

Your Ref:
Our Ref: 898

12 November 2021

Tasmanian Climate Change Office
Department of Premier and Cabinet
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TO WHOM IT MAY CONCERN

Re: Tasmanian Climate Change (State Action) Act Amendment Bill 2021

Thank you for the opportunity to comment on the consultation draft of the Tasmanian Climate Change (State Action) Amendment Bill 2021 (the draft Bill).

Background to the draft Bill

The *Climate Change (State Action) Act 2008* (the Act) sets the Tasmanian Government's legislative framework for action on climate change. Every four years, a review of the Act is required – this is a legislative requirement. [The most recent independent review](#) was conducted in 2021, in consultation with the community and relevant stakeholders. The Final Report of the Independent Review of the Climate Change (State Action) Act 2008 (the Independent Review) made the following seven recommendations to amend the Act:

1. Net zero emissions from 2030
2. Consolidate the objects of the Act
3. A set of principles to guide climate action
4. Relevant policies and strategies informed by climate change
5. Make the Climate Action Plan a legislative requirement
6. State-wide climate change risk assessment
7. Decarbonisation and Resilience Plans

The Tasmanian Government [supported or supported in principle all recommendations](#) and now has prepared [a draft Bill](#) to amend the Act in response to the recommendations.



According to the explanatory material for the draft Bill, it proposes to amend the Act by:

- strengthening Tasmania's emissions reduction target by legislating a target of **net zero emissions for Tasmania from 2030**;
- establishing a framework for sector-based **emissions reduction and resilience plans** to be prepared in partnership between the Tasmanian Government and representatives from industry and business;
- requiring the Tasmanian Government to have a **Climate Change Action Plan** in place; and
- requiring a statewide **climate change risk assessment** be completed every five years.

I note that the review of the climate change legislation occurred alongside consultations and other work to inform the development of the next whole-of-government climate change action plan.¹

Role of the Commissioner for Children and Young People

The Commissioner for Children and Young People is an independent statutory office established under Tasmania's *Commissioner for Children and Young People Act 2016*. My functions, which are set out in section 8(1) of the CCYP Act, include:

- advocating for all children and young people in the State generally
- researching, investigating and influencing policy development into matters relating to children and young people generally
- promoting, monitoring and reviewing the wellbeing of children and young people generally
- promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives
- assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.

Consistent with my statutory functions, my comments on the draft Bill focus on matters that are particularly relevant to promoting and protecting the rights, wellbeing and best interests of children and young people in Tasmania.²

Comment

In 2019, the UN Committee on the Rights of the Child (the Committee) emphasised the effects of climate change on the rights of children in the context of its periodic review of

¹ https://www.dpac.tas.gov.au/divisions/climatechange/tasmanias_climate_change_action_plan_20172021

² Pursuant to section 3 of the CCYP Act, 'child' means a person who has not attained the age of 18 years; and 'young person' means a person, who has not attained the age of 18 years, as determined by the Commissioner in accordance with section 8(4).



Australia's progress to implement the Convention on the Rights of the Child (CRC). In its concluding observations, the Committee recommended that Australia:

- a. Ensure that children's views are taken into account in developing policies and programs addressing climate change, the environment and disaster risk management, and increase children's awareness and preparedness for climate change and natural disasters; and
- b. Promptly take measures to reduce its emissions of greenhouse gases, establishing targets and deadlines to phase out the domestic use of coal and its export, and accelerate the transition to renewable energy, including by committing to achieve 100 per cent renewable energy in the electricity sector.³

I commend the legislative commitment to identify, promote and support measures to reduce Tasmania's greenhouse gas emissions and to report on progress towards targets. This is in line with the Committee's recommendations on Australia's implementation of the CRC.⁴ The UN Committee's recommendation on emissions reductions was made specifically in light of, and to help address, the recognised impacts of climate change on children and their rights, and on future generations.

It is, however, unfortunate that the opportunity has not been taken to incorporate into the draft Bill an acknowledgment of the relationship between climate change and children's rights and wellbeing, including their right to be heard in climate policy decision-making processes. I advocated very strongly in my 3 May 2021 [submission](#) to the Independent Review of the Act for the inclusion of child-rights based principles.

The child participation and intergenerational principles

Two crucial child-rights based principles that I particularly advocated for in my submission to the Independent Review – the participation principle and the intergenerational principle – are sadly lacking recognition in the draft Bill. In my submission, I strongly recommended the Act be amended to include the principle of child participation. As I noted in my submission, this principle would require that the Act explicitly acknowledge the right of children and young people under the age of 18, individually and as a group, to be heard and to participate in decision-making processes for climate policy, including the development of Action Plans. I also urged in the strongest terms the incorporation of the intergenerational principle, which would require political accountability to children and future generations for the mitigation and/or reversal of climate change, and its impacts and benefits on current and future generations.

³ Committee on the Rights of the Child (2019), Concluding observations on the combined fifth and sixth periodic reports of Australia, CRC/C/AUS/CO/5-6.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsK5X2w65LgiRF%2FS3dwPS4NWFNCtCr>

Un3lRntjF1P2gZpa035aKkorCHAPJx8blZmDed5owOGcbWFeosUSgDTFKNqA7hBC3KiwAm8SB0665E

⁴ Committee on the Rights of the Child (2019), Concluding observations on the combined fifth and sixth periodic reports of Australia, CRC/C/AUS/CO/5-6.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsK5X2w65LgiRF%2FS3dwPS4NWFNCtCrUn3lRntjF1P2gZpa035aKkorCHAPJx8blZmDed5owOGcbWFeosUSgDTFKNqA7hBC3KiwAm8SB0665E>



In my view, the failure to incorporate these principles into the draft Bill leaves the Act out of step with Australia's international obligations relating to child rights. I also noted in my submission to the Independent Review that these principles are supported by recommendation 40 of the Premier's Economic and Social Recovery Advisory Council (PESRAC), which calls for a strong future focus on environmental considerations and ensuring that decisions account for the best interests of future generations. In failing to consider those most likely to bear the burden of climate change, the draft Bill is also at odds with the PESRAC's recommendations.

In May and June 2021, the Tasmanian Climate Change Office (TCCO) met with children and young people involved in the CCYP Ambassador Program to listen to their opinions and concerns about climate change and the environment as part of a consultation for both the independent review of the *Climate Change (State Action) Act 2008* and the development of Tasmania's next climate change action plan. This consultation occurred because CCYP Ambassadors had expressed interest in having more opportunities to speak with decision-makers on matters relating to climate change and the environment. TCCO facilitated four face-to-face workshops with the CCYP Ambassadors, in Devonport, Launceston, and Hobart, and a fifth workshop was held online. A summary of the CCYP Ambassadors' rich and insightful input into the consultation process can be found in the [CCYP Consultation Report Summary](#).

It is particularly notable, therefore, that the only reference to children made in the Final Report of the Independent Review was in its acknowledgement of disadvantaged children as one of several vulnerable community groups "likely to bear the brunt of climate related difficulties".⁵ It did not, however, acknowledge the fact that children and young people generally and future generations are the stakeholders most likely to bear the burden of climate change and to be affected by the outcomes of any current or future policies implemented to address climate change and its effects.

The failure to acknowledge child rights principles in the Independent Review has been carried over into the draft Bill. Indeed, and perhaps more concerningly, there is not one mention of children, young people or future generations in the draft Bill.

I therefore strongly recommend the draft Bill be amended by:

1. Incorporating the principle of child participation into the proposed amendment to section 4(e) of the Act by specifically listing children and young people amongst the groups with whom a partnership approach should be supported (Clause 5).
2. Inserting a new subsection into the proposed section 5A (which deals with climate change action plans) specifically requiring the Minister to prepare a child-friendly version of the quinquennial climate change action plan and any necessary supporting documentation to enable children and young people to participate in an informed manner in climate change decision-making processes covered by the Act (Clause 6).
3. Expanding the list of groups with whom consultations must be conducted and whose views must be taken into account by the Minister when developing action plans. This

⁵ Department of Premier and Cabinet, Tasmanian Climate Change Office, Independent Review of the *Climate Change (State Action) Act 2008*, p61 [Independent Review of the Climate Change State Action Act 2008 - Final Report 2021.PDF \(dpac.tas.gov.au\)](#)



could be achieved by redrafting the proposed s5A(4)(e) to add explicit reference to children and young people as a stakeholder group with whom consultations should occur and whose views should be taken into account (Clause 6).

4. Incorporating the intergenerational principle into proposed s5B(2). This subsection outlines the matters that the Minister is to take into account when developing a statewide climate change risk assessment. The intergenerational principle could be incorporated into s5B(2)(b) by incorporating 'children, young people and future generations' as a specific cohort of the Tasmanian community for whom consideration of associated risk must be given. For example, proposed s 5B(2)(b) could be amended to read:

'consideration of economic, social and environmental implications of climate change and assessment of the associated risks to Tasmanian communities, **including children, young people and future generations**; natural environments and ecosystems; and economic activity'.

Education to support the right of participation

I also noted in my submission to the Independent Review that, consistent with the Committee's periodic review of Australia's progress to implement the CRC, it is incumbent upon governments to increase children's awareness and understanding of climate change and natural disasters. The inclusion of a commitment to education and awareness raising into the Act would not only bolster current and future generations' understanding of and resilience to climate change and its effects; it would also further strengthen the ability of children and young people to fully and meaningfully participate on an equal footing in decision-making processes covered by the Act. I note with regret, however, that the draft Bill proposes no amendments to address education about and preparedness for climate change. I recommend that further consideration is given to how this could be incorporated into the draft Bill.

Monitoring and reporting

In my submission to the Independent Review, I called for the Act to be amended to include provisions that would require the Minister to monitor and report on the impacts of climate change, specifically on the rights and wellbeing of children in Tasmania, as well as progress to mitigate those impacts. While proposed s5 (see clause 6 of the draft Bill) requires the Minister to publish data on greenhouse gas emissions, it does not require the Minister to publish or disclose the impacts as outlined above. As a result, the draft Bill does not align with the recommendation of the Office of the United Nations High Commissioner for Human Rights that States should 'improve the understanding of the relationship between climate change and children's rights by collecting disaggregating data, conducting impact assessments, promoting intersectoral cooperation, and establishing consultative and reporting mechanisms focussed on the rights of children'.⁶

⁶ OHCHR, Climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13), <https://www.ohchr.org/Documents/Issues/ClimateChange/RightsChild/ChildrenOnePager.pdf>



Conclusion

The Bill as currently drafted fails to acknowledge the burden posed by climate change on children and young people and future generations, nor does it reflect their right to be heard and to participate in decision-making processes for climate policy. I therefore urge that the draft Bill be amended to ensure it aligns with Australia's international obligations relating to children's rights, including the crucial need to provide them with the opportunities and means to engage in and influence decision-making processes which inform Tasmania's climate policy.

Thank you for the opportunity to comment on the draft Bill. I would be very pleased to discuss my comments in more detail should this be of assistance.

Yours sincerely

Leanne McLean

Commissioner for Children and Young People

cc *The Hon Sarah Courtney MP, Minister for Children and Youth*
The Hon Roger Jaensch MP, Minister for Climate Change