous and scientifically informed signal on the long-term direction of travel. Climate change is a long-term problem, the solution to which requires structural change across the economy at an accelerating pace.

4. EPLA also notes the establishment of the guiding principles for action to address climate change (cl 8). The guiding principles appear to EPLA to be logical, economically responsible and consistent with the principles of sustainable ecological development.
5. EPLA supports the creation of the Net Zero Commission, a body which will be independent of the Minister and has the power to provide advice and recommendations to the Minister (cl 11-14), including giving advice and making recommendations on setting interim targets for the reduction in net greenhouse gas emissions in NSW before 2030 and 2050. The Commission, as a body independent of the Government of the day, creates a mechanism to enhance the long-term credibility of climate action and to safeguard against political mood swings. An independent institution, led by technical experts, is better equipped, in EPLA's view, to take a long-term view than politicians.
6. However, EPLA sees that there are some fundamental omissions from the Bill, which tend to undercut its strength. The most glaring weakness is the absence of a statutory duty to meet the targets of reducing greenhouse gas emissions. For example s 1(1) of the United Kingdom *Climate Change Act 2008* states:

“It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.”

7. The Victorian *Climate Change Act 2017* imposes a type of duty on the Minister to meet the long-term emissions reduction target:

“The Premier and the Minister must ensure that the State achieves the long-term emissions reduction target.”

8. It is that duty enshrined in the UK Act (and other climate change legislation enacted around the world) which makes the targets legally binding. The danger is that, without making the targets legally binding, they are merely aspirational and send the message that the NSW Government is not wholly committed to achieving net zero, or, alternatively, is not convinced that the targets can be met. As the largest economy in Australia, it is vital that the NSW Government sets the lead and enshrines the targets as legally binding commitments.
9. Further, the Bill should include legal duties on the Government to prepare proposals and policies which will enable the interim targets for the reduction in net greenhouse

gas emissions recommended by the Net Zero Commission to be met. For example, section 13 of the UK Climate Change Act provides:

**“Duty to prepare proposals and policies for meeting carbon budgets**

The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.”

10. Further, EPLA is of the view that the Bill is somewhat lacking in ambition in the estimated date for achieving net zero. The NSW Government should take the initiative and show leadership for the other states and territories around the Commonwealth of Australia and set a target of achieving net zero by 2045 at the latest.

11. EPLA notes that the Bill implements the objective for adaptation to climate change in law (cl 10). Climate resilience planning is an important tool in combatting the effects of climate change because the impacts of climate change are likely to materialise gradually over time. It is disappointing therefore that no specific provisions relating to adaptation, beyond establishing the objective, are enshrined in the provisions of the Bill. Rather, implementation of the adaptation objective is to be left to the forthcoming regulations (cl 10(2)). This is a missed opportunity. For example, the Bill could mandate a five-year cycle beginning with a comprehensive climate change risk assessment. This would be followed by a NSW adaptation programme, which responds to those risks. The cycle then starts again with a new risk assessment five years after the previous one, which reflects new scientific opportunity but also the effect of adaptation so far. The NSW adaptation programme can then be updated and the cycle moves into its next phase.

12. The following are comments that relate to specific clauses of the Draft Bill

**Clause 9 – Targets for reducing net greenhouse gas emissions**

Here the targets for reducing net greenhouse emissions are set. Sub-clause 3 constrains the Regulations from setting a specific interim target for reduction by a particular date occurring before 30 June 2050. EPLA is of the view that there should be milestones set to maximise the likelihood of achieving both of the 2030 and 2050 reduction targets. The legislation does not set milestones. In the absence of milestones in the legislation, it would be up to the Regulations to do so. However, cl 9(3) simply forbids the Regulations from so doing. EPLA

considers that the establishment of and the tracking of performance to milestones to be essential for the achievement of overall targets.

#### Clause 19 – Publication of Commission Reports

Sub-clause 1 provides for the Commission to give the Minister a report that contains advice or a recommendation whether the report was required by the Minister or given to the Minister on the initiative of the Commission.

Sub-clauses 2 and 3 deal with timing and a response to the report.

Sub-clause 4 imposes an obligation for the response required of the Minister to specify:

- a) Whether the recommendation is accepted, refused, or noted.
- b) If the recommendation is accepted - the action to be taken by Government
- c) If the recommendation is refused or noted - the reasons for refusing or noting the recommendation.

EPLA does not see any reason why advice from the Commission would not be afforded the same status as a recommendation from the Commission, and that the Minister should in their response specify:

- a) Whether the advice is accepted, refused, or noted
- b) If the advice is accepted – the action to be taken by Government
- c) If the advice is refused or noted – the reasons for refusing or noting the advice.

13. Please do not hesitate to contact me if you would like to discuss any aspect of EPLA's comments. EPLA would be pleased to provide further comments if that would be of assistance to the Committee.

Paul Crennan  
President  
Environment and Planning Law Association (NSW) Inc

24 October 2023