

A Climate Act for Queensland



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Queensland
Conservation
Council

Authorised by Revel Pointon, Managing Lawyer - Southern and Central Queensland
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We recognise the traditional owners and custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander elders past and present and aspire to learn from traditional knowledge and customs so that together we can protect our environment and cultural heritage through law.



Queensland Conservation Council

Queensland Conservation Council is the state's peak non-governmental environment group. Our mission is to protect, conserve and sustain Queensland's unique, natural environment.

Visit queenslandconservation.org.au for more information.



AUSTRALIAN CONSERVATION FOUNDATION

ACF is Australia's national environment organisation. We are 700,000 people who speak out for the air we breathe, the water we drink, and the places and wildlife we love.

We are proudly independent, non-partisan and funded by donations from our community.



Environmental Defenders Office

EDO is the leading public interest environmental law organisation in Australia, with a formidable track record of successful Court outcomes and in driving systemic change through policy and law reform expertise.

Our vision is for a world where nature thrives.

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Introduction

We all want to live in a world that is safe and healthy for present and future generations. Climate change is one of the greatest threats to the lives, rights and prosperity of people today and of the generations to come.

The current pandemic is having a significant impact on lives and economies globally. If we contemplate the level of impact we are now suffering, multiply that impact across all ages, countries, species and ecosystems that we depend on, and envisage it getting increasingly worse as decades pass, the impact of the pandemic begins to pale in comparison to the threat we are facing from climate change.

Queensland is particularly vulnerable to the dangers of climate change. Our State is already experiencing hotter summers, more frequent natural disasters and impacts on our natural environment, such as coral bleaching on the Great Barrier Reef.

But happily, there is action we can take now to reduce this threat.

As Australia's highest emitting jurisdiction, with emissions per person four times higher than China, Queensland has an obligation to take action now to reduce our emissions and ensure that climate change is incorporated into decisions of all sectors of the economy.

Delaying action risks more severe climate impacts. Queensland must play its part in limiting global warming to 1.5 degrees Celsius above pre-industrial levels, in order to avoid the most dangerous levels of climate change.

Federal government action is currently proving inadequate to meet Australia's international commitments to reduce greenhouse gas (GHG) emissions.¹ Accordingly, Australia's states and territories have an important leadership role to play in addressing climate change, transitioning to renewable energy, and ensuring that we do our fair share to reduce global emissions. Many businesses, local governments, and local communities are working towards incorporating climate change into planning decisions, to better manage the adverse impacts of climate change. Yet there is no Queensland legal framework aimed at mitigating carbon emissions to limit global warming within internationally agreed goals.

¹ "if all countries were to follow Australia's current policy trajectory that we rate "Highly Insufficient", warming could reach over 3°C and up to 4°C." per New Climate Institute and Climate Analytics, Climate crisis demands more government action as emissions rise (Climate Action Tracker, Update Report, June 2019) 8 < https://climateanalytics.org/media/cat_2019-06-19_sb50_cat_update.pdf.>

The Queensland Government has released the Queensland Climate Adaptation Strategy together with the Queensland Climate Transition Strategy as a guide for climate change policy, both of which include an aspirational target of net zero emissions by 2050. However, no targets or other binding obligations aimed at reducing emissions are embedded in law. In this regard, Queensland lags behind other Australian jurisdictions, many of which already have emissions reduction targets and climate legislation in place.

Queensland must do its fair share to help reduce GHG emissions and move to a clean energy future through strong, enforceable, legislated targets. Legislation is needed to ensure that all sectors of government and industry are obliged to take action to enable Queensland to reach meaningful emissions reductions targets. The legislation must also place an obligation on decision-makers to consider whether the decisions they make are consistent with Queensland reaching those targets.

Failing to implement adequate legal and policy responses to the serious and systemwide impacts of climate change will have far-reaching and long-term consequences for Queenslanders. These impacts will hit hardest in regional, rural and remote communities, and will devastate the spectacular natural environment at the heart of the Queensland lifestyle and many parts of the economy.

We must also recognise that, even with strong action now to reduce our emissions and curb the most dangerous levels of climate change, the impacts of climate change are already being felt in Queensland and are likely to continue for some time. Queensland needs a strong plan to protect all Queenslanders with smart, effective techniques to prepare for and adapt to the current and future impacts of a changing climate, to reduce risk and increase resilience.

To respond to the systemic climate change impacts already being experienced, Queensland needs a clear and coordinated legal framework.

A Climate Act can be a key part of Queensland's response to the challenges it faces. Such an Act will clearly and unequivocally deliver an accountable decision-making and policy framework for action to align the Queensland Government's policies with the global goals set by the Paris Agreement and ratified by Australia, and to appropriately respond to the many, escalating challenges climate change presents. Through implementing a Climate Act, Queensland will be showing leadership in taking strong action to reduce GHG emissions and creating a path for a low carbon future that is just and sustainable.

Why a Climate Act for Queensland?

A Climate Act, implementing key elements of needed climate action such as targets and whole-of-government obligations to meet those targets and oversight mechanisms, is a strong way to deliver clear, effective and lasting positive action on climate change in Queensland. It can:

- deliver a clear, strategic and accountable plan and governance mechanisms, such as implementing a Climate Authority, to achieve the required GHG emissions reductions;
- send a clear signal of the government's intention, commitment and level of ambition;²
- function as a significant political statement, ensuring the government is accountable to the Queensland Parliament and the public for its performance on climate change;
- drive low-carbon investment and innovation, and lower the cost of a just transition to a low-carbon economy;
- provide certainty and confidence for business and civil society, which will drive investment in renewables and clean technology; and
- deliver a range of positive economic and social benefits such as cleaner air and healthier environments, let alone reduced risks from climate change.

A Climate Act can ensure that Queensland proactively responds to climate change risk and reduces its GHG emissions across all sectors, consistent with the overarching aim of the Queensland Government's Climate Change Response.

² Institute for Government, Legislated Policy Targets: commitment device, political gesture or constitutional outrage? (2012).



The proper management of Australia's GHG emissions is heavily reliant on action taken by state and local governments, as they are often responsible for making the decisions that directly influence the amount of GHG emissions produced across Australia.

To respond to the urgency of climate change, a Climate Act can establish binding obligations on the Queensland Government to reduce GHG emissions.

Mandatory targets, strategies and policies can be required, and climate change considerations can be integrated into all levels of government decision-making, to drive a just transition to a low carbon economy and adapt measures to support the most vulnerable in Queensland. Strong state action in the form of a Climate Act is necessary to clearly define the level and strength of Queensland's intention, commitment and ambition to develop lasting responses to the many escalating challenges climate change poses.

Multiple Australian states, a territory, and other countries, have taken the step to adopt climate change legislation. The Queensland Government can draw on the experiences of other Australian Jurisdictions, including Victoria,³ South Australia,⁴ the ACT⁵ and Tasmania,⁶ as well as laws enacted in other countries, including Canada, the UK, various US states (such as California and New York) and New Zealand.⁷

A Climate Act can build on growing momentum across regions and establish valuable opportunities to collaborate across all sectors in Queensland.

³ Victoria is said to have made good progress with a reduction in emissions already, and emissions are projected to fall further to 18% below 2005 levels by 2020: Independent Expert Panel on Interim Emissions Reduction Targets for Victoria, 'Interim Emissions Reduction Targets for Victoria (2021-2030)', March 2019.

⁴ SA enacted the Climate Change and Greenhouse Emissions Reduction Act 2007, which made them the first Australian state to legislate targets to reduce greenhouse emissions.

⁵ The ACT enacted the Climate Change and Greenhouse Gas Reduction Act 2010, which was updated in 2016 to set targets for the ACT of 40% on greenhouse gas emission on 1990 levels by 2020 and zero net emissions by 2050 (ACT is reported to be on track to meet 2020 targets).

⁶ Tasmania has an emissions reduction target of 60% below 1990 levels by 2050. ACT targets are 40% below 1990 levels by 2020, 80% below 1990 levels by 2050 and zero net emissions by 2060.

⁷ New Zealand recently passed the Zero Carbon Bill into law, which commits New Zealand to zero carbon by 2050 or sooner, sets a legally binding pathway to this target, and requires the Government to make a plan.

Strong action needed to protect Queensland's Great Barrier Reef

We are now facing an inescapable reality that the Great Barrier Reef, our greatest natural treasure and one of the seven natural wonders of the World, has been diminished as a direct result of human-induced climate change, and its entire existence is threatened unless current levels of GHG emissions are deeply and rapidly reduced.

A Climate Act that commits Queensland to limit its emissions to levels that are consistent with avoiding the worst impacts of global warming will give the Great Barrier Reef a greater chance of survival.

Whilst all governments must act to properly mitigate the threat of climate change, Queensland bears an additional onus as the steward of the beautiful Great Barrier Reef.

Warnings about the impacts of climate change on the Great Barrier Reef have resounded since 1998, when the first mass bleaching occurred. The continued rise of sea temperatures since that time means that mass bleaching events continue to threaten the Great Barrier Reef, which is further impacted by increasing ocean acidification caused by global warming. Over the past thirty years, the Great Barrier Reef has suffered significant damage as a result of climate change, the worst single mass bleaching event taking place around Lizard Island in 2016 and accounting for a substantial loss to coral reef.

Without immediate and significant action to reduce GHG emissions and to prevent further loss of Queensland's Great

Barrier Reef, we stand to lose this incredibly important ecosystem and world heritage site, listed for its exceptional natural beauty.

All significant species that rely on the health and wellbeing of the Great Barrier Reef will likewise be lost. Not to mention the reef's substantial contribution to Queensland's economy and job creation, particularly in the fishing and tourism industry.

A Climate Act that mandates the significant reduction of GHG emissions will help mitigate the impacts of rising global temperatures on the Great Barrier Reef, giving the reef a chance to repair itself.

A Climate Act is needed for all sectors to help avoid the threats of climate change

Whilst we are already experiencing severe negative impacts from global warming, the scientific-consensus confirms that any warming above 1.5 degrees Celsius will very significantly impact Queensland's biodiversity sites and environment, and impact the state's economy, agriculture sector, community health sector and cultural heritage. For this reason, a Climate Act is important for a variety of sectors across Queensland.



For example:

- Climate change will impact and disrupt Queensland's businesses and industry. Increases in the frequency of flooding, inundation, bushfires and heatwaves will disrupt supply chains, workplace access, water supply and infrastructure. Any damage to workplaces, equipment and facilities may leave customers unable to access services and products. Adapting and developing low emissions services, industries and technologies, and shifting infrastructure from zones at risk, will allow Queensland to minimise these risks and realise the economic benefits of being climate ready.

- Climate change will impact on the agriculture sector as rainfall reduction and variability will impact crop and forage production, decrease livestock carrying capacity and animal production, and cause severe changes in flora and fauna species composition. Increases in the prevalence of drought will cause greater depletion of soil moisture and reduce ground covering impacting on the management of diseases, weeds and pests.
- Community health stands to be impacted by higher temperatures and hotter days, resulting in heat exhaustion and increased heat-related mortality among outdoor workers and vulnerable people (including the very young and elderly, and people living in disadvantaged rural, regional and remote communities). Increases in extreme weather events such as flooding, fire weather and cyclones will create greater stress on health and emergency services. Furthermore, current risks of vector-borne diseases such as malaria and dengue fever may increase in response to changing humidity, rainfall and temperature rise.
- Cultural heritage values also risk being impacted by climate change. Strong links to country and wildlife, alongside access to land and its resources, are integral for cultural value maintenance within Indigenous communities. Any loss to biodiversity or access to land caused by climate change, for example the degradation of islands due to rising sea levels, threatens the cultural practices of Indigenous communities. Communities in the Torres Strait are particularly vulnerable to the impacts of climate change. Island communities regularly suffer the impacts of sea-water inundation and there is great concern that continued sea-level rise may force communities from their traditional lands. These impacts to the cultural and human rights of Indigenous communities clearly demonstrate the need for greater commitment to climate change mitigation and adaptation in the form of a Climate Act.



What will a Climate Act do?

An effective Climate Change Act will:

1. Establish clear objectives and guiding principles to guide whole-of-government climate action in Queensland

A Climate Act will set clear objectives for reducing the risks of climate change in Queensland, with principles to guide the delivery of these objectives.

These objectives can be drafted to ensure the Act is framed around:

- reducing GHG emissions through long and short-term targets consistent with the Paris Agreement's temperature goals;
- plans for a rapid and just transition away from fossil fuel production to a low carbon economy – reducing the exposure of the Queensland economy to the risk of stronger climate action in markets for our fossil fuel exports, such as Japan and China;
- ensuring adaptation measures are implemented, with a focus on the most vulnerable communities; and
- consistency with the principles of ecologically sustainable development and the best available expert science.

The objectives and principles can be used to guide all decisions made under the Climate Act by decision-makers across the Queensland Government, including in relation to the setting and review of emissions reduction targets, and developing sectoral policies and plans. They can establish a clear and consistent approach to frame

and guide delivery of all aspects of the Climate Act.

2. Set binding greenhouse gas emission reduction targets

A Climate Act can set binding GHG emissions reductions targets to ensure Queensland makes a fair and equitable contribution to meeting the internationally agreed temperature goals set by the Paris Agreement.

This can include a long-term target of net zero emissions by 2050, with interim (5 year) targets that set us on a fast but fair trajectory to reduce the bulk of our emissions by 2040, along with sector-specific carbon 'budgets' included to establish a pathway to the interim and long-term targets. These targets must be consistent with the temperature goals of the Paris Agreement. In determining an interim emissions reduction target, independent expert advice, in the form of an expert panel established under the Act, can be provided to guide the Minister in relation to his or her decision. The interim targets drive accountability and allow performance to be tracked over time, with adjustment mechanisms available to ensure the long-term target is met. There can be a prohibition on the weakening of targets.

Embedding long-term and interim targets signals to the community and all sectors of the economy that Queensland is committed to consistent action to address GHG emissions across all of government and society.

There can also be specific target pledges for different sectors. For example, the Queensland Government has expressed a commitment to achieving 50% renewable energy by 2030 which should be specifically entrenched in the Act.

The Act can also provide for a framework to regulate GHG emissions through amendments to the *Environmental Protection Act 1994 (Qld)*. It is a significant inadequacy of our environmental laws that they do not currently require regulation of GHG emissions through consistent monitoring, reporting and capping of emissions.

3. Establish duties for decision-makers to meet targets

A Climate Act can include clear obligations and duties on all decision-makers in the Queensland Government to ensure GHG emissions reduction targets are met and to provide the appropriate integration of climate change in all relevant sector laws (such as planning, water, environment and energy laws). This is critical to establish genuine accountability to ensure the the legislated emissions reduction targets are met.

A general obligation can be included in a Climate Act to ensure that consideration of climate change (mitigation and adaptation) is integrated into a wide range of decision-making processes under other relevant laws.

Mechanisms could include setting clear legal duties to consider climate change in exercising decision-making functions and developing institutional guidance and support on technical matters.

To assist decision-makers, guidelines should be developed to specify the ways in which climate change should be taken in account in decision-making processes – for example, how the decision will impact on climate change and how climate change will impact on the subject matter of the decision. The question of whether the decision will contribute to Queensland's GHG emissions, and whether it is consistent with any relevant emissions reduction targets, should also be a mandatory consideration.

In addition, a 'pledge' model can require the Queensland Government and local governments to commit, or pledge, the amount of emissions reductions they will deliver based on the emissions of each portfolio and the policy tools available to that portfolio.

This can help strengthen the integration of climate change into existing planning processes and strengthen institutional cooperation and mutual accountability. Guidelines could be used to assist decisionmakers across portfolios to understand their statutory obligations.

4. Establish an independent statutory Climate Authority to provide expert advice and oversight

A Climate Act can establish an independent, expert Queensland Climate Authority. This can provide objective oversight and expert advice to assist government with delivering its various obligations under the Act.

A Climate Authority can provide the objective, evidence-based and transparent information and advice, needed by government to advance emissions reduction targets and adaptation plans, and achieve a just transition to a low carbon economy.

The Climate Authority should ideally be established in the Treasury, to ensure climate action is a whole-of-government consideration which affects all portfolios, rather than siloed as an issue solely for the environment department.

The Climate Authority can also develop and publish guidelines to establish how climate change is to be taken in account in decision-making. Each year, the Climate Authority, having regard to the latest climate science, can determine and report on what the most likely climate impacts are for Queensland. This will enable decision-makers to clearly understand the most relevant predicted impacts of climate change within their sectors, and allow them to address climate risks with greater certainty.⁸

⁸ A Climate Act can establish a monitoring, reporting and offence framework to require the monitoring, periodically review and publicly report on progress against the Act's goals, including particularly the legislated targets.



5. Ensure monitoring, reporting and compliance

A Climate Act can establish a framework to require that progress against the Act's goals, particularly the legislated emissions reduction targets, is monitored, regularly reviewed, and reported on publicly.

Reporting requirements can include reporting on climate science and emissions data, and the preparation of further information to ensure accountability and transparency. There can also be requirements to provide updated information to the public on climate science and the impacts of climate change to Queensland.

A requirement to provide evidence of how decisions are in line with, and do not compromise the Act's targets can be required upon all relevant decision points, as well as in the review of legislation before parliament. The use of offsets should not be allowed in seeking to justify decisions which would increase or continue current GHG emission levels, to ensure that meaningful action is taken going forward given the extent of emissions reductions needing to be achieved.

Ideally, extended standing for applicants seeking judicial review of decisions made under a Climate Act and other relevant Acts can be provided, to have an accountability mechanism to help ensure decision making is in line with the Acts targets.

These features can ensure that the framework is not just aspirational, but is driven by clear actions and enhanced ambition over time, and that it will provide public transparency and accountability around climate action, particularly the progress towards emission reductions targets.

6. Establish a framework for strategic planning and adaptation action plan

A Climate Act can require the Queensland Government to develop a whole-of-government strategy for climate change adaptation action.

This can provide the platform for integrating climate change considerations across the Queensland economy, by defining the risk posed by climate change and providing a framework for mitigation and adaptation strategies across different sectors - including, energy, agriculture, remote community housing and water supply, health, transport, emergency services, planning and infrastructure - as well as guiding a just transition to a low-carbon economy.

An **Adaptation Action Plan** can include:

- short to medium-term objectives for adaptation and disaster risk reduction;
- an assessment of the sector's disaster and adaptation readiness;
- proposals and actions to address risks (especially for the most vulnerable sectors and communities); and
- performance indicators against which progress can be measured.

A **Climate Change Strategy** can also be prepared that includes a description of Queensland's priorities in relation to adaptation, GHG emissions reduction and planning for the State's transition to meet the challenges of climate change and to capitalize on the opportunities created by being properly prepared to address the risks and impacts of climate change. This can include:

An adaptation component - including a summary of the most recent climate science, including the implications of climate change for the State and any regions of the State; the medium-term and long-term objectives of the State in respect of adaptation, including any regions of the State; and actions which may be taken by the Government of Queensland to ensure that the effects of climate change are considered during the carrying out of its operations and activities; and

An emissions reduction component – providing the policies and actions for meeting the Queensland Government's interim and long term targets, each sector's pledge and actions to be taken to ensure that each sector's share of Queensland's emissions reduction 'budget' is met for the forthcoming five-year period.

Adopting a legislative basis for an Adaptation Action Plan and a Climate Change Strategy can signal the commitment of the Queensland Government to responding to climate change.

It can ensure climate change action is elevated and prioritised across all sectors, and it can provide for and empower the just transition of all communities currently dependent on GHG emissions related industries.

7. Consideration of cardinal principles that ensure a principle of equity, community engagement and compatibility

A principles-based approach can be introduced in a Climate Act with a set of commonly agreed policy objectives and principles to guide policymaking across the full range of government decisions and operations.

A decision, policy, program or process can have regard to the following principles:

- **Principle of risk management:** a decision, policy, program or process should not rely on a lack of full scientific certainty as a reason to postpone appropriate measures to prevent serious or irreversible loss or damage as a result of climate change.
- **Principle of equity:** opportunities can be created by the present generation to increase capacities to adapt to climate change for those people most vulnerable to the impacts of climate change and to ensure the health,

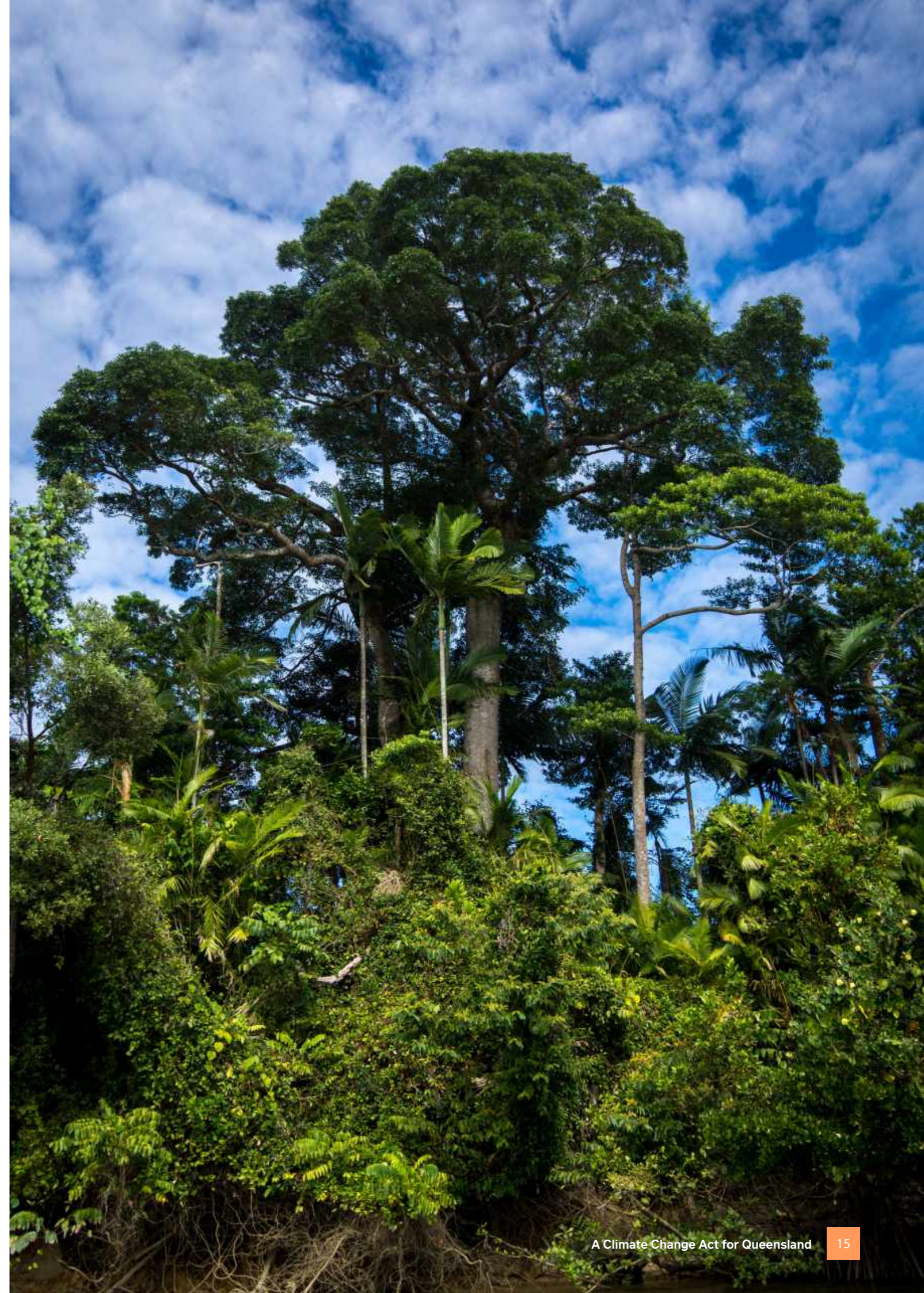
diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.

- **Principle of community engagement:** members of the community, especially members of vulnerable or marginalised communities can be facilitated to participate in meaningful consultation on matters relating to climate change.
- **Principle of compatibility:** a coherent policy framework within the State can be promoted, as well as cohesion with commitments made by other states and territories; the federal government ; governments of other countries; and international bodies and organisations.

Ensuring that decision-making has regard to cardinal principles such as the principle of equity, can prevent and address potential disadvantage that may arise in actions taken to reduce GHG emissions or to implement the development of renewable energy.

Conclusion

A Climate Act can be a key part of a legislative and policy agenda for Queensland Government action on climate change. It can demonstrate strong leadership by setting clear objectives and emissions reductions targets, establishing standards of accountability for government action, and integrating climate change into all aspects of government planning and decision-making. Most significantly, it can demonstrate a commitment to climate justice for all Queenslanders, especially its vulnerable remote communities, and for future generations.





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