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Portfolio Committee No. 7 – Planning and Environment
Legislative Council
NSW Parliament House
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Sydney NSW 2000

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25 October 2023

Re: Inquiry into the Climate Change (Net Zero Future) Bill 2023 - call for submissions

The National Environmental Law Association Ltd ACN 008 657 761 (**NELA**) welcomes the opportunity to make a submission to the Portfolio Committee No. 7 – Planning and Environment on your inquiry into the Climate Change (Net Zero Future) Bill 2023 (**Bill**).

1. NELA's objects and its interest in this Committee Inquiry

NELA is the national peak body for advancing Australian environmental law and policy. It is an independent, multidisciplinary, member-based association focused on environmental law and sustainability. NELA is managed by a national board that includes Directors with expertise in international and domestic legal frameworks for biodiversity conservation, climate change and natural disasters, environmental regulation and regulatory theory and natural resource management.

One of NELA's core objectives is to provide a forum for, and to otherwise assist in, the discussion, consideration, and advancement of environmental law across the legal profession and the wider community. When considering environmental legislative reforms, NELA considers several factors including whether the reform advances environment protection and restoration, the environment protection principles integral to environmental law, and the integrity and transparency of the reform. NELA is also a member of the leadership committee of the Professional Bodies Climate Action Charter Australia and New Zealand Forum, which represents professional members in Australia across a wide range of sectors including finance, insurance, science, engineering, law, health, construction, and the built environment.

Given the potential significance of the Bill in legislating net zero targets for NSW and establishing the Net Zero Commission to advise the NSW Government on future climate action, the Bill is of particular importance to NELA's members. NELA is grateful for the opportunity to make a submission.

2. Summary of Submission

NELA supports the aims of this Bill. In particular, NELA welcomes the proposal in the Bill to legislate net zero targets for NSW, establish an independent Net Zero Commission (**Commission**), and introduce innovative Guiding Principles into NSW legislation.

However, NELA submits that the Bill can be more ambitious, and indeed, *must* be more ambitious if it is to adequately meet the challenge that is posed by climate change to the people and environment of NSW. NELA further submits that the climate crisis is not independent of, but intrinsically linked to, the biodiversity crisis - one cannot be addressed without the other. The purpose of this submission is to draw this to the Committee's attention, and also to assist the Committee by suggesting key amendments that would empower the Commission to meaningfully galvanise efforts across the NSW government to urgently reduce greenhouse gas emissions, strengthen NSW's resilience to climate change, and mitigate and respond to loss or damage suffered by NSW people and communities as a result of climate change.

Our recommendations are:

1. The Bill must meaningfully operationalise climate change considerations across the NSW Government.
2. The net zero targets enshrined in the Bill must be more ambitious and include interim targets.
3. The Bill must recognise the intersecting nature of the climate and biodiversity crises.
4. The Bill should recognise the necessity in responding to climate-related loss and damage that is already being suffered by people and communities in NSW as a result of a changing climate and empower the Commission to provide advice on this.
5. The Net Zero Commission should be strengthened to ensure effectiveness and independence from political and financial interests.
6. The Bill must seek to recognise and involve diverse perspectives in the exercise of the Commission's functions.

To assist the Committee, this submission is accompanied by **Annexure A**, which sets out NELA's proposed amendments to the Bill in redline mark-up, and **Annexure B**, a schedule of comparative provisions in other climate legislation and international instruments that have been used to inform this submission.

3. Background to this Submission

The Bill proposes to:

- Enable the Minister to abolish the existing Net Zero Emissions and Clean Economy Board (**Net Zero Board**) by notice in the Gazette. The Net Zero Board was established on 30 June 2021 pursuant to section 34W *Energy and Utilities Administration Act 1987* (NSW)

to, inter alia, advise the government on the development and implementation of Net Zero Plans to achieve the emissions reduction objectives of NSW,¹

- Establish a new Net Zero Commission, which will advise the NSW government based on Guiding Principles, and
- Legislate emissions reduction targets for NSW, being a 50% reduction in net greenhouse gas emissions from 2005 levels by 2030, and 100% reduction in net emissions by 2050.

4. Detailed Comments and Recommendations

Recommendation 1: The Bill must meaningfully operationalise climate change considerations across the NSW Government

As currently proposed, the Commission will be able to provide relatively strong, independent, and well-considered advice to the Minister on the achievement of the net zero targets. However, NELA notes that the Commission in its current form is intended to be an advisory body only. The Bill does not require anyone - not the Minister, nor the NSW Government - to take climate change considerations into account, or to act in accordance with the legislated net zero targets.

NELA considers this significantly weakens the potential of the Commission and the net zero targets to drive real climate action across the NSW government.

In NELA's submission, the Bill should expressly require that:

- (1) climate change considerations be taken into account for government decision-making under key environmental and planning related legislation, and
- (2) government decision-making be undertaken in accordance with the legislated net zero targets.

A new Schedule 3 should be included at the end of the Bill specifying the decisions and actions taken by government agencies under other legislation which should be subject to the above two conditions. Key decisions and actions include, for example, the grant of development consents under the *Environmental Planning and Assessment Act 1979* (NSW) and review of environment protection licences under the *Protection of the Environment Administration Act 1991* (NSW). This Schedule can then be amended from time to time to reflect changes in the legislation listed.

A useful comparator may be found in Part 3 of the *Climate Change Act 2017* (Vic), under which a person making a decision or taking an action contained in Schedule 1 of the Act must have regard to:²

1. the potential impacts of climate change relevant to the decision or action;

¹ Contained in *Energy and Utilities Administration Regulation 2021* (NSW), cl 8 (**EUA Regulation**).

² *Climate Change Act 2017* (Vic), s 17.

2. the potential contribution to the State’s greenhouse gas emissions of the decision or action; and
3. any relevant guidelines made by the Minister.

Schedule 1 *Climate Change Act 2017* (Vic) refers to specific actions contained in related legislation, including for example decisions by the Environment Protection Authority relating to licences and permits under the *Environment Protection Act 2017* (Vic), or preparation of a Biodiversity Strategy by the Secretary under the *Flora and Fauna Guarantee Act 1988* (Vic).

Recommendation 1a: Insert new Part 3 Consideration of climate change and net zero targets

11 Consideration of climate change in government decision-making

A person making a decision or taking an action contained in Schedule 3 of the Act must:

- (1) Consider the potential impacts of climate change relevant to the decision or action;
- (2) Consider the potential contribution to the State’s greenhouse gas emissions of the decision or action;
- (3) Be consistent with the State of New South Wales achieving the net zero targets contained in section 9.

Recommendation 1b: Insert new Schedule 3

Schedule 3 - Acts and decisions or actions

Section 11

Name of Act	Decision or action
<i>Environmental Planning and Assessment Act 1979</i> (NSW)	A decision to grant or refuse development consent under section 4.16 etc.
<i>Protection of the Environment Operations Act 1997</i> (NSW)	A decision to grant or refuse an environment protection licence under section 55 A review of a licence conducted under section 78 etc.

Recommendation 2: The net zero targets enshrined in the Bill must be more ambitious and include interim targets.

The current Bill proposes to legislate the below targets for reducing net greenhouse gas emissions in New South Wales:

- 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; and
- by 30 June 2050 – to reduce net greenhouse gas emissions in New South Wales to zero.³

In addition, the Bill provides that the regulations may make provision about the implementation of the 2030 and 2050 targets.⁴

NELA supports the Bill's proposal to enshrine net zero targets in NSW legislation for the first time.⁵ This is a substantial and welcome improvement from the current regulatory framework, under which emissions targets are not legislated, but instead included in the EUA Regulation as a consideration of the Net Zero Board in exercising its functions, such as developing NSW's Net Zero Plans.⁶

NELA submits, however, that the targets must be more ambitious. September 2023 was the warmest September since 1850, representing the first time that a monthly temperature exceeded 1.5 degrees Celsius above pre-industrial temperatures, and 2023 is projected to become the hottest year on record.⁷ In its updated 2023 Net Zero Emissions Scenario, the International Energy Agency has stated that in order to achieve the global goal of net zero emissions by 2050, almost all countries need to bring forward their targeted net zero dates, with advanced economies reaching net zero *by 2045* to allow emerging and developing economies more time to decarbonise.⁸

Further the Bill should specify interim targets to hold governments accountable to meeting the stated targets, particularly in circumstances where the regulations are explicitly prohibited from specifying interim targets.⁹ While the Bill does not purport to directly abolish the current emissions reductions objective of a 70% reduction of 2005 emissions by 2035 currently contained in cl 2(2) EUA Regulation, it is unclear whether that objective would continue to be operative following the abolition of the Net Zero Emissions Board currently proposed.¹⁰ Amending the Bill to at the very

³ *Climate Change (Net Zero Future) Bill 2023* (NSW), cl.9(1)(a) and (b) ('Bill').

⁴ Bill, cl.9(2)(a).

⁵ New South Wales, *Parliamentary Debates*, New South Wales Legislative Council, 12 October 2023, (Penny Sharpe), <<https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/'HANSARD-1820781676-93659'>>.

⁶ EUA Regulation, reg. 2(a).

⁷ Jeff Masters, 'September 2023 was Earth's Most Extreme Month for Heat Ever Recorded', *Yale Climate Connections* (online, 13 October 2023) <<https://yaleclimateconnections.org/2023/10/september-2023-was-earths-most-extreme-month-for-heat-ever-recorded/>; <https://berkeleyearth.org/september-2023-temperature-update/>>.

⁸ International Energy Agency, *Net Zero Roadmap: A Global Pathway to Keep the 1.5 C Goal in Reach* (Report, 2023) 3, 17, 59-60 <https://iea.blob.core.windows.net/assets/13dab083-08c3-4dfd-a887-42a3ebe533bc/NetZeroRoadmap_AGlobalPathwaytoKeepthe1.5CGoalinReach-2023Update.pdf>.

⁹ Bill, cl.9(3).

¹⁰ Bill, Sch 2, Pt 2.

least include the existing 2035 target already contained in the EUA Regulation would fill the resulting policy vacuum.

Finally, NELA submits that the Bill must explicitly impose a responsibility on the Minister to achieve those targets in order for those targets to be meaningful. This is not a novel or radical suggestion. Indeed, a similar provision may be found in section 8 of the *Climate Change Act 2017* (VIC), which states: ‘The Premier and the Minister must ensure that the State achieves the long-term emissions reduction target’. To ensure accountability, close attention should be devoted to ensuring the accuracy of compiling baseline data to inform appropriate carbon budgeting. Such efforts will need to be resourced appropriately in order to accurately measure progress towards the targets.

Recommendation 2a: Amend section 9(1) to increase ambition in net zero targets, insert an interim net zero target

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~~ 60% from the net greenhouse gas emissions in 2005, ~~and~~
 - (b) 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, and
 - ~~(b)~~ (c) by 30 June 2050—to reduce net greenhouse gas emissions in New South Wales to zero.

Recommendation 2b: Insert section 9(2) to establish a mechanism to review and ratchet up net zero targets

- (2)(a) The targets in sub-section (1) must be reviewed every 3 years following receipt of advice from the Commission.
- (b) The targets in sub-section (1) must be increased if consistent with the advice of the Commission.
- (c) Despite sub-section (2)(a), the first review of the targets must be completed by 31 December 2024.

Recommendation 2c: Amend proposed section 9(2) to require the regulations to make provision about implementation of net zero targets and calculation of emissions

- ~~(2)~~ (3) The regulations ~~may~~ **must** make provision about the following—
- (a) the implementation of the 2030 and 2050 targets,
 - (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,
- and may make provision about** ~~(e)~~ other matters relating to the 2030 and 2050 targets.

Recommendation 2d: Insert new section 10 requiring the Minister to meet net zero targets

10 Minister responsible for achieving targets
The Minister must ensure that the State achieves the targets contained in section 9.

Recommendation 3: The Bill must recognise the intersecting nature of the climate and biodiversity crises.

NELA welcomes this proposal to introduce a Bill that explicitly addresses the NSW Government's response to the climate crisis. However, NELA submits that the climate crisis cannot be considered in isolation from the biodiversity crisis. Amending the Bill to explicitly recognise the fundamental relationship between climate change and biodiversity would help to ensure that the Commission and the NSW Government take a holistic and integrated approach to tackling the challenges confronting humanity and the biosphere. This would also align the Bill with the leading edge of discourse at international law, such as that under the two key texts coming out of 2022:

- the Sharm el-Sheikh Implementation Plan, the climate COP27 cover decision, which highlighted climate change and biodiversity as “interlinked global crises”; and
- the Kunming-Montreal Global Biodiversity Framework, the landmark agreement entered into at the biodiversity COP15 that has been hailed as a ‘Paris Agreement moment for biodiversity’. Within the 23 global targets adopted by the Parties - including Australia - to be initiated immediately, various actions are identified that address the interrelated climate and biodiversity crises, such as Target 8:

Minimize the impact of climate change and ocean acidification on biodiversity and increase its resilience through mitigation, adaptation, and disaster risk reduction actions, including through nature-based solutions and/or ecosystem-based approaches, while minimizing negative and fostering positive impacts of climate action on biodiversity.

A healthy environment underpins human wellbeing and prosperity. NELA welcomes the recognition in the Guiding Principles that climate action should be consistent with the right to a clean, healthy and sustainable environment. In our recommendation below, we suggest tightening the definition of this concept by reference to usage by the UN Human Rights Council and the UN General Assembly.

Adopting a planetary boundaries framework, climate change and biosphere integrity have also been recognised by scientists to be the two core planetary boundaries,¹¹ each of which on their own have the potential to destabilise the earth system¹²:

An analysis of the many interactions among the boundaries (table S3 and fig. S10) suggests that two of them—climate change and biosphere integrity—are highly integrated, emergent system level phenomena that are connected to all of the other [planetary boundaries]. They operate at the level of the whole Earth system (7) and have coevolved for nearly 4 billion years (82). They are regulated by the other boundaries and, on the other hand, provide the planetary-level overarching systems within which the other boundary processes operate. **Furthermore, large changes in the climate or in biosphere integrity would likely, on their own, push the Earth system out of the Holocene state.**

NELA recommends that the Bill be amended to explicitly recognise the intersecting nature of the climate and biodiversity crises, and the importance of maintaining the stability of both the climate system and biosphere in order to ensure the planet remains in the safe operating space for humanity. We note the concept of ‘planetary boundaries’ has been in currency since 2009, having emerged from thinking on ecological limits to growth and sustainable development in the 1970s. Planetary boundaries form a key part of the EU’s 8th Environment Action Programme to 2030, which adopts in Article 2 ‘the long-term priority objective that by 2050 at the latest, people live well, within the planetary boundaries in a well-being economy’.¹³

Integrating climate change and biodiversity goals, the NSW Government would more effectively facilitate the implementation of measures that respond to the far-reaching consequences of the crises on both human and non-human communities. Furthermore, such reforms would align with the position of the Intergovernmental Panel on Climate Change (IPCC) and and the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) co-sponsored workshop report, that recommends integrated responses to the intersecting global crises of climate change and biodiversity loss.¹⁴ Recognising the climate-nature nexus in the proposed Bill would enable the Commission to provide advice on necessary changes or connections to biodiversity reforms which are also ongoing, such as reforms to the *Biodiversity*

¹¹ The planetary boundaries framework seeks to define a safe operating space where human activities can take place without the risk of transgressing the Earth system’s ecological thresholds, thus maintaining the planet’s Holocene-like conditions: Johan Rockström et al, ‘Planetary Boundaries: Exploring the Safe Operating Space for Humanity’ (2009) 14(2) *Ecology and Society*; Will Steffen et al, ‘Planetary Boundaries: Guiding Human Development on a Changing Planet’ (2015) 347(6223), *Science*, 736, DOI: 10.1126/science.1259855.

¹² Will Steffen et al, ‘Planetary Boundaries: Guiding Human Development on a Changing Planet’ (2015) 347(6223) *Science*, 736, 744, DOI: 10.1126/science.1259855. We note this paper has been cited over 12,000 times since being published.

¹³ *Decision (EU) 2022/591 of the European Parliament and of the Council of 6th April 2022 on a General Union Environment Action Programme to 2030* [2022] OJ L 114/22, art 2(1), <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022D0591>>.

¹⁴ Hans-Otto Pörtner et al, *IPBES-IPCC Co-Sponsored Workshop Report on Biodiversity and Climate Change* (Report, 2021) 15.

Conservation Act 2016 (NSW) and the *Local Land Services Act 2013* (NSW). While it may appear attractive, from a regulatory standpoint, to confine the application of a particular Act to one subject matter, NELA submits that in this instance the challenge posed by intersecting climate and biodiversity crises demands an intersecting approach - the Bill must facilitate a dialogue between these two crucial areas of work.

Recommendation 3a: Insert new section 3(2)(c)

3 Purpose of Act

...

- (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.
 - (c) **the current rate of climate change and biodiversity loss, which represent the two core planetary boundaries that ensure a safe operating space for human societies to develop and thrive, pose urgent threats to the people and environment of NSW.**

Recommendation 3b: Insert new definition, ‘planetary boundaries’, in section 5

planetary boundaries mean the environmental thresholds that must not be transgressed if the Earth system is to remain in the safe operating space for human society to develop and thrive.

Recommendation 3c: Insert new guiding principle in section 8

Action to address climate change should, be taken in a way that:

- (a) mitigates biodiversity loss to the greatest extent practicable;
- (b) contributes measurable improvements in the protection, conservation and restoration of biodiversity in NSW; and
- (c) improves the management of terrestrial, inland water and coastal and marine ecosystems across NSW to minimise the impact on climate change and ocean acidification on biodiversity.

Recommendation 3d: Insert reference to resolutions of UNHRC and UNGA to define the right to a clean, healthy and sustainable environment

8 Guiding principles

...

- (5) Action to address climate change should be consistent with the right to a clean, healthy and sustainable environment- **as defined by the Human Rights Council in 2021 (A/HRC/RES/48/13) and the General Assembly in 2022 (A/RES/76/300).**

Recommendation 4: The Bill should recognise the necessity in responding to climate-related loss and damage that is already being suffered by people and communities in NSW as a result of a changing climate and empower the Commission to provide advice on this.

The Bill proposes to address climate change mitigation and adaptation through the prescription of greenhouse gas emission reduction targets and the defining of an ‘adaptation objective’. However, the Bill does not propose to address loss and damage, which occurs when the impacts of climate change intensify natural hazards to an extent where adaptation measures designed to slow down loss and damage are overwhelmed.¹⁵ Loss and damage is the third pillar of the climate law hierarchy as established under the Paris Agreement. Under Article 8(1) of the Paris Agreement, the Parties:

recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.

NELA is alarmed by the absence in the Bill of any recognition of loss and damage and submits that, at a minimum, the Bill should explicitly recognise that people and communities in NSW have already suffered and will continue to suffer as a result of the adverse effects of climate change. We only have to look to examples from recent years, with unprecedented extreme weather events, flooding and bushfires causing significant loss and damage to NSW people and communities - across social, cultural, environmental and economic aspects of life. This is supported by the best available climate science, including the IPCC in its Sixth Assessment Report on Climate Change, which found that climate change is already causing widespread losses and damages to people, property and ecosystems in Australia.¹⁶

While NELA recognises that the Bill incorporates an ‘adaptation objective’ (with the detail for implementation of that objective proposed to be the subject of the regulations), adaptation is not a sufficient or meaningful lens through which loss and damage should be recognised or taken into account by decision-makers and government in NSW. Adaptation is intended to slow down loss and damage. However, as identified by the IPCC, adaptation cannot prevent all losses and damages, especially for communities with development constraints.¹⁷ This means that for areas with a specific vulnerability to natural hazards - for example, rural communities’ susceptibility to bushfires or coastal communities’ susceptibility to coastal inundation and erosion - adaptation will

¹⁵ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of the Working Group II to the Sixth Assessment Report on the Intergovernmental Panel on Climate Change* (Summary for Policymakers, 2022), 12 [SPM.B.2.4] (**IPCC WGII 6AR, Summary for Policymakers**).

¹⁶ Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of the Working Group I to the Sixth Assessment Report on the Intergovernmental Panel on Climate Change* (Report, 2022), 11-3.

¹⁷ IPCC WGII 6AR, Summary for Policymakers, 12 [SPM.B.2.4].

not in all (and likely will not in most) circumstances be able to prevent the harm that communities are already suffering and will continue to suffer.

To the extent that the Bill does not recognise loss and damage in this context and circumstance, NELA considers this to be a significant shortfall in the Bill and the Government's attempt to develop climate change law that is fit-for-purpose. In particular, this fails to give full effect to the international commitments established under the Paris Agreement or recognise the evidence of the best available climate science regarding climate change.¹⁸ Accordingly, NELA submits that loss and damage as a legal concept should be contemplated by the Bill and a legislative priority for the NSW Government moving forward. If such reforms were implemented, NSW would be the first law-making body in Australia to enshrine loss and damage as a legal concept, presenting an opportunity for the NSW Government to signal its intention to deliver a pioneering response to the climate crises for the benefit of NSW, its human and its non-human communities.

NELA submits that the following provisions should be included within the Bill.

Recommendation 4a: Amend sub-clause (1)(d) addressing loss and damage in proposed section 3

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, **and**
- (d) avert, minimise and address loss and damage associated with the adverse effects of climate change.**

Recommendation 4b: Amend proposed section 4 to insert a new objective to set a loss and damage objective

4 Objects of Act

The objects of this Act are as follows—

- (a) to establish guiding principles for action to address climate change,
- (b) to set targets for the reduction in net greenhouse gas emissions in New South Wales by 2030 and 2050,
- (c) to set an objective for New South Wales to be more resilient to a changing climate,
- (d) to set an objective for New South Wales to avert, minimise and address loss and damage associated with the adverse effects of climate change.**
- (e) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the 2030 and 2050 targets, the adaptation objective, **the loss and damage objective** and other matters.

¹⁸ As currently outlined as fundamental elements of the purpose of the Bill: s 3.

Recommendation 4c: Amend definition, ‘action to address climate change’ in section 5

action to address climate change includes—

- (a) action to mitigate climate change by reducing—
 - (i) greenhouse gas emissions, and
 - (ii) greenhouse gases in the atmosphere, for example, through sequestration or sinks, and
- (b) action to adapt to a changing climate and to address the effects of climate change, and
- (c) action to avert, minimise and address loss and damage associated with the adverse impacts of climate change.

Recommendation 4d: Insert new definition, ‘loss and damage objective’, in section 5

Loss and damage objective—see section 10A

Recommendation 4e: Insert new section 10A

10A Objective for responding to loss and damage from climate change

- (1) For this Act, the ***loss and damage objective*** is that loss and damage associated with the adverse effects of climate change suffered by human and non-human communities in New South Wales is averted, minimised and addressed to the greatest extent practicable.
- (2) The regulations may make provision about the implementation of the loss and damage objective.

Recommendation 4f: Amend proposed section 14(2) to empower the Commission to provide advice and make recommendations to the Minister on ways to achieve the loss and damage objective

- (2) Without limiting subsection (1), the Commission may provide advice and make recommendations to the Minister about the following—
 - (a) how to give effect to the guiding principles in New South Wales,
 - (b) interim targets for the reduction in net greenhouse gas emissions in New South Wales before 2030 and 2050,
 - (c) ways to reduce net greenhouse gas emissions in New South Wales,
 - (d) ways to achieve the adaptation objective,
 - (e) ways to achieve the loss and damage objective,
 - (f) emissions budgets for New South Wales, having regard to Commonwealth emissions budgets and nationally determined contributions,
 - (g) targets for energy use by government agencies,
 - (h) greenhouse gas emissions and action to address climate change relating to specific business or industry sectors, and
 - (i) ways to ensure a whole-of-government approach to addressing climate change in New South Wales.

Recommendation 4g: Amend proposed section 15 to require the Commission to consider the loss and damage objective when exercising the Commission’s functions

When exercising the Commission’s functions, the Commission must consider the

following—

- (a) the guiding principles,
- (b) the 2030 and 2050 targets,
- (c) the adaptation objective,
- (d) the loss and damage objective,
- (e) reports, advice or recommendations about climate change from other persons or bodies in Australia and internationally, as the Commission considers relevant,
- (f) action to address climate change that is taken internationally, and
- (g) the exercise of the functions of government agencies.

Recommendation 5: The Net Zero Commission should be strengthened to ensure effectiveness and independence from political and financial interests

The Commission's functions

NELA is supportive of the Bill's proposal to establish an independent Net Zero Commission. However, the functions of the Commission should be clarified and strengthened in order to ensure that it will provide the Minister the crucial advice that is required to meet the climate challenge.

NELA welcomes the establishment of guiding principles for action to address climate change in NSW, as contained in section 8 of the Bill (**Guiding Principles**). In particular, NELA supports the recognition in the Guiding Principles of the urgency of climate action required, and the need to consider a wide range of scientific, economic, and community perspectives in developing climate policy, particularly Indigenous perspectives. NELA is also encouraged that the principles assign the responsibility to develop climate policy and best practice to the whole of the NSW Government, and not only the responsible Minister.

The Bill should strengthen the role of the Guiding Principles. As currently drafted, the achievement of the Guiding Principles simply constitute something that the Commission *may* - not even *must* - provide advice and make recommendations to the Minister about.¹⁹ This drafting undermines the normative and legal force of a set of principles that could quite usefully inform the Commission's advice. NELA submits that the Commission should be required to advise the Minister on how the Guiding Principles are to be implemented.

This requirement should be extended to the other items under section 14(2), all of which are crucial items which should be incorporated into the Commission's advice.

Recommendation 5a: Amend section 14(2)(a) to require the Commission to advise on giving effect to the guiding principles and other matters

¹⁹ Bill, s 14(2)(a).

14 Functions of Commission

(1) The Commission has the following functions—

...

(2) Without limiting subsection (1), the Commission ~~may~~ **must** provide advice and make recommendations to the Minister about the following—

- (a) how to give effect to the guiding principles in New South Wales,
- (b) interim targets for the reduction in net greenhouse gas emissions in New South Wales before 2030 and 2050,
- (c) ways to reduce net greenhouse gas emissions in New South Wales,

...

Appointment of Commissioners

Under the Bill, the Minister is afforded some discretion to recommend persons for appointment as commissioners of the Commission. In making recommendations, the Minister:

- must not recommend a person for appointment as a commissioner unless the Minister is satisfied the person has skills, qualifications and experience to enable the Commission to exercise the Commission's functions; and
- is required to have regard to the need for the members of the Commission to together have skills, qualifications and experience in relation to the criteria outlined in sections (3)(a)-(g).

NELA submits that these provisions could be strengthened to strengthen the independence of the Commission from political and financial interests and lock in a reasonable balance of perspectives on the Commission. In addition, NELA submits the commissioner(s) with qualifications in the interests of Aboriginal communities, should possess knowledge gained and recognised according to Aboriginal cultural laws, as determined by custodians of Aboriginal knowledge.

Recommendation 5b: Amend section 12(3):

(3) ~~In making a recommendation about the appointment of a commissioner or in appointing a temporary commissioner, the Minister must have regard to the need for t~~ The members of the Commission ~~to~~ **must** together have skills, qualifications and experience in relation to the following—

- (a) the best available climate change science,
- (b) mitigation and adaptation approaches,
- (c) economics and technologies relating to climate change,
- (d) the strategies, policies and programs of the Government of New South Wales,
- (e) the environmental, social, economic and distributional impacts of climate change, including socio-economic, regional, industrial and sector differences,
- (f) the effects of climate change on human health and safety,
- (g) the **knowledges, interests, and priorities** of Aboriginal communities **based on cultural law as determined by nominated Aboriginal knowledge custodians.**

Recommendation 5c: Insert section 12(4)

(4) The Commission should represent a reasonable range of persons from different sectors, comprising at least 1 commissioner whose primary background is in each of the below sectors:

- (a) State and Government;
- (b) the local government sector;
- (c) the business community;
- (d) the environment and conservation sector;
- (e) the scientific community; and
- (f) (if applicable) other sectors of the State's community more generally.

Recommendation 5d: Insert section 12(5) to encourage Minister to appoint people who are committed to addressing climate change.

(5) In making a recommendation about the appointment of a commissioner or in appointing a temporary commissioner, the Minister should seek to appoint persons who can demonstrate a commitment to action to address climate change.

Recommendation 5e: Insert section 12(6) regarding the appointment of commissioners to represent interests of Aboriginal communities²⁰

(6) The Minister must not recommend a person for appointment as a commissioner with skills, qualifications, and experience in the interests of Aboriginal communities unless the person is—

- (a) an Aboriginal person within the meaning of the *Aboriginal Land Rights Act 1983* (NSW), section 4(1), and
- (b) recognised as a cultural knowledge holder, and
- (c) willing to represent Aboriginal cultural values.

Ancillary powers

NELA submits that the Commission's powers could be strengthened to better enable it to carry out its functions. For example, the Commission does not have the power to require production of information by persons not including a government agency. This should be contrasted to the powers afforded to other, stronger commissions such as the Independent Commission against Corruption (**ICAC**).

Although the functions of the ICAC differ from the Commission's proposed functions, they represent a much stronger model that can illustrate the possibilities that could be available for the Net Zero Commission. For example, under section 19 of the *Independent Commission Against Corruption Act 1988* (NSW), ICAC is given "power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions [...]".

²⁰ See comparative provision in section 15(3B) *Protection of Environment Administration Act 1991* (NSW).

Further guidance should be taken from the approach taken in the United Kingdom under the *Climate Change Act 2008* (UK). Under that Act, power is given to the Committee on Climate Change, a body corporate incorporated under the *Climate Change Act 2008* (UK), to “do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions”. Further, the Committee on Climate Change is given power to, in exercising its functions:²¹

- (a) gather information and carry out research and analysis,
- (b) commission others to carry out such activities, and
- (c) publish the results of such activities carried out by the Committee or others.

Recommendation 5f: Amend section 17 to expand the Commission’s ability to make reasonable requests beyond public sector agencies

17 Obligation of ~~persons government agencies~~ to provide information

A ~~person government agency~~ must comply with a reasonable request by the Commission to give the Commission information relevant to the Commission’s functions.

Recommendation 6: The Bill must seek to recognise and involve diverse perspectives in the exercise of the Commission’s functions

NELA submits that the Bill could be strengthened by enabling the Commission to seek out and acknowledge diverse perspectives in the exercise of its functions. These include perspectives from:

- non-human communities, inviting an ecocentric perspective into what is otherwise a primarily human-centric Bill, and
- young people, who have historically been excluded from policy- and law-making activities.

Recommendation 6a: Amend section 3 to include reference to ‘non-human communities’

3 Purpose of Act

...

(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~~ **human communities, non-human communities, and economy** of New South Wales.

Recommendation 6b: Amend section 8(7) to include perspectives on behalf of the environment

8 Guiding principles

²¹ Section 39(3) *Climate Change Act 2008* (UK).

...

(7) Action to address climate change should involve appropriate consultation with affected persons, communities, ~~and~~ stakeholders, **and persons on behalf of the environment**

Recommendation 6c: Insert new section 8(8)(aa) to include perspectives of young people

8 Guiding principles

...

(8) Action to address climate change should take into account the following—

(aa) the knowledge, perspectives, and interests of children and young people.

Recommendation 6d: Amend section 8(8) to strengthen recognition of Aboriginal cultural laws as determinants of Aboriginal knowledge, perspectives, and priorities

8 Guiding principles

...

(8) Action to address climate change should take into account the following—

...

(a) the knowledge and perspectives and priorities of Aboriginal communities based on cultural law as determined by nominated Aboriginal knowledge custodians,

5. Conclusion

NELA appreciates the opportunity to make submissions on this momentous Bill for climate action in NSW.

Any questions should be directed to president@nela.org.au, copying in partnerships@nela.org.au and secretary@nela.org.au.



Grace Huang, NELA Director

With Tom Webb (NELA Secretary), Madeleine Grant (NELA Climate Change Working Group), and Cameron Algie (NELA Climate Change Working Group, Vice-Chair)

On behalf of the NELA Board

Annexure A – *Climate Change (Net Zero Future) Bill 2023* (NSW) (NELA Mark-Up)

Annexure B – Schedule of Comparative Provisions



New South Wales

Climate Change (Net Zero Future) Bill 2023

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to establish guiding principles for action to address climate change,
- (b) to set targets for the reduction in net greenhouse gas emissions in New South Wales by 2030 and 2050,
- (c) to set an objective for New South Wales to be more resilient to a changing climate (the *adaptation objective*),
- (d) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the 2030 and 2050 targets, the adaptation objective and other matters,
- (e) to provide for other minor and consequential matters.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 provides for the purpose of the proposed Act.

Clause 4 provides for the objects of the proposed Act.

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Climate Change (Net Zero Future) Bill 2023 [NSW]

Clause 5 defines certain words and expressions used in the proposed Act.

Clause 6 provides that the proposed Act binds the Crown.

Clause 7 provides that the proposed Act prevails to the extent of an inconsistency with another Act or law.

Part 2 Guiding principles, targets and objectives

Clause 8 sets out the guiding principles of the proposed Act.

Clause 9 sets out the targets for reducing net greenhouse gas emissions in New South Wales as follows—

(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,

(b) by 30 June 2050—to reduce net greenhouse gas emissions in New South Wales to zero. The clause also contains a power to make regulations about matters relating to the targets, including the implementation of the targets and the calculation and assessment of greenhouse gas emissions.

Clause 10 defines *adaptation objective* for the proposed Act and provides that regulations made under the proposed Act may make provision about the implementation of the objective.

Part 3 Net Zero Commission

Clause 11 establishes the Net Zero Commission (the *Commission*) as a body corporate and NSW Government agency. The Commission is generally not subject to the control and direction of the Minister administering the proposed Act (the *Minister*).

Clause 12 contains provisions relating to the membership of the Commission, which consists of—

(a) 5–7 commissioners appointed by the Governor, on the recommendation of the Minister, and

(b) up to 3 temporary commissioners appointed by the Minister, and

(c) the Chief Scientist.

Clause 13 provides that persons may be employed in the Public Service to enable the Commission to exercise its functions.

Clause 14 provides for the functions of the Commission. In particular, the Commission has the functions of monitoring, reviewing and providing advice and recommendations to the Minister on progress and action taken in relation to the 2030 and 2050 targets, the adaptation objective and matters to address climate change.

Clause 15 requires the Commission to consider certain matters when exercising its functions. The matters for consideration include the guiding principles, the 2030 and 2050 targets, the adaptation objective, certain reports, advice and recommendations about climate change and certain other related matters.

Clause 16 requires the Commission to consult with, and consider submissions from, persons the Commission considers relevant or necessary for the exercise of the Commission's functions.

Clause 17 requires a government agency to comply with a reasonable request by the Commission for information relevant to the Commission's functions.

Clause 18 allows the Minister to require the Commission to report to the Minister in relation to a particular matter. The Commission may also report to the Minister on the Commission's own initiative.

Clause 19 provides for the publication of reports of the Commission and the Minister's response to reports.

Clause 20 makes provision in relation to the annual reporting requirements for the Commission under the *Government Sector Finance Act 2018*.

Clause 21 provides for the establishment of committees to give advice and assistance to the Commission in connection with the Commission's functions.

Clause 22 allows the Commission to delegate the Commission's functions under the proposed Act to a member of the Commission, a member of staff of the Commission or a person or body

prescribed by the regulations.

Clause 23 prohibits the disclosure of information obtained in connection with the administration or execution of the proposed Act, except in certain circumstances.

Clause 24 provides that a member of the Commission, a member of an advisory committee of the Commission or a member of staff of the Commission is not personally subject to civil liability for exercising a function under the proposed Act in good faith.

Part 4 Miscellaneous

Clause 25 provides for a review of the proposed Act to be undertaken after the period of 5 years from the date of assent to the proposed Act, and subsequently every 5 years.

Clause 26 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Members and procedure of Net Zero Commission

Schedule 1 contains provisions about the members and procedure of the Commission.

Schedule 2 Savings, transitional and other provisions

Schedule 2 contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

Proposed section 1 enables savings and transitional regulations to be made.

Proposed section 2 enables the Minister to abolish the committee, known as the Net Zero Emissions and Clean Economy Board, that is established by the Minister administering the *Energy and Utilities Administration Act 1987* under that Act, section 34W.



New South Wales

Climate Change (Net Zero Future) Bill

2023 Contents

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New South Wales

Climate Change (Net Zero Future) Bill 2023

No , 2023

A Bill for

An Act to establish guiding principles for action to address climate change; to set 2030 and 2050 targets for the reduction in net greenhouse gas emissions in New South Wales; to set an objective for New South Wales to be more resilient to a changing climate; and to establish the Net Zero Commission to monitor, review and report on progress towards the 2030 and 2050 targets and the objective and to exercise other related functions.

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Climate Change (Net Zero Future) Act 2023*.

2 Commencement

This Act commences on the date of assent to this Act.

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, and

(d) avert, minimise and address loss and damage associated with the adverse effects 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.

(c) the current rate of climate change and biodiversity loss, which represent the two core planetary boundaries that ensure a safe operating space for human societies to develop and thrive, pose urgent threats to the people and environment of NSW.

(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 human communities, non-human communities, and economy ~~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,
- (b) to set targets for the reduction in net greenhouse gas emissions in New South Wales by 2030 and 2050,
- (c) to set an objective for New South Wales to be more resilient to a changing climate,
- (d) to set an objective for New South Wales to avert, minimise and address loss and damage associated with the adverse effects of climate change.
- (de) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the 2030 and 2050 targets, the adaptation objective, the loss and damage objective and other matters.

5 Definitions

In this Act—

2030 target means the target for the reduction in net greenhouse gas emissions in New South Wales set out in section 9(1)(a).

2050 target means the target for the reduction in net greenhouse gas emissions in New South Wales set out in section 9(1)(b).

action to address climate change includes—

- (a) action to mitigate climate change by reducing—

- (i) greenhouse gas emissions, and

- (ii) greenhouse gases in the atmosphere, for example, through sequestration or sinks, and

- (b) action to adapt to a changing climate and to address the effects of climate change—~~and~~

- (c) action to avert, minimise and address loss and damage associated with the adverse impacts of climate change.

adaptation objective—see section 10.

chair of the Commission means the chair of the Commission appointed by the Minister under section 12(4).

Chief Scientist means the person employed in the Public Service as the Chief

Scientist and Engineer.

climate change means a change of climate that is—

- (a) directly or indirectly attributable to human activity that alters the composition of the atmosphere, and
- (b) in addition to natural climate variability over comparable time periods.

Commission means the Net Zero Commission established by section 11.

commissioner means a commissioner appointed by the Governor under section 12(1)(a) and does not include a temporary commissioner appointed by the Minister under section 12(1)(b).

exercise a function includes perform a duty.

function includes a power, authority or duty.

government agency means the following—

- (a) a public authority constituted by or under an Act,
- (b) a NSW Government agency,
- (c) a Public Service agency,
- (d) a local council,
- (e) a State owned corporation.

greenhouse gas means carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, hydrofluorocarbon gas, perfluorocarbon gas and other gases prescribed by the regulations.

loss and damage objective—see section 10A

member of the Commission means a commissioner, a temporary commissioner or the Chief Scientist.

planetary boundaries mean the environmental thresholds that must not be transgressed if the Earth system is to remain in the safe operating space for human society to develop and thrive.

temporary commissioner means a temporary commissioner appointed by the Minister under section 12(1)(b).

Note— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

35
36 This Act binds the Crown in right of New South Wales and, to the extent the
37 legislative power of the Parliament of New South Wales permits, the Crown in all its
38 other capacities.

7 Relationship with other Acts and laws

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

Part 2 Guiding principles, targets and objectives

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.
- (3) Action to address climate change should, be taken in a way that:
- (a) mitigates biodiversity loss to the greatest extent practicable;
 - (b) contributes measurable improvements in the protection, conservation and restoration of biodiversity in NSW; and
 - (c) improves the management of terrestrial, inland water and coastal and marine ecosystems across NSW to minimise the impact on climate change and ocean acidification on biodiversity.
- (3) Action to address climate change should be taken as early as possible to minimise the cost and adverse impacts of climate change.
- (4) Action to address climate change should be taken in a way that—
- (a) is fiscally responsible, and
 - (b) promotes sustainable economic growth, 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: as defined by the Human Rights Council in 2021 (A/HRC/RES/48/13) and the General Assembly in 2022 (A/RES/76/300).
- (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).
- (7) Action to address climate change should involve appropriate consultation with affected persons, communities, ~~and stakeholders~~ and persons on behalf of the environment.

- (8) Action to address climate change should take into account the following—
- (aa) the knowledge, perspectives, and interests of children and young people.
 - (a) the knowledge and perspectives and priorities of Aboriginal communities, based on cultural law as determined by nominated Aboriginal knowledge custodians,
 - (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.

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~~ 60% from the net greenhouse gas emissions in 2005, and
 - (b) 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, and
 - (bc) by 30 June 2050—to reduce net greenhouse gas emissions in New South

Wales to zero.

2

(2) (a) The targets in sub-section (1) must be reviewed every 3 years following receipt of advice from the Commission.

(b) The targets in sub-section (1) must be increased if consistent with the advice of the Commission.

(c) Despite sub-section (2)(a), the first review of the targets must be completed by 31 December 2024.

~~(2-3)~~ The regulations ~~may~~ must make provision about the following—

3

(a) the implementation of the 2030 and 2050 targets,

4

(b) the calculation and assessment of greenhouse gas emissions, including by—

5

(i) providing for a person to calculate or assess greenhouse gas emissions,

6

and

7

(ii) adopting documents in force from time to time,

8

and may make provision about ~~(e)~~ other matters relating to the 2030 and 2050 targets.

9

(3) Despite subsection (2), the regulations must not set a specific interim target to reduce

10

net greenhouse gas emissions in New South Wales by a particular date occurring

11

before 30 June 2050.

12

10 Minister responsible for achieving targets

The Minister must ensure that the State achieves the targets contained in section 9.

10A Objective for responding to loss and damage from climate change

(1) For this Act, the loss and damage objective is that loss and damage associated with the adverse effects of climate change suffered by human and non-human communities in New South Wales is averted, minimised and addressed to the greatest extent practicable.

(2) The regulations may make provision about the implementation of the loss and damage objective.

110-Objective for adaptation to changing climate

13

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

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15

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

16

17

Part 3 Consideration of climate change and net zero targets

11 Consideration of climate change in government decision-making

A person making a decision or taking an action contained in Schedule 3 of the Act must:

(1) Consider the potential impacts of climate change relevant to the decision or action;

(2) Consider the potential contribution to the State's greenhouse gas emissions of the decision or action;

(3) Be consistent with the State of New South Wales achieving the net zero targets contained in section 9.

Part 3 Net Zero Commission

Division 1 Constitution of Commission

11 Constitution of Commission

(1) There is constituted by this Act a body corporate with the corporate name of the Net Zero Commission.

(2) The Commission is a NSW Government agency.

Note— See the *Interpretation Act 1987*, section 13A.

(3) The Commission is not subject to the control and direction of the Minister, except to the extent expressly provided for under this or another Act.

12 Members of Commission

(1) The Commission must consist of the following members—

(a) 5–7 commissioners appointed by the Governor, on the recommendation of the Minister,

(b) up to 3 temporary commissioners appointed by the Minister,

(c) the Chief Scientist.

(2) The Minister must not recommend a person for appointment as a commissioner unless the Minister is satisfied the person has skills, qualifications and experience to enable the Commission to exercise the Commission’s functions.

(3) ~~In making a recommendation about the appointment of a commissioner or in appointing a temporary commissioner, the Minister must have regard to the need for~~

‡The members of the Commission ~~to~~ must together have skills, qualifications and experience in relation to the following—

(a) the best available climate change science,

(b) mitigation and adaptation approaches,

(c) economics and technologies relating to climate change,

- (d) the strategies, policies and programs of the Government of New South Wales, 26
- (e) the environmental, social, economic and distributional impacts of climate 27
change, including socio-economic, regional, industrial and sector differences, 28
- (f) the effects of climate change on human health and safety, 29
- (g) the knowledges, interests, and priorities of Aboriginal communities based on cultural law 30
as determined by nominated Aboriginal knowledge custodians.
- (4) The Commission should represent a reasonable range of persons from different sectors, 31
comprising at least 1 commissioner whose primary background is in each of the below sectors:
- (a) State and Government;
- (b) the local government sector;
- (c) the business community;
- (d) the environment and conservation sector;
- (e) the scientific community; and
- (f) (if applicable) other sectors of the State’s community more generally.
- (5) In making a recommendation about the appointment of a commissioner or in appointing a 32
temporary commissioner, the Minister should seek to appoint persons who can demonstrate a
commitment to action to address climate change.
- (6) The Minister must not recommend a person for appointment as a commissioner with skills, 33
qualifications, and experience in the interests of Aboriginal communities unless the person is—
- (a) an Aboriginal person within the meaning of the *Aboriginal Land Rights Act 1983* (NSW),
section 4(1), and
- (b) recognised as a cultural knowledge holder, and
- (c) willing to represent Aboriginal cultural values.
- (74) The Minister may appoint a commissioner as chair of the Commission. 34
- (85) Schedule 1 contains provisions about the members and procedure of the 35
Commission. 36

13 Staff of Commission 37

Persons may be employed in the Public Service to enable the Commission to exercise 38
the Commission’s functions. 39

Note— The *Government Sector Employment Act 2013*, section 59 provides that the persons 40
employed for the Commission, or whose services the Commission makes use of, may be
referred to as officers or employees, or members of staff, of the Commission. The *Constitution*
Act 1902, section 47A precludes the Commission from employing staff.

Division 2 Functions of Commission

14 Functions of Commission

(1) The Commission has the following functions—

(a) to monitor and review, and to provide advice and recommendations to the Minister on, progress towards the 2030 and 2050 targets in New South Wales,

(b) to monitor and review, and to provide advice and recommendations to the Minister on, progress in relation to the adaptation objective in New South Wales,

(c) to monitor and review action currently being taken in New South Wales to address climate change, including—

(i) the environmental, social and economic impacts of the action, and

(ii) action related to the strategies, policies and programs of the Government of New South Wales,

(d) to identify and recommend action that should be taken by the Government of New South Wales to address climate change, including strategies, policies and programs that should be implemented by the Government of New South Wales,

(e) to educate and inform the Government of New South Wales, businesses, organisations and individuals to promote action to address climate change.

(2) Without limiting subsection (1), the Commission ~~may~~ **must** provide advice and make recommendations to the Minister about the following—

(a) how to give effect to the guiding principles in New South Wales,

(b) interim targets for the reduction in net greenhouse gas emissions in New South Wales before 2030 and 2050,

(c) ways to reduce net greenhouse gas emissions in New South Wales,

(d) ways to achieve the adaptation objective,

(e) ways to achieve the loss and damage objective,

- (f) emissions budgets for New South Wales, having regard to Commonwealth emissions budgets and nationally determined contributions, 27
 - (g) targets for energy use by government agencies, 28
 - (h) greenhouse gas emissions and action to address climate change relating to specific business or industry sectors, and 29
 - (i) ways to ensure a whole-of-government approach to addressing climate change in New South Wales. 30
- (3) The Commission may have other functions conferred or imposed on it by or under this or another Act. 31

15 Considerations for Commission 32

When exercising the Commission’s functions, the Commission must consider the following— 33

- (a) the guiding principles, 34
- (b) the 2030 and 2050 targets, 35
- (c) the adaptation objective, 36
- (d) the loss and damage objective, 37
- (e) reports, advice or recommendations about climate change from other persons or bodies in Australia and internationally, as the Commission considers relevant, and 38
- (f) action to address climate change that is taken internationally, 39
- (g) the exercise of the functions of government agencies. 40

16 Consultation 41

The Commission must consult with, and consider submissions from, persons the Commission considers relevant or necessary for the exercise of the Commission’s functions, including government agencies and the general public. 42

17 Obligation of persons government agencies to provide information 43

A person government agency must comply with a reasonable request by the Commission to give the Commission information relevant to the Commission’s functions. 44

Division 3 Reporting requirements

9

18 Minister may require report from Commission

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- (1) The Minister may require the Commission to give the Minister a report, including a report containing information, advice or recommendations in relation to a particular matter. 11
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- (2) The Minister may, after consulting with the Commission, require the report to be given to the Minister within a specified period. 14
15
- (3) This section does not prevent the Commission from giving the Minister a report, information, advice or recommendations on the Commission's own initiative. 16
17

19 Publication of Commission reports

18

- (1) This section applies if the Commission gives the Minister a report, including a report that contains advice or a recommendation, whether the report was required by the Minister or given to the Minister on the Commission's own initiative. 19
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21
- (2) Within 28 days after receiving a report from the Commission, the Minister must table the report in both Houses of Parliament. 22
23
- (3) Within 6 months after receiving a report from the Commission, the Minister must— 24
25
26
27
 - (a) publish a response to the report, and
 - (b) table the response in both Houses of Parliament within 28 days after publishing the response.
- (4) A response to a report that contains a recommendation from the Commission must specify the following— 28
29
 - (a) whether the recommendation is accepted, refused or noted, 30
 - (b) if the recommendation is accepted—the action to be taken by the Government of New South Wales to implement the recommendation, 31
32
 - (c) if the recommendation is refused or noted—the reasons for refusing or noting the recommendation. 33
34
- (5) Subsections (2) and (3) do not apply to a report included under section 20 in the annual reporting information prepared for the Commission under the *Government Sector Finance Act 2018*. 35
36
37

20 Annual reports	38
(1) The annual reporting information prepared for the Commission under the <i>Government Sector Finance Act 2018</i> must include a report about the following—	39
(a) New South Wales’s progress towards the 2030 and 2050 targets,	40
(b) New South Wales’s progress in relation to the adaptation objective,	41
(c) a summary of all reports given to the Minister by the Commission in the period to which the report relates,	42
(d) other matters prescribed by the regulations.	1
(2) The Commission may also include in the report a recommendation to the Minister that had not been given to the Minister in the period to which the report relates.	2
(3) Within 4 months of receiving the report required under subsection (1), the Minister must—	3
(a) publish a response to the report, and	4
(b) table the response in both Houses of Parliament within 28 days of publishing the response.	5
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Division 4 Other	11
21 Advisory committees	12
(1) The Commission may establish committees to give advice and assistance to the Commission in connection with the Commission’s functions.	13
(2) An advisory committee need not include a member of the Commission.	14
(3) The procedure for calling meetings of an advisory committee and conducting business at the meetings must be determined by the Commission or, subject to a determination of the Commission, by the advisory committee.	15
	16
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	18
22 Delegation	19
The Commission may delegate any of the Commission’s functions under this Act, other than this power of delegation, to the following—	20
(a) a member of the Commission,	21
(b) a member of staff of the Commission,	22
	23

(c) a person or body prescribed by the regulations.

24

23 Disclosure of information

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(1) This section applies to the following persons—

26

(a) a member of the Commission,

27

(b) a member of an advisory committee of the Commission,

28

(c) a member of staff of the Commission.

29

(2) A person must not disclose information obtained in connection with the administration or execution of this Act unless the disclosure is made—

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(a) with the consent of the person from whom the information was obtained, or

31

(b) in connection with the administration or execution of this Act, or

32

(c) for the purposes of legal proceedings arising out of this Act, or

33

(d) with another lawful excuse.

34

35

Maximum penalty for subsection (2)—50 penalty units.

36

24 Protection from personal liability

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(1) A protected person, or an individual acting under the direction of a protected person, is not personally subject to civil liability for anything done or omitted to be done—

38

(a) in good faith, and

39

(b) for the purposes of exercising functions under this Act or the regulations.

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(2) The liability instead attaches to the Crown.

1

(3) In this section—

2

civil liability includes an action, claim or demand.

3

protected person means the following—

4

(a) a member of the Commission,

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(b) a member of an advisory committee of the Commission,

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(c) a member of staff of the Commission.

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Part 4 Miscellaneous

25 Review of Act

(1) The Minister must review this Act to determine whether the policy objectives 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.

(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.

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.

Schedule 1 Members and procedure of Net Zero Commission ¹

section 12(5)

1 Term of office of commissioners

(1) A commissioner holds office for the term, not exceeding 5 years, specified in the instrument of appointment.

(2) A commissioner is not eligible for re-appointment.

2 Term of office of temporary commissioners

(1) A temporary commissioner holds office for the term, not exceeding 18 months, specified in the instrument of appointment.

(2) A temporary commissioner may be re-appointed but must not hold office for a cumulative total of more than 5 years.

3 Remuneration of commissioners and temporary commissioners

A commissioner or temporary commissioner is entitled to be paid the remuneration, including travelling and subsistence allowances, determined by the Minister from time to time.

4 Acting commissioners

(1) The Minister may, from time to time, appoint a person to act in the office of a commissioner during the illness or absence of the commissioner or a vacancy in the office.

(2) When acting in the place of the commissioner, the acting commissioner has all the functions of the commissioner and is taken to be a commissioner.

(3) The Minister may remove a person from the office to which the person was appointed under this section.

5 Vacancy in office of commissioners and temporary commissioners

(1) The office of a commissioner or temporary commissioner becomes vacant if the commissioner or temporary commissioner—

- (a) dies, or 27
- (b) completes a term of office and is not re-appointed, or 28
- (c) resigns from office by a written instrument addressed to the Minister, or 29
- (d) is removed from office by— 30
- (i) for a commissioner—the Governor under subsection (2), or 31
- (ii) for a temporary commissioner—the Minister under subsection (3), or 32
- (e) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt 33
- or insolvent debtors, compounds with the commissioner’s or temporary 34
- commissioner’s creditors or makes an assignment of the commissioner’s or 35
- temporary commissioner’s remuneration for the creditors’ benefit, or 36
- (f) becomes a mentally incapacitated person, or 37
- (g) is convicted in New South Wales of an offence that is punishable by 38
- imprisonment for 12 months or more or is convicted elsewhere than in New 39
- South Wales of an offence that, if committed in New South Wales, would be 40
- an offence so punishable. 41
- (2) The Governor may, on the recommendation of the Minister, remove a commissioner 42
- from office. 43
- (3) The Minister may remove a temporary commissioner from office. 1
- (4) The Minister must publish written reasons for a recommendation to the Governor 2
- under subsection (2) or for the removal of a temporary commissioner under 3
- subsection (3). 4

6 Quorum 5

The quorum for a Commission meeting is a majority of the members of the 6

Commission for the time being. 7

7 Presiding commissioner 8

- (1) The chair of the Commission must preside at a Commission meeting. 9
- (2) If the chair is absent from a Commission meeting, a commissioner elected by the 10
- members of the Commission present at the meeting must preside at the meeting. 11
- (3) If there is an equality of votes, the presiding commissioner has a second or casting

vote.

8 Voting

A decision supported by a majority of the votes cast by the members of the Commission at a Commission meeting at which a quorum is present is the decision of the Commission.

9 Disclosure of pecuniary and other interests

(1) This section applies if—

(a) a member of the Commission has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a Commission meeting, and

(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter.

(2) The member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Commission meeting.

(3) It is sufficient disclosure of the nature of an interest relating to a specified company, body or person if the member has previously disclosed that the member—

(a) is a member of, or employed by, the company or body, or

(b) is a partner of, or employed by, the person, or

(c) has some other specified interest relating to the company, body or person.

(4) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Commission otherwise determines—

(a) be present during a deliberation of the Commission about the matter, or

(b) take part in a decision of the Commission about the matter.

(5) A member who has a direct or indirect pecuniary or other interest in a matter to which a disclosure relates must not—

(a) be present at the time the Commission is making a determination under subsection (4), or

(b) take part in the making of the determination.

(6) A contravention of this section does not invalidate a decision of the Commission.

Tabling copy

Climate Change (Net Zero Future) Bill 2023 [NSW]
Schedule 1 Members and procedure of Net Zero Commission

(7) This section applies to a member of an advisory committee of the Commission and the advisory committee in the same way as it applies to a member of the Commission and the Commission.

10 General procedure

The procedure for calling Commission meetings and conducting business at Commission meetings must, subject to this Act and the regulations, be determined by the Commission.

11 Transaction of business outside meetings or by telecommunication

(1) The Commission may, if it thinks fit, transact its business—

(a) by the circulation of papers, by email or other electronic means, among all members, or

(b) at a meeting at which all or some members participate by telephone or other electronic means, but only if a member who speaks on a matter at the meeting can be heard by the other members.

(2) If the Commission transacts its business by the circulation of papers under subsection (1)(a), a written resolution approved in writing by a majority of the members of the Commission is taken to be a decision of the Commission made at a Commission meeting.

(3) The chair and each other member of the Commission have the same voting rights as at an ordinary Commission meeting for the purposes of—

(a) a meeting held in accordance with subsection (1)(b), or

(b) the approval of a resolution under subsection (2).

(4) A resolution approved under subsection (2) must be recorded in the minutes of the Commission meeting.

12 Code of conduct

(1) The Minister may—

(a) approve a code of conduct to be observed by the members of the Commission

in carrying out the functions of the Commission, and	27
(b) authorise changes to the code of conduct as recommended by the Commission.	28
(2) Compliance with an approved code of conduct is a condition of the appointment of a member to whom the code of conduct applies.	30
(3) The code of conduct may identify conduct, whether involving an act or omission, that is likely to bring the Commission or its members into disrepute.	31
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Schedule 2 Savings, transitional and other provisions ¹

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
- (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
- (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
- (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section—
- person* does not include the State or an authority of the State.

Part 2 Provision consequent on the enactment of this Act ²⁴

2 Minister may abolish existing Net Zero Board

- (1) The Minister may, by notice published in the Gazette, abolish the Net Zero Board.
- (2) A person who ceases to hold office as a member of the Net Zero Board because of its abolition is not entitled to remuneration or compensation because of the loss of the office.

(3) In this section—

Net Zero Board means the committee established by the Minister administering the *Energy and Utilities Administration Act 1987* under that Act, section 34W that is—

(a) known as the Net Zero Emissions and Clean Economy Board, and

(b) referred to in the *Energy and Utilities Administration Regulation 2021*, Part 2.

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Schedule 3 Acts and decisions or actions

Section 11

Section 11 Name of Act	Decision or action
<i>Environmental Planning and Assessment Act 1979 (NSW)</i>	A decision to grant or refuse development consent under section 4.16 etc.
<i>Protection of the Environment Operations Act 1997 (NSW)</i>	A decision to grant or refuse an environment protection licence under section 55 A review of a licence conducted under section 78 etc.

Annexure B
Schedule of Comparative Provisions

Provision in Bill	Comparative Provision
<p>Recommendation 1a: Insert new section 3(2)(c)</p> <p>3 Purpose of Act ...</p> <p>(2) The Parliament of New South Wales, in enacting this Act, recognises—</p> <p style="padding-left: 20px;">(a) there is a scientific consensus that human activity is causing abnormal changes to the climate; and</p> <p style="padding-left: 20px;">(b) action is urgently required to reduce greenhouse gas emissions and to address the adverse impacts of climate change.</p> <p style="padding-left: 20px;">(c) the current rate of climate change and biodiversity loss, which represent the two core planetary boundaries that ensure a safe operating space for human societies to develop and thrive, pose urgent threats to the people and environment of NSW.</p> <p>Recommendation 1b: Insert new definition, ‘planetary boundaries’, in section 5</p> <p><i>planetary boundaries</i> mean the environmental thresholds that must not be transgressed if the Earth system is to remain in the safe operating space for human society to develop and thrive.</p> <p>Recommendation 1c: Insert new guiding principle in section 8</p>	<p><u>Article 2 of the EU’s 8th Environment Action Programme to 2030</u></p> <p>Article 2</p> <p>Priority objectives</p> <p>1. The 8th EAP shall have the long-term priority objective that by 2050 at the latest, people live well, within the planetary boundaries in a well-being economy where nothing is wasted, growth is regenerative, climate neutrality in the Union has been achieved and inequalities have been significantly reduced. A healthy environment underpins the well-being of all people and is an environment in which biodiversity is conserved, ecosystems thrive, and nature is protected and restored, leading to increased resilience to climate change, weather- and climate-related disasters and other environmental risks. The Union sets the pace for ensuring the prosperity of present and future generations globally, guided by intergenerational responsibility.</p>

<p>Action to address climate change should, be taken in a way that:</p> <ul style="list-style-type: none"> (a) mitigates biodiversity loss to the greatest extent practicable; (b) contributes measurable improvements in the protection, conservation and restoration of biodiversity in NSW; and (c) improves the management of terrestrial, inland water and coastal and marine ecosystems across NSW to minimise the impact on climate change and ocean acidification on biodiversity. 	
<p>No corresponding provision in current Bill</p> <p>Recommendation 2d: Insert new section 10 requiring the Minister to meet net zero targets</p> <p>10 Minister responsible for achieving targets The Minister must ensure that the State achieves the targets contained in section 9.</p>	<p>Section 8 of the Climate Change Act 2017 (VIC)</p> <p>8 Achieving the long-term emissions reduction target The Premier and the Minister must ensure that the State achieves the long-term emissions reduction target.</p>
<p>Recommendation 3a: Amend proposed section 3 to</p> <p>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—</p> <ul style="list-style-type: none"> (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, and (d) avert, minimise and address loss and damage 	<p>Article 8(1) of the Paris Agreement</p> <p>Article 8 1. Parties recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events, and the role of sustainable development in reducing the risk of loss and damage.</p>

associated with the adverse effects of climate change.

Recommendation 3b: Amend proposed section 4 to insert a new objective to set a loss and damage objective

4 Objects of Act

The objects of this Act are as follows—

- (a) to establish guiding principles for action to address climate change,
- (b) to set targets for the reduction in net greenhouse gas emissions in New South Wales by 2030 and 2050,
- (c) to set an objective for New South Wales to be more resilient to a changing climate,
- (d) to set an objective for New South Wales to avert, minimise and address loss and damage associated with the adverse effects of climate change.
- (e) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the 2030 and 2050 targets, the adaptation objective, the loss and damage objective and other matters.

Recommendation 3c: Amend definition, ‘action to address climate change’ in section 5

action to address climate change includes—

- (a) action to mitigate climate change by reducing—
 - (i) greenhouse gas emissions, and
 - (ii) greenhouse gases in the atmosphere, for example, through sequestration or sinks, and
- (b) action to adapt to a changing climate and to address the effects of climate change, and
- (c) action to avert, minimise and address loss and damage

associated with the adverse impacts of climate change.

Recommendation 3d: Insert new definition, 'loss and damage objective', in section 5

Loss and damage objective—see section 10A

Recommendation 3e: Insert new section 10A

10A Objective for responding to loss and damage from climate change

- (1) For this Act, the *loss and damage objective* is that loss and damage associated with the adverse effects of climate change suffered by people and communities in New South Wales is averted, minimised and addressed to the greatest extent practicable.
- (2) The regulations may make provision about the implementation of the loss and damage objective.

Recommendation 3f: Amend proposed section 14(2) to empower the Commission to provide advice and make recommendations to the Minister on ways to achieve the loss and damage objective

- (2) Without limiting subsection (1), the Commission may provide advice and make recommendations to the Minister about the following—
- (a) how to give effect to the guiding principles in New South Wales,
 - (b) interim targets for the reduction in net greenhouse gas emissions in New South Wales before 2030 and 2050,
 - (c) ways to reduce net greenhouse gas emissions in New South Wales,

- (d) ways to achieve the adaptation objective,
- (e) ways to achieve the loss and damage objective,
- (f) emissions budgets for New South Wales, having regard to Commonwealth emissions budgets and nationally determined contributions,
- (g) targets for energy use by government agencies,
- (h) greenhouse gas emissions and action to address climate change relating to specific business or industry sectors, and
- (i) ways to ensure a whole-of-government approach to addressing climate change in New South Wales.

Recommendation 3g: Amend proposed section 15 to require the Commission to consider the loss and damage objective when exercising the Commission’s functions

When exercising the Commission’s functions, the Commission must consider the following—

- (a) the guiding principles,
- (b) the 2030 and 2050 targets,
- (c) the adaptation objective,
- (d) the loss and damage objective,
- (e) reports, advice or recommendations about climate change from other persons or bodies in Australia and internationally, as the Commission considers relevant,
- (f) action to address climate change that is taken internationally, and
- (f) the exercise of the functions of government agencies.

No corresponding provision in current Bill

[Part 3 of the Climate Change Act 2017 \(VIC\)](#)

Recommendation 4a: Insert new Part 3 Consideration of climate change and net zero targets

Part 3—Climate change considerations
17 Decision makers must have regard to climate change

11 Consideration of climate change in government decision-making

A person making a decision or taking an action contained in Schedule 3 of the Act must:

- (1) Consider the potential impacts of climate change relevant to the decision or action;
- (2) Consider the potential contribution to the State's greenhouse gas emissions of the decision or action;
- (3) Be consistent with the State of New South Wales achieving the net zero targets contained in section 9.

Recommendation 4b: Insert new Schedule 3

Schedule 3 - Acts and decisions or actions

Section 11

Name of Act	Decision or action
<i>Environmental Planning and Assessment Act 1979 (NSW)</i>	A decision to grant or refuse development consent under section 4.16 etc.
<i>Protection of the Environment Operations Act 1997 (NSW)</i>	A decision to grant or refuse an environment protection licence under section 55 A review of a licence conducted under section 78

- (1) This section applies to any decision made or action taken that is authorised by—
 - (a) the provision of an Act specified in Schedule 1; or
 - (b) any other prescribed provision of an Act specified in Schedule 1; or
 - (c) any prescribed provision of a subordinate instrument made under an Act specified in Schedule 1.
- (2) A person making a decision or taking an action referred to in subsection (1) must have regard to—
 - (a) the potential impacts of climate change relevant to the decision or action; and
 - (b) the potential contribution to the State's greenhouse gas emissions of the decision or action; and
 - (c) any guidelines issued by the Minister under section 18.
- (3) In having regard to the potential impacts of climate change, the relevant considerations for a person making a decision or taking an action are—
 - (a) potential biophysical impacts; and
 - (b) potential long and short term economic, environmental, health and other social impacts; and
 - (c) potential beneficial and detrimental impacts; and
 - (d) potential direct and indirect impacts; and
 - (e) potential cumulative impacts.
- (4) In having regard to the potential contribution to the State's greenhouse gas emissions, the relevant considerations for a person making a decision or taking an action are—
 - (a) potential short-term and long-term greenhouse gas emissions; and
 - (b) potential direct and indirect greenhouse gas emissions; and
 - (c) potential increases and decreases in greenhouse gas emissions; and
 - (d) potential cumulative impacts of greenhouse gas emissions.
- (5) The requirements of this Part apply in addition to and without limiting the power or duty of a person making a decision or taking an

etc.

action referred to in subsection (1) to consider any other matter.
(6) Nothing in this Part limits the power of a person making a decision or taking an action not referred to in subsection (1) to consider any potential impacts of climate change or potential contributions to the State's greenhouse gas emissions in making any other decision or taking any other action under any other Act or subordinate instrument.

Schedule 1—Acts and decisions or actions

Section 17

Name of Act

Decision or action

Catchment and Land Protection Act 1994

An approval or refusal of an approval of a management plan by the Minister, or the return of a plan to the Catchment Management Authority with any recommendations for change, under clause 3 of Schedule 2.

The revocation of a management plan by the Minister under clause 7 of Schedule 2.

Marine and Coastal Act 2018

Consideration by the Minister of a Marine and Coastal Policy under Division 1 of Part 4.

Consideration by the Minister of a Marine and Coastal Strategy under Division 2 of Part 4.

	<p>Environment Protection Act 2017</p> <p>A recommendation of the Minister to make, amend or revoke regulations made under the Environment Protection Act 2017.</p> <p>A recommendation of the Minister to make, amend or revoke an environment reference standard.</p> <p>A decision by the Environment Protection Authority relating to licences and permits under the Environment Protection Act 2017.</p> <p>A decision by the Environment Protection Authority to review an operating licence under the Environment Protection Act 2017.</p> <p>...</p>
<p>No corresponding provision in current Bill</p> <p>Recommendation 5e: Insert section 12(6) regarding the appointment of commissioners to represent interests of Aboriginal communities¹</p> <p>(6) The Minister must not recommend a person for appointment as a commissioner with skills, qualifications, and experience in the interests of Aboriginal communities unless the person is—</p>	<p>Section 15(3B) of the <i>Protection of Environment Administration Act 1991</i> (NSW)</p> <p>(3B) A person may only be recommended by the Minister as a person with skills and experience in Aboriginal cultural values if the person is—</p> <ul style="list-style-type: none"> (a) an Aboriginal person within the meaning of the Aboriginal Land Rights Act 1983, section 4(1), and (b) recognised as a cultural knowledge holder, and

¹ See comparative provision in section 15(3B) *Protection of Environment Administration Act 1991* (Cth).

<p>(a) an Aboriginal person within the meaning of the <i>Aboriginal Land Rights Act 1983</i> (NSW), section 4(1), and</p> <p>(b) recognised as a cultural knowledge holder, and</p> <p>(c) willing to represent Aboriginal cultural values.</p>	<p>(c) willing to represent Aboriginal cultural values.</p>
<p>Recommendation 5c: Amend section 17 to expand the Commission’s ability to make reasonable requests beyond public sector agencies</p> <p>17 Obligation of persons government agencies to provide information</p> <p>(1) A person government agency must comply with a reasonable request by the Commission to give the Commission information relevant to the Commission’s functions.</p> <p>(2) It is an offence to fail to comply with a request given under section 17(2).</p> <p>Maximum penalty-</p> <p>(a) For a corporation - \$500,000, or</p> <p>(b) For an individual - \$250,000</p>	<p><u>Section 19 of the <i>Independent Commission Against Corruption Act 1988</i> (NSW)</u></p> <p>19 Incidental powers</p> <p>(1) The Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions, and any specific powers conferred on the Commission by this Act shall not be taken to limit by implication the generality of this section.</p> <p>(2) The Commission or an officer of the Commission may seek the issue of a warrant under the <i>Surveillance Devices Act 2007</i>.</p> <p><u>Section 39 of the <i>Climate Change Act 2008</i> (UK)</u></p> <p><i>Supplementary provisions</i></p> <p>39 General ancillary powers</p> <p>(1) The Committee may do anything that appears to it necessary or appropriate for the purpose of, or in connection with, the carrying out of its functions.</p> <p>...</p> <p>(3) In exercising its functions, the Committee may—</p> <p>(a) gather information and carry out research and analysis,</p> <p>(b) commission others to carry out such activities, and</p>

	<p>(c) publish the results of such activities carried out by the Committee or others.</p>
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