

TASMANIA

CLIMATE CHANGE (STATE ACTION) BILL 2008

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CLIMATE CHANGE (STATE ACTION) BILL 2008

(Brought in by the Premier, the Honourable David John Bartlett)

A BILL FOR

An Act for certain measures to help the State address the challenges of climate change and contribute to the broader national and international response to those challenges and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Climate Change (State Action) Act 2008*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act, unless the contrary intention appears –

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“Council” means the Tasmanian Climate Action Council established under section 10;

“emissions offset programs” means programs designed to recognise or achieve reductions in greenhouse gas emissions, or the removal of such emissions, taking into account any criteria prescribed by the regulations;

“greenhouse gas emissions” means emissions of –

- (a) carbon dioxide; or
- (b) methane; or
- (c) nitrous oxide; or
- (d) hydrofluorocarbons; or
- (e) perfluorocarbons; or
- (f) sulfur hexafluoride; or
- (g) gases prescribed by the regulations;

“measurement” includes calculation;

“member” means a member of the Council;

“person” includes any kind of body, including a body politic;

“prescribe” includes provide for;

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“recognition” includes any form of accreditation, authorisation, endorsement, licensing or registration;

“regulations” means regulations made and in force under this Act;

“regulatory recommendation” means a Ministerial recommendation under section 6;

“State’s 2050 target” – see section 5.

4. Objects of Act

The objects of this Act are –

- (a) to help Tasmania respond to the challenges of climate change by addressing issues associated with that phenomenon and, in particular, by providing for the setting of a target for the reduction of greenhouse gas emissions in the State as part of the national and international response to climate change; and
- (b) to promote a commitment to action on climate change issues in Tasmania by providing for the development of –
 - (i) interim State targets for the reduction of greenhouse gas emissions in the State; and

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- (ii) suitable targets and interim targets, having the same aim, for specific sectors of the State's economy; and
- (c) to help Tasmania take advantage of the new social, economic and environmental opportunities that climate change will present; and
- (d) to provide for reporting and Parliamentary oversight of progress being made towards achieving the State's 2050 target and other targets; and
- (e) to promote energy efficiency and conservation; and
- (f) to promote research and development in the development and use of technology for reducing or limiting greenhouse gas emissions or for dealing with and adapting to the expected consequences of climate change, including technology for removing greenhouse gases from the atmosphere; and
- (g) to promote and facilitate business and community consultation and early action on climate change issues; and
- (h) to identify, promote and support measures to help Tasmania deal with and adapt to the expected consequences of climate change; and

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- (i) to promote a Tasmanian response to climate change issues that is as far as practicable consistent with national and international schemes addressing those issues, including any schemes for emissions trading and emissions reporting; and
- (j) to enhance Tasmania's willingness and capacity to contribute and respond, constructively and expeditiously, to national and international developments in climate change issues.

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Division 1 – Target

5. The State’s 2050 target

The State’s 2050 target under this Act is to reduce, by 31 December 2050, greenhouse gas emissions in Tasmania to at least 60% below 1990 levels.

Division 2 – Climate change regulations

6. Regulation-making power

The Governor may, on the recommendation of the Minister, make regulations for the purposes of this Act.

7. Greenhouse gas emission regulations

- (1) The regulations may, in connection with the operation of section 5 or any other provision of this Act (or other regulations) –
 - (a) prescribe the method for measuring greenhouse gas emissions for the purposes of setting relevant 1990 levels (the “**baseline**”) and prescribe a figure that represents the baseline; and

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- (b) prescribe methods for measuring reductions in greenhouse gas emissions; and
 - (c) prescribe interim State targets; and
 - (d) prescribe targets and interim targets for specific sectors of the State's economy; and
 - (e) prescribe policy targets; and
 - (f) prescribe specific baselines for particular areas of activity (as subsidiary components of the baseline); and
 - (g) prescribe other measures and matters relating to the measurement of greenhouse gas emissions.
- (2) The Minister, in making regulatory recommendations for the purposes of subsection (1), is to have regard to –
- (a) actions taken since 1990 to limit or reduce greenhouse gas emissions; and
 - (b) the advice of relevant experts; and
 - (c) relevant methodologies and principles that apply in other Australian jurisdictions; and
 - (d) climate change actions taken in foreign jurisdictions that, by reason of their geographic, demographic, economic, industrial or infrastructural profile, face

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climate change challenges similar to those facing Tasmania; and

- (e) the desirability of achieving consistency with best national and international practice in prescribing the baseline and methods for measuring reductions in greenhouse gas emissions; and
- (f) in the case of any amendment of the regulations, any new or updated methodologies or advice relating to the assessment, measurement or reporting of greenhouse gas emissions.

8. Emissions offset regulations

- (1) The regulations may –
 - (a) provide for the recognition, facilitation or promotion of emissions offset programs; and
 - (b) prescribe ways of identifying or determining the types, and extent, of offsets that may form part of recognised emissions offset programs; and
 - (c) prescribe criteria allowing for the recognition of emissions offset programs capable of delivering multiple benefits (such as the removal of greenhouse gases from the atmosphere, biodiversity enhancement and economic development).

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- (2) The Minister, in making regulatory recommendations for the purposes of subsection (1), is to have regard to the desirability of enabling emissions offset programs recognised in Tasmania to also be recognised under national and international programs so as to promote the tradability of products and services.

9. Regulations generally

- (1) The regulations may –
- (a) require any person to provide specified reports, returns, documents or other forms of information to the Minister or another person; and
 - (b) require any person to keep specified records, statistics or other information; and
 - (c) authorise the Minister (or any person authorised by the Minister) to inspect any information required to be kept under the regulations and require any person to permit or facilitate any such inspection; and
 - (d) require the giving of notice before a specified activity or class of activities is commenced, and the notification of the occurrence of any specified event or class of events; and

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- (e) provide for the setting of targets for the State Government, including interim targets and specific targets for specified government agencies or instrumentalities for the reduction of greenhouse gas emissions from their activities in Tasmania; and
 - (f) provide for the service of any specified notice or document; and
 - (g) regulate the release or publication of specified information obtained in the administration of this Act.
- (2) The regulations may be made so as to apply differently according to specified factors.
- (3) The regulations may –
- (a) confer powers and functions on the Minister or the Council; and
 - (b) authorise any matter to be from time to time determined, applied or regulated by any specified person.
- (4) The regulations may provide for any matter by incorporating, either specifically or by reference and either wholly or in part and with or without modification, any code, standard or guideline, whether as in force at a particular time or as from time to time amended and whether published or issued before, on or after the day on which this Act commences.
- (5) The regulations may –

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- (a) provide that a contravention of any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 30 penalty units and, in the case of a continuing offence, a further fine not exceeding 3 penalty units for each day during which the offence continues.
- (6) In this section –
- “**specified**” means specified in the regulations.

Division 3 – Tasmanian Climate Action Council

10. Establishment of Council

The Tasmanian Climate Action Council is established.

11. Membership of Council

- (1) The Council consists of at least 8 and not more than 10 members appointed by the Minister.
- (2) In appointing members, the Minister is to –
 - (a) prefer persons who can demonstrate an understanding of and commitment to act on climate change issues; and

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- (b) aim to ensure that the Council has a balance of relevant expertise and a reasonable range of representation from –
 - (i) the government sector; and
 - (ii) the business community; and
 - (iii) the scientific community; and
 - (iv) other sectors of the community more generally.
- (3) The Minister is to appoint –
 - (a) a member as chairperson of the Council; and
 - (b) a member as deputy chairperson of the Council.
- (4) Schedule 1 has effect with respect to the membership of the Council.
- (5) Schedule 2 has effect with respect to the meetings of the Council.

12. Function of Council

- (1) The Council’s function is to provide the Minister with independent advice on climate change issues as they affect Tasmania including, in particular –
 - (a) the setting of interim State targets and the setting of targets and interim targets

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- for specific sectors of the State's economy; and
- (b) the progress being made towards achieving the State's 2050 target and other targets; and
 - (c) the effectiveness of the initiatives and methods being employed to achieve those targets; and
 - (d) alternative or additional methods capable of being employed to achieve those targets; and
 - (e) the extent to which any targets or methods prescribed by the regulations are being achieved and, if it seems relevant, should be revised; and
 - (f) the progress being made towards identifying and implementing strategies for dealing with and adapting to the expected consequences of climate change; and
 - (g) other matters relating to the mitigation of, and adaptation to, the expected consequences of climate change.
- (2) In performing its function, the Council may have regard to such matters as it considers necessary or expedient but is to have particular regard to –
- (a) national and international best practice; and

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- (b) relevant methodologies and principles that apply in other Australian jurisdictions; and
 - (c) climate change actions taken in foreign jurisdictions that, by reason of their geographic, demographic, economic, industrial or infrastructural profile, face climate change challenges similar to those facing Tasmania; and
 - (d) the medium- to long-term practicability, flexibility and sustainability of Tasmania's climate change strategies; and
 - (e) any opportunities for Tasmania to innovate and contribute to national and international solutions.
- (3) The Council is to also perform any prescribed functions.

13. Committees

The Council may establish committees of such members as it considers appropriate to assist it in the performance of its function.

Division 4 – Reporting

14. Annual report of Council

- (1) The Council, on or before 31 October in each year, is to give the Minister a report on its activities for the financial year ending on the preceding 30 June.
- (2) The Minister is to cause a copy of the report to be tabled in each House of Parliament within 10 sitting-days after it is given to the Minister.

15. Biennial reports of Council

- (1) The Council, on a two-yearly basis, is to submit to the Minister a report on the matters set out in section 12(1).
- (2) The Minister is to cause a copy of the report to be tabled in each House of Parliament within 10 sitting-days after it is submitted to the Minister.
- (3) The Council is to ensure that the first report under this section is prepared and provided to the Minister by 31 December 2010.

PART 3 – MISCELLANEOUS

16. Confidentiality

- (1) A person involved in the administration of this Act must not disclose or use any confidential information that the person acquires by reason of that involvement except –
 - (a) as may be necessary for the purposes of this Act or the regulations; or
 - (b) for a purpose authorised or required by or under another Act of the State or an Act of the Commonwealth; or
 - (c) with the express written consent of the person to whom the information relates; or
 - (d) when required to do so by a court or tribunal constituted by law.

Penalty: Fine not exceeding 50 penalty units.

- (2) To avoid doubt, a member of the Council is a person involved in the administration of this Act.
- (3) This section does not apply to the recording, disclosure or use of information in a statistical or other form that could not reasonably be expected to cause any material detriment to a particular person.
- (4) In this section –

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“confidential information” means –

- (a) information that is commercial, financial, scientific or technical in nature that would reveal proprietary business, competitive or trade secret information of significant value if released; or
- (b) information that is commercially sensitive for some other reason; or
- (c) information that is brought within the ambit of this definition by the regulations.

17. Delegation

The Minister may delegate any of the Minister’s powers or functions under this Act or the regulations other than –

- (a) this power of delegation; and
- (b) the making of appointments under section 11.

18. Review of Act

- (1) The Minister is to cause an independent review of the operation of this Act to be carried out on a four-yearly basis.
- (2) The review is to address –

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- (a) the extent to which the objects of this Act are being achieved; and
 - (b) the extent to which additional legislative measures, if any, are considered necessary to achieve the targets set by this Act within the periods contemplated by this Act, including by the introduction of performance standards and other mandatory requirements; and
 - (c) such other matters as the Minister may consider relevant to a review of this Act.
- (3) The Minister is to take reasonable steps to ensure that the review is carried out in consultation with –
- (a) the Council; and
 - (b) relevant business, scientific, environment and community bodies.
- (4) The persons who carry out the review are to give the Minister a written report on its outcome.
- (5) The Minister is to cause a copy of the report to be tabled in each House of Parliament within 10 sitting-days after it is given to the Minister.
- (6) The Minister is to ensure that the first review under this section is carried out, and that a copy of the report on the outcome of that review is tabled in Parliament, by 31 December 2012.

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19. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Premier; and
- (b) the department responsible to the Premier in relation to the administration of this Act is the Department of Premier and Cabinet.

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SCHEDULE 1 – MEMBERSHIP OF COUNCIL

Section 11(4)

1. Term of office

A member is appointed for such period not exceeding 3 years as is specified in the instrument of appointment and, if eligible, may be reappointed.

2. Holding other office

The holder of an office who is required by the terms of his or her employment to devote the whole of his or her time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of a member; or
- (b) accepting any remuneration payable to a member.

3. *State Service Act 2000*

- (1) The *State Service Act 2000* does not apply in relation to a member in his or her capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

4. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act as are specified in the member's instrument of appointment.

5. Vacation of office

- (1) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns by written notice given to the Minister; or
 - (c) is removed from office pursuant to subclause (2) or (3).
- (2) The Minister may remove a member from office if the member –
 - (a) is absent from 3 consecutive meetings of the Council without the permission of the Council; or

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- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or
 - (c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for a term of 12 months or longer or a fine of 300 penalty units or more; or
 - (d) fails to disclose a pecuniary interest as required under clause 7 of Schedule 2.
- (3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.
- (4) A member must not be removed from office otherwise than in accordance with this clause.

6. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of the member's term of office.

7. Validation of proceedings, &c.

- (1) An act or proceeding of the Council or of a person acting under a direction of the Council is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts and proceedings of the Council or of a person acting under a direction of the Council are, despite the subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or incapable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the Council had been fully constituted.

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SCHEDULE 2 – MEETINGS OF COUNCIL

Section 11(5)

1. Convening of meetings

- (1) The chairperson of the Council, after giving each member reasonable notice of a meeting –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting when requested to do so by 2 or more other members.
- (2) If the chairperson of the Council is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given, by –
 - (a) the deputy chairperson; or
 - (b) two or more other members; or
 - (c) a person authorised by the Council to do so.
- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Council.

2. Presiding at meetings

- (1) The chairperson of the Council is to preside at all meetings of the Council at which he or she is present.

- (2) If the chairperson of the Council is not present at a meeting the deputy chairperson is to preside at the meeting.
- (3) If neither the chairperson of the Council nor the deputy chairperson is present at a meeting of the Council, a member elected by the members present at the meeting is to preside at that meeting.

3. Quorum and voting at meetings

- (1) At a meeting of the Council, a quorum is constituted by a majority of the total number of members appointed.
- (2) A meeting of the Council at which a quorum is present is competent to transact any business of the Council.
- (3) At a meeting of the Council –
 - (a) the member presiding has a deliberative vote only; and
 - (b) a question is decided –
 - (i) by a majority of votes of the members present and voting; or
 - (ii) in the negative if there is an equality of votes of the members present and voting.
- (4) At a meeting of the Council where a member is excluded from being present and taking part in

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the consideration and decision of the Council in relation to a matter, a quorum for the purposes of considering and making a decision in relation to the matter is constituted by the number of members specified as constituting a quorum in subclause (1) less the number of members so excluded.

4. Conduct of meetings

- (1) Subject to this Act, the Council may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Council may permit members to participate in a particular meeting or all meetings by –
 - (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Council.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Council may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

5. Resolutions without meetings

- (1) If all members appointed sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Council held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.
- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
 - (a) advised immediately of the matter; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

6. Minutes

The Council is to keep accurate minutes of its meetings.

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7. Disclosure of interests

- (1) If a member has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Council, the member must, as soon as practicable after the relevant facts come to the member's knowledge, disclose the nature of the interest to the Council.

Penalty: Fine not exceeding 30 penalty units.

- (2) A disclosure under subclause (1) is to be recorded in the minutes of the Council and, unless the Council otherwise determines, the member who has made the disclosure must not –
- (a) be present during any deliberation of the Council in relation to the matter; or
 - (b) take part in any decision of the Council in relation to the matter.
- (3) For the purpose of making a determination under subclause (2), the member to whom the determination relates must not –
- (a) be present during any deliberation of the Council for the purpose of making the determination; or
 - (b) take part in making the determination.
- (4) Subclause (1) does not apply in respect of an interest that arises only –
- (a) by virtue of the fact that a member has an interest in a particular sector of the

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State's economy or community more generally; or

- (b) because the member is also a State Service officer or State Service employee.

8. General procedure

Except as provided by this Act, the Council may regulate its own proceedings.