



Environmental
Defenders Office

Submission regarding WA's proposed Climate Change Bill

17 October 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.

Environmental Defenders Office is a legal centre dedicated to protecting the environment.

www.edo.org.au

Acknowledgment of Country

Environmental Defenders Office recognises 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, present and emerging, and aspire to learn from traditional knowledges and customs so that, together, we can protect our environment and cultural heritage through law.

Submitted to:

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Background

On 21 September 2023, the Department of Water and Environmental Regulation released an explanatory paper in relation to a proposed Climate Change Bill, together with a fact sheet. The explanatory paper sets out, in broad terms, the key features of the proposed Climate Change Bill, together with the proposed provisions in the proposed Bill.

We are disappointed that the Government has not provided the draft Climate Change Bill, and that a full consultation process has not been conducted with the Western Australian community. We would be happy to provide our detailed analysis of the terms of the draft Climate Change Bill.

Notwithstanding this, we commend the Government for committing to the introduction of climate change legislation. As set out in the fact sheet accompanying the proposed Climate Change Bill, Western Australia “is already experiencing the impacts of climate change, including more frequent and severed droughts, heatwaves, high-risk bushfire weather, extreme rainfall events and rising sea levels”. In particular, we support the inclusion in the proposed Bill of legislated targets as a necessary first step.

However, we consider that the proposed Climate Change Bill is a missed opportunity for more meaningful legislative reform, and could be strengthened in a number of areas. Accordingly, this submission makes recommendations for amendment.

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.

Summary of recommendations

Recommendation 1: An ‘objects’ section be included in the proposed Climate Change Bill, which reflects the temperature goals in the Paris Agreement, and plans for a rapid and just transition away from fossil fuel production to a low carbon economy.

Recommendation 2: The proposed Climate Change Bill be amended to:

- a. bring forward the first target year to 2030, and bring forward the net zero target to 2035;
- b. set targets for reducing Western Australia’s net emissions by reference to a carbon budget reflecting WA’s fair share of the remaining budget for limiting the temperature increase to 1.5°C;
- c. include criteria which the Minister is required to take into account when setting climate targets.

Recommendation 3: A duty should be imposed on the Minister to take all reasonable steps to meet legislated targets.

Recommendation 4: A duty should be imposed on the Minister and all government decision-makers to consider climate change and act consistently with legislated emissions reduction targets in exercising any powers.

Recommendation 5: The Climate Change Bill should be amended (or alternatively, further legislation should be introduced) to establish an independent expert body to provide advice and undertake other functions to support climate action in WA.

Recommendation 6: The Climate Change Bill should be amended to clarify that all instruments will be publicly available.

Recommendation 7: The Climate Change Bill should be amended to require annual State of the Climate Reports to be prepared and made publicly available.

Table of Contents

I. The proposed Climate Change Bill requires further consultation and scrutiny	2
II. The proposed Climate Change Bill falls short in a number of areas, as against EDO’s key principles for climate change legislation	2
A. Principle 1: The Climate Change Bill should establish clear objectives and guiding principles	2
B. Principle 2: The Climate Change Bill should establish strong, enforceable emissions targets with timeframes	3
C. Principle 3: The Climate Change Bill should impose a duty on the Minister and all government decision-makers to consider climate change and act consistently with legislated emissions reduction targets in exercising any powers	5
D. Principle 4: WA should establish an independent expert body to advise the Government and Parliament on the implementation of the Climate Change Act	5
E. Principle 5: The Climate Change Bill should include mechanisms for the publication of budgets, emissions reduction plans and other instruments	6

I. The proposed Climate Change Bill requires further consultation and scrutiny

The WA Government published material relating to the Climate Change Bill on 21 September 2023. Submissions from identified stakeholders were requested by 17 October 2023. This is less than a month of consultation, without a formal opportunity for the wider WA community to participate.

Climate change is affecting and will continue to affect all Western Australians. Members of the WA community – including First Nations Peoples, scientists, young people, and other sectors of civil society – should be able to participate in Government and Parliamentary processes which aim to address climate change in WA. Input from these perspectives will lead to better legislation and better outcomes.

The EDO recommends broader public consultation on the Climate Change Bill, or at a minimum that the Parliament scrutinise the terms of the Bill (including by providing opportunities for public and independent expert input) by way of a Committee inquiry once the Bill has been introduced.

II. The proposed Climate Change Bill falls short in a number of areas, as against EDO’s key principles for climate change legislation

The EDO has developed a number of principles for good climate change legislation in WA. We have summarised these principles below, and have identified a number of shortcomings with the Climate Change Bill. Our scorecard of the proposed Climate Change Bill (as understood from the currently available published materials) as against EDO’s principles is set out in Annexure 1 to this submission.

A. Principle 1: The Climate Change Bill should establish clear objectives and guiding principles

We consider that the proposed Climate Change Bill should set clear climate change objectives for WA, with principles to guide the delivery of these objectives. They should be drafted to ensure the Climate Change Bill is framed around limiting emissions consistent with the Paris Agreement’s temperature goals, and plans for a rapid and just transition away from fossil fuel production to a low carbon economy.

The international community, through the Paris Agreement, has agreed to aim for a limit in temperature rise to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5°C. Global greenhouse gas (**GHG**) emissions need to be significantly reduced for this to be achieved. Australia has shown its commitment to these temperature goals by ratifying the Paris Agreement. All jurisdictions in Australia, including Western Australia, need to reduce their emissions in a way that contributes to achieving these goals, to ensure Australia’s compliance with the Paris Agreement.

The explanatory paper to the proposed Climate Change Bill refers to Australia’s ratification of the Paris Agreement on 9 November 2016, and the Federal Government’s commitment to achieving net zero emissions by 2050. However, the proposed Climate Change Bill does not include any ‘objects’ in the text of the legislation itself.

As “framework legislation”, the Climate Change Bill should set up a clear direction for further action that is aligned with science and with national and international standards. The WA community

should be given confidence that action under this legislation will be targeted to the urgent and critical goal of limiting warming to 1.5°C, to avoid catastrophic climate impacts in WA.

We consider that it is necessary to include an ‘objects’ section in the proposed Climate Change Bill, which reflects the temperature goals in the Paris Agreement, and plans for a rapid and just transition away from fossil fuel production to a low carbon economy. The objectives would be used to guide all decisions made under the Climate Change Act (if the Bill is passed) by decision-makers across the WA Government, including in relation to the setting and review of targets, and developing policies and plans. They would establish a clear and consistent approach to frame and guide the delivery of all aspects of the Climate Change Act.

Recommendation 1: An ‘objects’ section be included in the proposed Climate Change Bill, which reflects the temperature goals in the Paris Agreement, and plans for a rapid and just transition away from fossil fuel production to a low carbon economy.

B. Principle 2: The Climate Change Bill should establish strong, enforceable emissions targets with timeframes

In our view, the proposed Climate Change Bill should:

- (a) set emissions targets by reference to a carbon budget reflecting WA’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 consider that it is necessary to set binding GHG emissions reduction targets to ensure that Western Australia 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 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.**¹

Our understanding of the proposed Climate Change Bill based on the explanatory statement is that it “creates requirements for the responsible Minister to set interim targets for reducing Western Australia’s net emissions to be achieved at specific years called the target years: 2035, 2040, 2045, and 2050”, and that these targets “are to include both point targets and five-yearly emissions budgets”. 2030 is not included as a target year.

The current proposal in the Climate Change Bill requires that interim targets be set as soon as practicable after the national targets (which are set on a five-yearly cycle) are set by the Australian Government under Article 4.9 of the Paris Agreement. However, the failure to include a 2030 target means that WA is out of sync with the Paris Agreement, the Australian Government and other Australian jurisdictions such as New South Wales.²

¹ Climate Targets Panel, “Shifting the Burden: Australia’s Emissions Reduction Tasks Over Coming Decades” (Report, March 2021), available <https://www.climatecollege.unimelb.edu.au/files/site1/docs/%5Bmi7%3A7uid%5D/Climate%20Targets%20Panel%20Report%20-%20March%202021.pdf>.

² Climate Change (Net Zero Future) Bill 2023, cl 9.

Further, the setting of targets by the Minister is not guided by any clear criteria. It appears instead that the Minister is given complete discretion to set targets without, for example, input from experts, taking into account the Paris Agreement or climate science, considering the long-term economic interests of WA, or applying the principles of ecologically sustainable development.

As to the setting of future targets, the Minister is required to be satisfied that each interim target represents a progression beyond the previous target towards the 2050 target of zero net emissions. This reflects the need for continuous emissions reductions over time and is consistent with the principle of non-regression. This is supported.

However, the Climate Change Bill also includes a mechanism to allow the Minister to amend a target if satisfied that there are “exceptional circumstances”. It does not appear that the Bill will define when “exceptional circumstances” may exist, or provide any criteria to constrain the Minister’s discretion in forming the view that “exceptional circumstances” exist. Further, there does not appear to be any way for the Parliament, independent authority or members of the public to review such an amendment, with the Bill only requiring that the Minister provide a statement of reasons. The failure to provide any recourse against the Minister’s decision to amend a target in a regressive way represents a serious equivocation on the Government’s commitment to reduce emissions and transition the economy. Accordingly, in the absence of any criteria constraining this mechanism, or any process to review regressive amendments, we recommend that any provisions giving the Minister power to amend a target in a regressive way should be removed from the Bill

In summary, we commend the WA Government for the inclusion in the proposed Climate Change Bill of a mechanism by which targets can be set. However, we consider that proposed mechanisms in the Climate Change Bill to set targets could be significantly strengthened, and brought into line with the best available climate science, by bringing forward the first target year to 2030, and by bringing forward the net zero target to 2035. More broadly, we consider that the targets should be set by reference to a carbon budget reflecting WA’s fair share of the remaining budget for limiting the temperature increase to 1.5°C. We note existing independent scientific resources published on this topic,³ and also refer to Principle 4 discussed below, as an independent expert body could be tasked with preparation of carbon budgets. In addition, we consider that the proposed Climate Change Bill should include criteria which the Minister is required to take into account when setting climate targets.

Recommendation 2: The proposed Climate Change Bill be amended to:

- (a) bring forward the first target year to 2030, and bring forward the net zero target to 2035;
- (b) set targets for reducing Western Australia’s net emissions by reference to a carbon budget reflecting WA’s fair share of the remaining budget for limiting the temperature increase to 1.5°C;
- (c) include criteria which the Minister is required to take into account when setting climate targets.

³ See, eg, Climate Analytics, “A 1.5°C compatible carbon budget for Western Australia” (Report, 25 November 2019), available: <https://climateanalytics.org/publications/2019/a-15c-compatible-carbon-budget-for-western-australia/>.

C. Principle 3: The Climate Change Bill should impose a duty on the Minister and all government decision-makers to consider climate change and act consistently with legislated emissions reduction targets in exercising any powers

We submit that the Climate Change Bill must create enforceable duties on the Minister and on other government 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.

While the Climate Change Bill would require that the Minister prepare an annual climate change report, there are no enforceable obligations proposed. That is, if the WA Government fails to meet an interim target (or to fulfil any other requirements in the legislation, such as preparation of a climate adaptation strategy), there are no legal consequences. The WA 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 to take reasonable steps to meet the target would clearly set out expectations of the WA community and the Government, and provide a strong legal basis for the Minister to take necessary action. A duty on the Minister 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.

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

Recommendation 3: A duty should be imposed on the Minister to take all reasonable steps to meet legislated targets.

Recommendation 4: A duty should be imposed on the Minister and all government decision-makers to consider climate change and act consistently with legislated emissions reduction targets in exercising any powers.

D. Principle 4: WA should establish an independent expert body to advise the Government and Parliament on the implementation of the Climate Change Act

We consider that the Climate Change Bill should establish a body which is independent from the government of the day and consists of experts on climate change and just transitions.

The Climate Change Bill relies solely on the Minister. While the Minister might seek informal input from experts, or draw on government agencies and the formal functions of the Environmental Protection Authority, an independent expert body would provide a strong, focused resource for climate action in WA.

An independent expert body would be able to assist with and oversee implementation of the Act, including emissions reduction targets, emissions budgets, and provide critical advice to the WA Government on climate change. The body could also include functions relating to a just transition

within the WA economy, and encompass First Nations Peoples and knowledge holders to tackle this challenge.

Examples of similar bodies can be found in other jurisdictions. For example, the proposed independent Net Zero Commission in NSW will:

- be comprised of experts in climate change, economics and technology, and the interests of Aboriginal communities;
- advise on the environmental, social and economic impacts of proposed government climate action, highlight emerging opportunities, and advise on the implementation of strategies, policies and programs; and
- coordinate and consult with stakeholders such as industry and non-government organisations, and have a role in educating and informing business and the community to promote climate action.

As framework legislation, the Bill must provide the administrative infrastructure to deliver on the WA Government's climate commitments, and an independent, expert statutory body would directly assist with implementing the Act and taking action in an efficient, effective and economic manner. We consider that an independent expert body is critical for the success of climate action in WA and must be included in the Climate Change Bill.

Recommendation 5: The Climate Change Bill should be amended (or alternatively, further legislation should be introduced) to establish an independent expert body to provide advice and undertake other functions to support climate action in WA.

E. Principle 5: The Climate Change Bill should include mechanisms for the publication of budgets, emissions reduction plans and other instruments

Transparency and accountability are essential for the Climate Change Bill to have legitimacy and be trusted by the WA community.

The Climate Change Bill provides for targets (including five-yearly emissions budgets), the adaptation strategy, and the annual climate change report to be published. However, this does not appear to have been extended to sector adaptation plans.

The Climate Change Bill should provide for all instruments and documents under the legislation to be notified in the Gazette, presented to both Houses of Parliament, and made publicly available online.

State of the Climate reporting would also assist in informing the community and government decision-makers.

Recommendation 6: The Climate Change Bill should be amended to clarify that all instruments will be publicly available.

Recommendation 7: The Climate Change Bill should be amended to require annual State of the Climate Reports to be prepared and made publicly available.

ANNEXURE 1 - SCORECARD



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WA Proposed Climate Legislation Scorecard

Principle for good legislation	WA proposed legislation	Score
Primary object of Act reflects Paris Agreement goal of 1.5°C	No objects Targets not required to be consistent with Paris Agreement and 1.5°C	0
Objects to facilitate a “just transition”	No objects No mention of “just transition” in relation to the legislation	0
Emissions targets set by reference to carbon budget consistent with 1.5°C This should include at least a 74 per cent reduction in emissions below 2005 levels by 2030 and net zero by 2035	No reference to carbon budgets No criteria specified for Minister’s decision on setting targets Target for net zero emissions set, but not until 2050 Targets start in 2035 (no 2030 target)	2
Clear mechanism for targets to be made more ambitious and prevent targets from being weakened	Requirement for Minister to be satisfied that each target constitutes a progression from previous target Provision for targets to be amended (which may include weakening a target) where Minister is satisfied that there are “exceptional circumstances”	4
Duty on Minister to ensure targets are met	Minister’s functions under the Act specified to include promoting action to meet targets but no duty to meet targets Requirement for publicly available annual climate change report No provision for enforcing targets, no penalties for not meeting targets Further functions can be prescribed in regulations, so a function to ensure targets are met could be added in future	2

Requirement for government decision-makers to consider climate change and act consistently with the Act	No duty on government-decision makers to consider climate change or act consistently with the Act Operations of government agencies and government trading enterprises will be covered by the government target	1
Right to a safe climate and a safe, clean, healthy and sustainable environment for Western Australians	No rights provided	0
Independent expert body to advise government and Parliament on implementation of the Act, also with functions to coordinate just transition planning in an environmental justice framework Advice and reporting from the body should be publicly available	No body created	0
Instruments under the Act should be notified in the Gazette, presented to Parliament and made publicly available	Targets, the adaptation strategy, and the annual climate change report will be publicly available Not specified whether sector adaptation plans will be publicly available	4
Regular State of the Climate Reporting	Annual climate change report which informs Parliament and WA community about progress on emissions reduction targets No broader reporting on climate change in WA	3