

Submission
No 44

INQUIRY INTO CLIMATE CHANGE (NET ZERO FUTURE) BILL 2023

Organisation: Environmental Defenders Office

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Environmental
Defenders Office

**Submission to the Inquiry into the Climate Change
(Net Zero Future) Bill 2023**

20 September 2023

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.

www.edo.org.au

Submitted to:

Portfolio Committee No 7 – Planning and Environment.
Legislative Council
NSW Parliament
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Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Introduction

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to the Inquiry into the [Climate Change \(Net Zero Future\) Bill 2023](#).

EDO has long called for NSW to enact a Climate Change Act and ensure that key NSW laws are climate-ready. EDO has long recommended a whole-of-government approach to climate change be established by enacting new climate change laws in NSW that deal with both climate change mitigation and adaptation in a clear and coordinated way.

An overarching Climate Change Act is a missing piece in the statute book and, if strongly drafted, will provide a clear framework for ensuring decisions across NSW government are consistent with meeting emissions reduction targets, carbon budgets and temperature goals. A clear legal framework is also needed for planning, risk assessment, and building resilience to help the NSW community, economy and environment adapt to the significant impacts of climate change.

Legislating 2030 and 2050 targets is an important step. However, to be meaningful and effective, the necessary targets need to be embedded in relevant decision-making processes and enforceable. We support the proposed Bill, but recommend that it be strengthened to ensure that timely, science-based targets can be achieved. At the outset this involves increasing the ambition of the targets, aligning targets and carbon budgets, and strengthening operational provisions to ensure targets can be met.

This submission addresses the following elements of the proposed legislation:

- **Purpose and Objects**
- **A whole of government approach**
- **Definitions**
- **Guiding Principles**
- **Targets**
- **Adaptation objective**
- **Net Zero Commission**
- **Review**
- **Regulations**

EDO's submission on the Climate Change Bill is couched in the context of its [Roadmap for Climate Reform \(Roadmap\)](#). We advocate for law reform that is science-aligned, prudent and ambitious enough to meet the scale of the climate crisis.

In the **Appendix** we provide further references for the Committee on best practice climate legislation, targets, duties, principles for transition projects, and the right to a healthy environment.

Summary of Recommendations

Objects and purpose

Recommendation: The objects clause should be strengthened to include an object ‘to facilitate a rapid and just transition away from fossil fuel production to a low carbon economy;’ establish a whole of government approach for applying guiding principles; and set interim targets linked to a carbon budget.

Recommendation: The review provision proposed in the Bill should refer to reviewing whether the Bill (Act) has achieved *both* its objectives and purpose.

Whole of government approach

Recommendation: The Bill should include a Schedule of related legislation that needs to be amended to include a reference to the new legislated targets and guiding principles – for example, this includes planning, environmental and resource legislation.

Recommendation: A duty should be imposed on both the Minister for Environment and the Minister for Planning to take all reasonable steps to meet legislated targets.

Recommendation: A duty should be imposed on the Ministers and all government and statutory decision-makers to consider climate change and act consistently with legislated emissions reduction targets and the commitment of the 2015 Paris Agreement to hold the increase in the global average temperature to well below 2°C above pre-industrial levels, and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, in exercising any powers.

Recommendation: The Government needs to identify and commit to concrete steps and a timeline for the related reforms including: developing a Climate SEPP, amending the Resources SEPP; updating the Strategic Statements on Gas and Coal; removing legal barriers to clean energy investment; and amending the *Environmental Planning & Assessment Act 1979* to embed the guiding principles and climate considerations in decision-making.

Definitions

Recommendation: Add or amend definitions for ‘action’, ‘reduction’, ‘net’, and ‘carbon budgets’.

Guiding principles

Recommendation: Add an explicit guiding principle to the effect that ‘Action to address climate change must involve a phase out of fossil fuels and transition to renewable energy’ in recognition of the critical need globally to facilitate a rapid transition from fossil fuels to renewable energy.

Recommendation: Amend the Bill to ensure that the guiding principles also apply across relevant government decision-making as identified in the recommended Schedule of related legislative amendments. This would be assisted by an additional principle being added to ensure any decisions, policy, program or process developed or implemented by Government takes the guiding principles into consideration where relevant, consistent with achievement of the emissions reduction targets.

Recommendation: The guiding principles should be a mandatory consideration for the IPC and other decision-makers when making decisions on development consents on all coal and gas projects, including modifications.

Recommendation: Provide further detail in relevant legislation, regulations and policy to enshrine principles for energy transition projects to ensure decision-making and assessment pathways deliver outcomes for climate, nature and communities.

Targets

Recommendation: Set emissions targets by reference to a carbon budget reflecting NSW's fair share of the remaining budget for limiting temperature increase to 1.5°C, noting that experts have recommended that the target needs to be at least a 74 per cent reduction in emissions below 2005 levels by 2030 and net zero by 2035.

Recommendation: At a minimum, legislate the previously agreed target of 70% reduction by 2035.

Recommendation: Include a clear mechanism for targets to be made more ambitious via a review trigger (ratchet mechanism), and prevent targets from being weakened (non-regression principle).

Recommendation: Amend the Bill to provide that interim 5 yearly targets are made.

Recommendation: Amend the Bill to provide that specific targets for methane can be made.

Recommendation: Ensure the regulations are made to facilitate the implementation of the 2030, 2035, 2040, 2045 and 2050 targets linked to carbon budgets.

Recommendation: Delete the prohibition on moving more quickly to net zero in clause 9(3).

Adaptation objective

Recommendation: Consultation on proposed adaptation measures and regulations be undertaken, particularly with First Nations and communities impacted by climate disaster.

Net Zero Commission

Recommendation: The Bill should require majority of Commissioners to be independent and not associated or affiliated with the fossil fuel industry.

Recommendation: Clause 12(3) be amended to make it clear that there should be an even spread (to the extent practicable) of the skills, qualifications and experience relevant to the matters listed at clause 12(3)(a) – (g) within the members of the Commission, and prevent, for example, the Commission being entirely constituted by members who have skills, qualifications and experience in only one of the matters listed at clauses 12(3)(a)-(g).

Recommendation: Expertise should include lived experience of climate impacts, and a Commissioner should represent climate impacted communities.

Recommendation: Amend the Bill to provide that the Commission has a role in modelling new and proposed coal projects against the targets, carbon budgets for NSW, as well as the global carbon budget to keep temperature increase to 1.5 degrees.

Recommendation: The Commission should also have a broader role in reviewing government policies to assess their consistency with achieving targets.

Recommendation: Require the Commission to give the Minister a report (distinct from an annual report referred to in clause 20) within 6 months of its constitution, and then at yearly intervals thereafter, to ensure that the Commission is giving regular and advice to the Minister in relation to “action to address climate change” and meeting the legislated targets.

Review and Regulations

Recommendation: As noted above, the review provision should refer to reviewing whether the Bill (Act) has achieved *both* its objectives and purpose.

Recommendation: Require the statutory review to be conducted by an independent expert or panel and involve public consultation.

Recommendation: The Government should develop and consult widely on draft regulations on how key elements of the framework legislation will be implemented.

1. Purpose and objects

What is proposed and how should it be strengthened?

The Bill sets out separate purpose and objects clauses as follows. EDO makes suggested edits in red.

3 Purpose of Act

(1) The purpose of this Act is to give effect to the international commitment established through the 2015 Paris Agreement to—

(a) hold the increase in the global average temperature to well below 2°C above pre-industrial levels, and

(b) pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, and

(c) increase the ability to adapt to the adverse impacts of climate change.

(2) The Parliament of New South Wales, in enacting this Act, recognises—

(a) there is a scientific consensus that human activity is causing abnormal changes to the climate, and

(b) action is urgently required to reduce greenhouse gas emissions and to address the adverse impacts of climate change.

(3) The Parliament of New South Wales, in enacting this Act, is committed to effective action on climate change to ensure a sustainable and fair future for the people, economy and environment of New South Wales.

4 Objects of Act

The objects of this Act are as follows—

(a) to establish guiding principles for action to address climate change [that apply across the NSW government],

(b) to set targets for the reduction in net greenhouse gas emissions in New South Wales by 2030 and 2050, [with interim targets linked to a NSW carbon budget]

[Insert (x) to facilitate a rapid and just transition away from fossil fuel production to a low carbon economy.]

(c) to set an objective for New South Wales to be more resilient to a changing climate,

(d) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the 2030 and 2050 [and any interim] targets, the adaptation objective and other matters.

Analysis and recommendations

EDO has long recommended a NSW Climate Change Act with a clear overarching objective to reduce greenhouse gas emissions and make decisions consistent with limiting the increase in global warming to no more than 1.5 degrees Celsius above pre-industrial levels. We welcome and **support** the explicit recognition of this goal in clause 3.

We note that in the proposed Bill the important reference to temperature goals is in the purpose clause (clause 3) rather than the objects clause (clause 4). We understand that both objects and

purpose clauses provide guidance to courts in interpreting legislation, but for completeness, we recommend that the review provision proposed in the Bill refers to reviewing whether the Bill (Act) has achieved *both* its objectives and purpose. We also make recommendations linking duties of decision-makers to targets and temperature goal – consistent with operationalising the proposed purpose and object clauses. This is discussed further below.

In addition, we recommend that the objects should also refer to planning for a rapid and just transition away from fossil fuel production and use, consistent with IPCC advice, and establishing a whole-of-government approach to addressing climate change impacts; and set interim targets linked to a carbon budget.

Purpose and objects recommendations

Recommendation: The objects clause should be strengthened to include an object ‘to facilitate a rapid and just transition away from fossil fuel production to a low carbon economy;’ establish a whole of government approach for applying guiding principles; and set interim targets linked to a carbon budget.

Recommendation: The review provision proposed in the Bill should refer to reviewing whether the Bill (Act) has achieved *both* its objectives and purpose.

2. Whole of government approach

We support the proposed clause:

7 Relationship with other Acts and laws

This Act prevails to the extent of an inconsistency with another Act or law.

However, for the targets to be meaningful, there needs to be clear requirements in other relevant NSW legislation to explicitly require decision-makers to make decisions consistent with the legislated targets. This model exists in other jurisdictions such as Commonwealth and Victorian climate change legislation. The absence of provisions linking critical decisions (like the approval or expansion of new fossil fuel projects) to the targets, would render the targets ornamental.

We therefore **recommend a Schedule** is added to the Bill to amend related legislation to contain a reference to the guiding principles and targets proposed in the Bill. It is particularly relevant to link the climate targets and principles to decisions made under NSW planning and environment legislation.¹ For example, the targets and principles should be a mandatory consideration for the IPC and other decision-makers in determining applications for development consent (including modifications). We refer the Committee to the Victorian *Climate Change Act* that includes a schedule of decisions to which the Act applies.² This has been effective at ensuring a broad range of decision-makers across a range of portfolios must embed climate change and emissions reduction target considerations in performing their functions and decision-making.

¹ For example, the *Environmental Planning & Assessment Act 1979* and the *Protection of the Environment Operations Act 1997*.

² See Part 3 of the Victorian *Climate Change Act 2017*.

To ensure the targets are actually met, we recommend that the Bill includes enforceable duties on the Minister and on other government and statutory decision-makers to support the implementation of the legislation. Setting targets in legislation is an important step, but to ensure that targets are actually achieved, there need to be requirements for decisions to be made that are consistent with the targets.

EDO recommends that the Bill should impose a duty on the Minister/s and all government and statutory decision-makers to consider climate change and act consistently with legislated emissions reduction targets in exercising any relevant powers. This must include consideration of *all* emissions of a project as all emissions contribute to climate change. Considering all emissions (ie, scope 1, 2 and 3) is also necessary for operationalising the right to a healthy environment as recognised in the principles in clause 8 of the Bill.

Explicit duties are needed to give the Bill regulatory teeth. While the Bill requires reporting, there are no enforceable obligations proposed or consequences for failing to take action and make decisions that ensure targets can be met. Similar to legislation being proposed currently in WA, if the NSW Government fails to meet an interim target (or to fulfil any other requirements in the legislation, including under the adaptation objective), there are no legal consequences. The NSW community should be provided with a mechanism to hold the Minister to account in the event that the Government's climate commitments are not achieved.

A duty on the Minister/s to take reasonable steps to meet the target would clearly set out expectations of the community and the Government, and provide a strong legal basis for the Minister/s to take necessary action. A duty on relevant Minister/s to consider climate change in decision-making and exercising functions, and make decisions consistent with targets set under the legislation would reflect the central importance of climate change to all aspects of government.

The importance of having clear regulatory requirements for relevant NSW agencies to achieve emissions reduction is evident through our work with the Bushfires Survivors for Climate Action. Since the decision of Chief Judge Preston in *Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority* [2021] NSWLEC 92 (**Decision**), the NSW EPA has developed a Climate Change Policy (**Policy**) and Climate Change Action Plan 2023-26 (**Action Plan**). In the two years since the Decision, BSCA and EDO have continually stressed the urgency of the action required from the EPA to develop environmental quality objectives, guidelines, and policies to ensure environment protection from climate change. BSCA and EDO have raised concerns about the delay both in the development of the Policy and Action Plan and in the actions required by them, as well as the absence of legally enforceable emissions reduction targets and licence conditions to regulate greenhouse gas emissions. Action to reduce emissions will only be taken some 3.5 years after the Decision, despite the climate urgency of deep reductions.

The proposed Bill could assist in further progressing effective action, but only if done in a co-ordinated and urgent way involving the relevant agencies and decision-makers across government. For example, there are currently many coal mine expansions that are being considered for approval, and licences being reviewed, without action to reduce emissions. As a result, the EDO has recently taken action against the EPA for failing to consider greenhouse gas emissions in reviewing an

Environmental Protection Licence for the Maules Creek Coal mine. Critical assessments and decisions being made now have the potential to blow out targets before plans are even set. Clear direction and duties are needed in the Bill to ensure that all emissions will be assessed against the legislated target and carbon budget. To ensure targets can be met, it will be necessary to await the Commission's clear plans to provide clarity and certainty to bureaucrats, decision-makers, industry and the community *before* approving new climate intensive projects.

A duty to consider climate change and make decisions consistent with legislated emissions reduction targets should be extended to all other decision-making under relevant NSW legislation, ensuring that the essential aims of pursuing efforts to limit warming to 1.5°C are accorded government-wide support.

In addition to establishing the recommended duties and schedule of relevant legislation, to ensure this legislation galvanizes reform to make all relevant NSW laws climate ready, the **Government needs to identify concrete steps and a timeline** for the following related reforms:

- Amending the *Environmental Planning & Assessment Act 1979* to embed climate change in all stages of planning and decision making – as set out in the recommendations in: [Climate-ready planning laws for NSW: Rocky Hill and beyond - Environmental Defenders Office \(edo.org.au\)](https://www.edo.org.au)
- Reviewing/updating the **Strategic Statement on Coal**
- Reviewing/updating the **Strategic Statement on Gas**
- Developing a **Climate Change State Environmental Planning Policy**
- Amending the **Resources SEPP**
- Consider the suite of legislative climate reforms needed to **fund the acceleration to net zero** in NSW, ensuring we have a legislative framework to target investment across renewable supply change and in transition from gas and coal to electrification. NSW should consider this as part of the suite of climate law reforms needed including removing the legal road blocks to clean energy.³

EDO would be happy to work with the Government on developing these related reforms.

Whole of government Recommendations

Recommendation: The Bill should include a Schedule of related legislation that needs to be amended to include a reference to the new legislated targets and guiding principles – for example, this includes planning, environmental and resource legislation.

Recommendation: A duty should be imposed on both the Minister for Environment and Minister for Planning to take all reasonable steps to meet legislated targets.

Recommendation: A duty should be imposed on the Ministers and all government and statutory decision-makers to consider climate change and act consistently with legislated emissions

³ In the United States the Inflation Reduction Act passed in August 2022 has led to \$520 billion worth of programs to fund the acceleration to net zero in the US. Australia needs a similar legislative framework to target investment across renewable supply change and in transition from gas and coal to electrification. NSW should consider this as part of the suite of climate law reforms needed including removing the legal road blocks to clean energy. See also the Victorian Gas Substitution roadmap and <https://www.cleanenergycouncil.org.au/advocacy-initiatives/inflation-reduction-act> and <https://www.cleanenergycouncil.org.au/news/energy-ministers-signal-moves-to-support-australia-becoming-a-clean-energy-superpower>

reduction targets and the commitment of the 2015 Paris Agreement to hold the increase in the global average temperature to well below 2°C above pre-industrial levels, and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels, in exercising any powers.

Recommendation: The Government needs to identify and commit to concrete steps and a timeline for the related reforms including: developing a Climate SEPP, amending the Resources SEPP; updating the Strategic Statements on Gas and Coal; removing legal barriers to clean energy investment; and amending the *Environmental Planning & Assessment Act 1979* to embed the guiding principles and climate considerations in decision-making.

3. Definitions

EDO recommends that there are some additional definitions that need to be added or clarified in clause 5. These include: ‘action’, ‘reduction’, ‘net’ and ‘carbon budget.’

‘Action’

The definition of ‘**action** to address climate change’ should also include the making of a policy, plan, program or funding decision, as well as decisions made in relation to whether fossil fuel development (or other development that will cause the release of substantial amounts of greenhouse gas emissions) may be carried out under environment, planning, mining, minerals, petroleum, and/or other relevant laws. In this regard, EDO notes that the current definition of “action to address climate change”, and therefore the “Guiding principles” in section 8, appear to be directed towards actions that will directly mitigate climate change or provide for adaptation to climate change. However, this means that the “Guiding principles” fail to address a significant and necessary component in addressing climate change, being the need to phase out existing fossil fuel developments (or other developments that cause the release of substantial amounts of greenhouse gas emissions) and to not approve any new (or expansions of) developments of that kind. This omission means that the Act will be significantly hamstrung in pursuing its purpose and objects.

‘Reduction’

The definition of ‘**reduction**’ should be amended to ensure it means genuine reduction in emissions, and not just avoided emissions or removal offsets. The Bill should make clear that actual emissions reductions are required. For example, conditions that are essentially promises to undertake research and development on carbon capture and storage (**CCS**) post-approval will not achieve the targets, and should not be used to facilitate approvals and justify continued increases in emissions. There is clear evidence that failed and underperforming projects considerably outnumber successful CCS experiences, and most of the successful exceptions have led to further emissions.⁴ Similarly there are a range of concerns with integrity and validity of carbon offsets being used to justify increased emissions. We would be happy to provide the Committee with further detail on offsets integrity, but in the meantime recommend the definition be tightened to focus on direct emissions reduction.

⁴ This is because the primary use for CCS has been for enhanced oil recovery, not emissions reduction. Additionally, the application of CCS/CCUS does not account for Scope 3 emissions. For further detail to clarify why CCS should not be given any weight in approvals, see: [The carbon capture crux: Lessons learned | IEEFA](#)

‘Net’

‘Net’ should be defined to exclude offsets from emissions reduction requirements. Offsets are referred to in the Second Reading speech, but the intent should be clarified in the Bill. There are a range of concerns with integrity and validity of carbon offsets being used to justify increased emissions. We would be happy to provide the Committee with further detail on offsets integrity, but in the meantime recommend the definition of ‘reduction’ and ‘net’ be tightened to focus on direct emissions reduction.

‘Carbon Budget’

Consistent with other jurisdictions, the Bill should provide for carbon budgets linked to temperature goals of the Paris Agreement. This would require amendments to the Bill and a definition of carbon budget.

Definition Recommendations

Recommendation: add definitions for ‘action’, ‘reduction’, ‘net’, and ‘carbon budgets’.

4. Guiding Principles

What is proposed and how it can be strengthened?

The Bill sets out a guiding principles clause as follows. EDO supports many of these principles – as indicated, and makes suggested edits and provides comment in red.

8 Guiding principles

- (1) For this Act, the guiding principles are the principles set out in this section.
- (2) There is a critical need to act to address climate change, which is a serious threat to the social, economic and environmental wellbeing of New South Wales. **Supported**
- (3) Action to address climate change should be taken as early as possible to minimise the cost and adverse impacts of climate change. **Supported**
Insert: Action to address climate change must involve a phase out of fossil fuels and transition to renewable energy.
- (4) Action to address climate change should be taken in a way that—
 - (a) is **fiscally responsible**, and **Not supported**. [As drafted this may prioritise economic considerations over other considerations which is potentially inconsistent with the principles of ecologically sustainable development in (6) below].
 - (b) promotes **sustainable economic growth** **Not supported**. [It is unclear what this means, and again may be inconsistent with (6)], and
 - (c) considers the economic risks of delaying action to address climate change.
- (5) Action to address climate change should be consistent with the right to a clean, healthy and sustainable environment. **Strongly supported**
- (6) Action to address climate change should be consistent with the principles of ecologically sustainable development described in the Protection of the Environment Administration Act 1991, section 6(2). **Supported**
- (7) Action to address climate change ~~should~~ **must** involve appropriate consultation with affected persons, communities and stakeholders.
- (8) Action to address climate change ~~should~~ **must** take into account the following—

- (a) the knowledge and perspectives of Aboriginal communities,
 - (b) the best available science,
 - (c) the need to support local communities, including Aboriginal communities, who may be affected by the action, including by—
 - (i) considering the impact on local employment and industries, and
 - (ii) diversifying local economies, and
 - (iii) encouraging local procurement, and
 - (iv) optimising job creation and employment transition opportunities,
 - (d) the need for education and skills diversification,
 - (e) the need to ensure essential utilities and infrastructure are provided, including energy, water, telecommunications and transport,
 - (f) the impact of the action on consumer costs in New South Wales, including energy costs,
 - (g) the need to reduce the risk climate change poses to human health.
- (9) The Government of New South Wales is responsible for—
- (a) urgently developing and implementing strategies, policies and programs to address climate change, and
 - (b) ensuring the Government of New South Wales pursues best practice in addressing climate change. ‘Addressing climate change’ is very broad. It should be phrased more specifically as ‘reducing greenhouse gas emissions, conserving and enhancing sinks of greenhouse gases including forests, and implementing adaptation measures.’
- Insert: (c) ensuring any decisions, policy, program or process developed or implemented by Government takes climate change into consideration where relevant, consistent with achievement of the emissions reduction targets.

Analysis and recommendations

In addition to the recommended edits above in red, we recommend that there needs to be an explicit guiding principle to the effect that ‘There is a critical need to facilitate a rapid transition from fossil fuels to renewable energy.’ This principle is necessary to guide the necessary phase out of fossil fuels and transition to renewable energy.

As proposed, these principles apply to this Act, so predominantly will apply to the work of the Net Zero Commission and the setting of targets. EDO recommends that this be clarified and that the guiding principles should also apply across relevant government decision-making as identified in the recommended Schedule of related legislative amendments. This would be assisted by an additional principle being added to ensure any decisions, policy, program or process developed or implemented by Government takes the guiding principles into consideration where relevant, consistent with achievement of the emissions reduction targets.

As noted, the principles should be a mandatory consideration for the IPC and other decision-makers when making decisions on development consents. This must explicitly include consideration of modifications to existing approvals. Modifications are currently approved by the Department as substantially the same developments. Often this can include extensions to the life of existing coal

mines, but this process does not properly take into account their emissions. If targets are to be achieved, the guiding principles must be a mandatory consideration for all coal and gas projects.

As discussed above, the EDO's proposed expansion of the definition of "action to address climate change" would ensure that the guiding principles are applied to decision-making processes that have the potential to increase the adverse effects of climate change – for example, the determination of approvals for new fossil fuel developments. This, in conjunction with the EDO's recommendation that the guiding principles should apply to relevant decision-making processes across government, would lend significantly greater effect to the guiding principles in meeting the purpose and objects of the Act. For example, if Guiding Principle (5) applied to approvals of new fossil fuel projects, or the grant of permits to allow existing fossil fuel projects to continue operating, the decision-maker would need to ensure that their decision is consistent with the right to a clean, healthy and sustainable environment. Unless the project proponent committed to significant greenhouse gas reduction measures, it would be difficult to envisage that a decision-maker could comply with Guiding Principle (5) and still approve a new project or permit an existing high emitting project to continue operation, given the current scientific consensus on the impacts of climate change. This would ensure that greenhouse gas emissions do not continue to rise, and that existing sources of greenhouse gas emissions are reduced. It would also ensure that real progress is made toward meeting the purpose and objects of the Act, and the targets for reducing greenhouse gas emissions to be set under the Act.

Finally, as noted above, further reform is needed to NSW planning laws to facilitate this transition. In addition to linking the targets and principles in the proposed Bill to relevant planning decisions, we recommend the NSW government develops specific principles to guide the energy transition. EDO has articulated 12 principles to help establish a new pathway for transition projects that will deliver outcomes for climate, nature and communities. We refer the committee to: [A new pathway for the renewable energy transition: national environment laws that deliver for nature, climate and communities - Environmental Defenders Office \(edo.org.au\)](#) and [EDO's 12 principles for renewable energy transition projects - Environmental Defenders Office.](#)

Guiding Principles Recommendations

Recommendation: Add an explicit guiding principle to the effect that 'Action to address climate change must involve a phase out of fossil fuels and transition to renewable energy' in recognition of the critical need globally to facilitate a rapid transition from fossil fuels to renewable energy.

Recommendation: Amend the Bill to ensure that the the guiding principles also apply across relevant government decision-making as identified in the recommended Schedule of related legislative amendments. This would be assisted by an additional principle being added to ensure any decisions, policy, program or process developed or implemented by Government takes the guiding principles into consideration where relevant, consistent with achievement of the emissions reduction targets.

Recommendation: The guiding principles should be a mandatory consideration for the IPC and other decision-makers when making decisions on development consents on all coal and gas projects, including modifications.

Recommendation: Provide further detail in relevant legislation, regulations and policy to enshrine principles for energy transition projects to ensure decision-making and assessment pathways deliver outcomes for climate, nature and communities.

5. Targets

What is proposed and how should it be strengthened?

The Bill sets out a targets clause as follows. EDO makes suggested edits and provides comment in red.

9 Targets for reducing net greenhouse gas emissions

- (1) The targets for reducing net greenhouse gas emissions in New South Wales are—
 - (a) by 30 June 2030—to reduce net greenhouse gas emissions in New South Wales by at least 50% from the net greenhouse gas emissions in 2005, [Note – experts recommend 74% reduction by 2030 is needed] and [Insert: by 30 June 2035—to reduce net greenhouse gas emissions in New South Wales by at least 70% from the net greenhouse gas emissions in 2005 – Note that the science indicates we need a target of net zero by 2035]
 - (b) by 30 June 2050—to reduce net greenhouse gas emissions in New South Wales to zero. – [Note that the science indicates we need a target of net zero by 2035]

- (2) The regulations may make provision about the following—
 - (a) the implementation of the 2030, 2035, 2040, 2045 and 2050 targets linked to carbon budgets,
 - (b) the calculation and assessment of greenhouse gas emissions, including by—
 - (i) providing for a person to calculate or assess greenhouse gas emissions, and
 - (ii) adopting documents in force from time to time,
 - (c) other matters relating to the 2030 and 2050 targets.

- ~~(3) Despite subsection (2), the regulations must not set a specific interim target to reduce net greenhouse gas emissions in New South Wales by a particular date occurring before 30 June 2050. Delete~~
[Insert a clause to establish the non-regression principle – similar to Commonwealth Climate Act]

Analysis and recommendations

Many jurisdictions have committed to a long-term target of Net-Zero greenhouse gas (GHG) emissions by 2050 and have adopted various approaches to implementing short and medium term targets to meet the goal of the Paris Agreement, including by setting interim ‘emissions budgets’. It is important to consider the long-term target and the mechanisms for achieving it in more detail. Interim targets linked to carbon budgets are critical.

While it is important, on its own, a Net-Zero by 2050 target does not regulate how many GHGs can be emitted before 2050, or the rate at which emissions must decline, in order to meet the goal of the Paris Agreement of limiting global temperature to increase to well below 2 degrees Celsius (°C) above pre-industrial levels, while pursuing efforts to limit the increase to 1.5°C. In this regard, it is the volume of emissions that are permitted to be released before 2050, and the rate at which emissions decline,

that will determine the ultimate level of global warming that Australia, and NSW, will have to endure. For example, if emissions are permitted to continue at high levels for too long into the future, the corresponding rate and depth of emissions reductions required to achieve the goal of the Paris Agreement will become impossible to achieve (both technologically and economically). The Net-Zero by 2050 target must therefore function in the context of meeting a carbon budget corresponding to a level of global warming of 1.5°C or well below 2°C above pre-industrial levels.

Therefore, **mechanisms in climate legislation for emissions budgets and interim and long-term targets should clearly link to a temperature outcome corresponding to the goal of the Paris Agreement.**

The stark differences, in terms of climate change risks and impacts, between a 1.5°C warming scenario and a 2°C warming scenario were highlighted in the IPCC's Special Report on the Impacts of Global Warming of 1.5°C (**SR15**).⁵ SR15 states that in order to avoid the most severe impacts of climate change, global temperature increase must be limited to 1.5°C above pre-industrial levels.

We consider that it is necessary to set binding GHG emissions reduction targets to ensure that NSW makes a fair and equitable contribution to achieving the global temperature goal set by the Paris Agreement. We note that experts have recommended that to save assets like the Great Barrier Reef and Ningaloo Reef, the target needs to be at least a **74 per cent reduction in emissions below 2005 levels by 2030 and net zero by 2035.**

EDO strongly supports the adoption of binding emissions reduction targets in legislation, but we note that the current science is clear that ambitious interim targets are required in the short-term to ensure that we immediately embark upon an emissions reduction trajectory that is feasible and sufficient to meet the goal of the Paris Agreement.

The NSW Bill proposes two targets only (for 2030 and 2050), and neither are what the science says is needed. While legislating a target is important, the proposed target is less than the previous NSW one of 70% before 2035, and the Bill includes a provision about not going faster. The latter, in proposed clause 9(3), is directly inconsistent with the science and with the Guiding Principles set out in the Bill (and particularly at clause 8(3)) and must be removed from the Bill.

In our view, the proposed Climate Change Bill should:

- (a) set emissions targets by reference to a carbon budget reflecting NSW's fair share of the remaining budget for limiting temperature increase to 1.5°C; and
- (b) include a clear mechanism for targets to be made more ambitious, and prevent targets from being weakened.

We also recommend an amendment providing that targets for methane reduction can be made on advice from the Commission.

To **operationalise the targets**, as noted above, we recommend that a duty should be imposed on the Minister to take all reasonable steps to meet legislated targets.

⁵ Available at <https://www.ipcc.ch/sr15/chapter/spm/>.

Also as noted above, the legislated targets, like the guiding principles, should apply to relevant decision-making processes across Government. The Act should ensure that relevant decision-makers are required to consider, and not act inconsistently with, the legislated targets when making decisions relevant to developments that cause the release of substantial amounts of greenhouse gas emissions. For example, before determining an application for a new fossil fuel project, a decision-maker should be required to consider how the greenhouse gas emissions from that project would fit within the carbon budgets required to meet the legislated targets, and ensure that any decision is consistent with meeting the legislated targets.

We note that s 9(2) may allow regulations to be made that expand the application of the guiding principles and legislated targets to other decision-making processes. However, the EDO **recommends** that such application should be made explicit in the Act to ensure that the purpose and objects of the Act have the best chance of being met.

Targets Recommendations

Recommendation: Set emissions targets by reference to a carbon budget reflecting NSW's fair share of the remaining budget for limiting temperature increase to 1.5°C - experts have recommended that the target needs to be at least a 74 per cent reduction in emissions below 2005 levels by 2030 and net zero by 2035.

Recommendation: At a minimum, legislate the previously agreed target of 70% reduction by 2035.

Recommendation: Include a clear mechanism for targets to be made more ambitious via a review trigger (ratchet mechanism), and prevent targets from being weakened (non-regression principle).

Recommendation: Amend the Bill to provide that interim 5 yearly targets are made.

Recommendation: Amend the Bill to provide that specific targets for methane can be made.

Recommendation: Ensure the regulations are made to facilitate the implementation of the 2030, 2035, 2040, 2045 and 2050 targets linked to carbon budgets.

Recommendation: Delete the prohibition on moving more quickly to net zero in clause 9(3).

6. Adaptation objective

The Bill proposes:

10 Objective for adaptation to changing climate

(1) For this Act, the adaptation objective is that New South Wales is more resilient to a changing climate.

(2) The regulations may make provision about the implementation of the adaptation objective.

EDO agrees that it is essential to plan for adaptation and build resilience. The proposed objective is high level and broad so key details need to be developed in regulations to expand on how this objective will be met. For further detail on adaptation actions, please see our [Roadmap for Climate Reform – Opportunity 5 – Plan for and Measure Success](#). This refers to risk assessments, adaptation plans, and monitoring outcomes for adaptive management. We recommend consultation on proposed adaptation measures and regulations be undertaken, particularly with First Nations and communities impacted by climate disaster.

Adaptation objective

Recommendation: Consultation on proposed adaptation measures and regulations be undertaken, particularly with First Nations and communities impacted by climate disaster.

7. Net Zero Commission

EDO has long-recommended an independent expert advisory body as a best practice element of climate legislation. We welcome the proposed Net Zero Commission. The Bill provides for constitution, staff, members, functions, reporting requirements, advisory committees in Part 3, clauses 11-24. We provide feedback and recommendations on the constitution of the Commission and its advisory role.

Independence and expertise of Commissioners

It is important that the Commissioners are truly independent of the industry that will be impacted by their decisions. We agree that technical expertise is relevant, but to ensure independence and objectivity, it is necessary to be cognisant of the risk that those who obtain that technical experience as consultants acting for industry in this area may not be impartial in their views on transitioning the economy. It is therefore important that the majority of Commissioners come from academic, First Nations and/or community backgrounds. We also see value in stipulating that expertise could include lived experience of climate impacts, and requiring a Commissioner to represent climate impacted communities.

To address this, we recommend that clause 12(3) of the Bill be amended to make it clear that there should be an even spread (to the extent practicable) of the skills, qualifications and experience relevant to the matters listed at cl 12(3)(a) – (g) within the members of the Commission. And not, for example, that the Commission could be entirely constituted by members who have skills, qualifications and experience in only one of the matters listed at cl 12(3)(a)-(g).

Advisory role

The structure proposed is very similar to the current Net Zero Board, with the role being advisory. This means, as currently proposed, that advice provided by the Commission will not be directly operationalised or considered in critical planning or EPA decisions. This reduces the impact of the Commission if the remit of their role is limited to 2030 and 2050 targets, but their advice cannot be applied further afield.

This means there is a disconnect in the Bill. It sets up a new Commission and legislates targets, but doesn't connect these elements with decisions that are imminent and likely to undermine the ability of NSW to meet targets. Specifically, there are there are a significant number (potentially 13) coal projects before DPE that could be approved while the Commission is being established. It may be at least 6-12 months once the Bill is passed for the Commissioners to be appointed and start on the plans to reduce emissions. Projects that will put emissions reduction targets in jeopardy may be approved in the interim period.

In this context, EDO recommends that the Commission should have a role in modelling new and proposed coal projects against the targets, carbon budgets for NSW, as well as the global carbon budget to keep temperature increase to 1.5 degrees. The Commission could also have a broader role in reviewing government policies to assess their consistency with achieving targets.

There should also be tighter timeframes for the Minister to respond to Commission advice and reports.

In relation to clause 18 of the Bill, the EDO recommends the Bill be amended to require the Commission to give the Minister a report (distinct from an annual report referred to in clause 20) within 6 months of its constitution, and then at yearly intervals thereafter, to ensure that the Commission is giving regular and advice to the Minister in relation to “action to address climate change” and meeting the legislated targets.

Net Zero Commission Recommendations

Recommendation: The Bill should require majority of Commissioners to be independent and not associated or affiliated with the fossil fuel industry.

Recommendation: Clause 12(3) be amended to make it clear that there should be an even spread (to the extent practicable) of the skills, qualifications and experience relevant to the matters listed at cl 12(3)(a) – (g) within the members of the Commission, and prevent, for example, the Commission being entirely constituted by members who have skills, qualifications and experience in only one of the matters listed at clauses 12(3)(a)-(g).

Recommendation: Expertise should include lived experience of climate impacts, and a Commissioner should represent climate impacted communities.

Recommendation: Amend the Bill to provide that the Commission has a role in modelling new and proposed coal projects against the targets, carbon budgets for NSW, as well as the global carbon budget to keep temperature increase to 1.5 degrees.

Recommendation: The Commission should also have a broader role in reviewing government policies to assess their consistency with achieving targets.

Recommendation: Require the Commission to give the Minister a report (distinct from an annual report referred to in clause 20) within 6 months of its constitution, and then at yearly intervals thereafter, to ensure that the Commission is giving regular and advice to the Minister in relation to “action to address climate change” and meeting the legislated targets.

8. Review

The Bill sets out a review clause as follows. EDO makes suggested edits and provides comment in red

Part 4 Miscellaneous

25 Review of Act

(1) The Minister must review this Act to determine whether the policy objectives and purpose of the Act remain valid and whether the terms of this Act remain appropriate for securing the objectives.

(2) A review must be undertaken—

(a) as soon as possible after the period of 5 years from the date of assent to this Act, and

(b) every 5 years after the first review.

Insert: The Review should be undertaken by an independent reviewer appointed by the Minister and involve public consultation.

(3) A report on the outcome of the review must be tabled in both Houses of Parliament within 12 months after the end of the period to which the review relates.

We note that 5 years can be a long time given the urgency of the timeframes for reducing emissions. It is therefore essential that there are clear requirements in the Bill (as recommended above) to require the Commission to give the Minister a report (distinct from an annual report referred to in clause 20) within 6 months of its constitution, and then at yearly intervals thereafter, to ensure that the Commission is giving regular and advice to the Minister in relation to “action to address climate change” and meeting the legislated targets. It is also essential to link review and advice by the Commission with an ability to increase targets if needed (ratchet mechanism). Enshrining these processes and mechanisms in the Bill will ensure that we don’t wait 5 years to see if the legislation is working and emissions reduction is on track to meet targets.

EDO recommends that best practice statutory reviews require an independent expert or panel undertake the review. This is preferable to an internal departmental review. Best practice statutory reviews also include public consultation. This should be required by the legislation.

Also, as noted above, as the Bill proposes a separate purpose and objects clauses, the review should assess progress against the objectives and the purpose that explicitly references the critical link to the temperature goal of the Paris Agreement.

Review Recommendations

Recommendation: As noted above, the review provision should refer to reviewing whether the Bill (Act) has achieved *both* its objectives and purpose.

Recommendation: Require the statutory review to be conducted by an independent expert or panel and involve public consultation.

9. Regulations

The Bill provides for regulations to be made:

26 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may apply, adopt or incorporate, wholly or in part and with or without modification, a publication in force at a particular time or from time to time.

As this is framework legislation, it is likely that significant detail will need to be addressed in regulations. We recommend that the Government consults widely on draft regulations to provide further detail on implementing the expanded scope of the legislation as recommended above.

Regulations

Recommendation: The Government should develop and consult widely on draft regulations on how key elements of the framework legislation will be implemented.

Appendix

We provide further references to assist the Committee:

Targets

- [Analysis: Net zero emissions by 2050? The importance of targets in climate law - Environmental Defenders Office \(edo.org.au\)](#)
- [A Roadmap for Climate Reform - Environmental Defenders Office \(edo.org.au\)](#)

Principles

- [A new pathway for the renewable energy transition: national environment laws that deliver for nature, climate and communities - Environmental Defenders Office \(edo.org.au\)](#)
- [EDO's 12 principles for renewable energy transition projects - Environmental Defenders Office](#)

Embedding climate in NSW decision-making

- [Climate-ready planning laws for NSW: Rocky Hill and beyond - Environmental Defenders Office \(edo.org.au\)](#)
- [Empowering the NSW EPA to Prevent Climate Pollution - Environmental Defenders Office \(edo.org.au\)](#)

Recognising the right to a Healthy environment in law

- [New Report: A Healthy Environment is a Human Right - Environmental Defenders Office \(edo.org.au\)](#)