



New South Wales

Climate Change (Net Zero Future) Bill 2023

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2023

Clerk of the Parliaments



New South Wales

Climate Change (Net Zero Future) Bill 2023

Act No _____, 2023

An Act to establish guiding principles for action to address climate change; to set 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 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.
- (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.
- (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 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 until 2050,
- (c) to set an objective for New South Wales to be more resilient to a changing climate,
- (d) to establish the Net Zero Commission to independently monitor, review and report on progress in New South Wales towards the targets, the adaptation objective and other matters.

5 Definitions

In this Act—

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.

adaptation objective—see section 10.

chair of the Commission means the chair of the Commission appointed by the Minister under section 13(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 12.

commissioner means a commissioner appointed by the Governor under section 13(1)(a) and does not include a temporary commissioner appointed by the Minister under section 13(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.

interim target means an interim target for the reduction of net greenhouse gas emissions in New South Wales prescribed by the regulations.

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

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

temporary commissioner means a temporary commissioner appointed by the Minister under section 13(1)(b).

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

6 Act to bind Crown

This Act binds the Crown in right of New South Wales and, to the extent the legislative power of the Parliament of New South Wales permits, the Crown in all its 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 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, and
 - (d) considers the impact on rural, regional, and remote communities in New South Wales.
- (5) Action to address climate change should be consistent with the right to a clean, healthy and sustainable environment.
- (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.
- (8) Action to address climate change should take into account the following—
 - (a) the knowledge and perspectives of Aboriginal communities,
 - (b) the best available science,
 - (c) the knowledge of rural, regional and remote communities in New South Wales,
 - (d) 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, and
 - (v) considering the impact on the amenity of local communities,
 - (e) the need for education and skills diversification,
 - (f) the need to ensure essential utilities and infrastructure are provided, including energy, water, telecommunications and transport,
 - (g) the impact of the action on consumer costs in New South Wales, including energy costs,
 - (h) the need to reduce the risk climate change poses to human health,
 - (i) equity and social justice impacts on socially disadvantaged groups and economically vulnerable regions,
 - (j) the need to reduce the risk climate change poses to the survival of all species.
- (9) Action to address climate change should take into account the impact on animals.
- (10) 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% 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
 - (c) by 30 June 2050—to reduce net greenhouse gas emissions in New South Wales to zero.
- (2) The regulations may—
 - (a) adjust a date in subsection (1) by prescribing an earlier date, and
 - (b) adjust a percentage in subsection (1) by prescribing a higher percentage.
- (3) The regulations must prescribe an interim target to reduce net greenhouse gas emissions in New South Wales for each of the following—
 - (a) 30 June 2040,
 - (b) 30 June 2045.
- (4) An interim target must specify a reduction that is greater than—
 - (a) for 30 June 2040—the 30 June 2035 target, and
 - (b) for 30 June 2045—the 30 June 2040 target.
- (5) The regulations may make provision about the following—
 - (a) implementing primary targets and interim targets,
 - (b) setting interim targets in addition to the interim targets in subsection (3),
 - (c) other matters relating to primary targets and interim targets, including imposing functions on the Commission in relation to the targets,
 - (d) calculating and assessing 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.
- (6) The regulations may prescribe requirements for giving advance notice about interim targets.

10 Objective for adaptation to changing climate

- (1) For this Act, the *adaptation objective* is that New South Wales is more resilient to a changing climate.
- (2) The regulations may make provision about the implementation of the adaptation objective.

11 Achieving the net zero target

The Premier and the Minister must ensure New South Wales achieves the target set out in section 9(1)(c).

Part 3 Net Zero Commission

Division 1 Constitution of Commission

12 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.

13 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 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 interests of Aboriginal communities,
 - (h) the interests of rural, regional and remote communities in New South Wales.
- (4) The Minister may appoint a commissioner as chair of the Commission.
- (5) Schedule 1 contains provisions about the members and procedure of the Commission.

14 Staff of Commission

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

Note— The *Government Sector Employment Act 2013*, section 59 provides that the persons 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

15 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 primary targets and interim 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 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,
 - (c) ways to reduce net greenhouse gas emissions in New South Wales,
 - (d) ways to achieve the adaptation objective,
 - (e) emissions budgets for New South Wales, having regard to Commonwealth emissions budgets and nationally determined contributions,
 - (f) targets for energy use by government agencies,
 - (g) greenhouse gas emissions and action to address climate change relating to specific business or industry sectors,
 - (h) ways to ensure a whole-of-government approach to addressing climate change in New South Wales.
- (3) The Commission may provide advice and make recommendations to any of the following persons or bodies, but if it does it must provide notice to the Minister responsible for the person or body—
 - (a) the Secretary of a Department,
 - (b) the Independent Planning Commission within the meaning of the *Environmental Planning and Assessment Act 1979*.
- (4) The Commission may have other functions conferred or imposed on it by or under this or another Act.

16 Considerations for Commission

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

- (a) the guiding principles,

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

17 Consultation

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.

18 Obligation of government agencies to provide information

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

Division 3 Reporting requirements

19 Minister may require report from Commission

- (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.
- (2) The Minister may, after consulting with the Commission, require the report to be given to the Minister within a specified period.
- (3) This section does not prevent the Commission from giving the Minister a report, information, advice or recommendations on the Commission's own initiative.

20 Publication of Commission reports

- (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.
- (2) Within 28 days after receiving a report from the Commission, the Minister must table the report in both Houses of Parliament.
- (3) Within 6 months after receiving a report from the Commission, the Minister must—
 - (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 advice or a recommendation from the Commission must specify the following—
 - (a) whether the advice or recommendation is accepted, refused or noted,
 - (b) if the advice or recommendation is accepted—the action to be taken by the Government of New South Wales to implement the advice or recommendation,
 - (c) if the advice or recommendation is refused or noted—the reasons for refusing or noting the advice or recommendation.
- (5) Subsections (2) and (3) do not apply to a report given to the Minister under section 21.

21 Annual reports

- (1) The Commission must, by 1 November each year, give the Minister a report for the previous financial year about the following—
 - (a) New South Wales's progress towards the primary targets and interim targets,
 - (b) New South Wales's progress in relation to the adaptation objective,
 - (c) a summary of all reports given to the Minister by the Commission during the financial year,
 - (d) other matters prescribed by the regulations.
- (2) The Commission may also include in the report a recommendation to the Minister that had not been given to the Minister during the financial year.
- (3) In preparing the report, the Commission must consult with the person employed in the Public Service as the Agriculture Commissioner.
- (4) Within 4 months of receiving the report required under subsection (1), the Minister must—
 - (a) publish a response to the report, and
 - (b) table the response in both Houses of Parliament within 28 days of publishing the response.

Division 4 Other

22 Advisory committees

- (1) The Commission may establish committees to give advice and assistance to the Commission in connection with the Commission's functions.
- (2) An advisory committee need not include a member of the Commission.
- (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.

23 Delegation

The Commission may delegate any of the Commission's functions under this Act, other than this power of delegation, to the following—

- (a) a member of the Commission,
- (b) a member of staff of the Commission,
- (c) a person or body prescribed by the regulations.

24 Disclosure of information

- (1) This section applies to the following persons—
 - (a) a member of the Commission,
 - (b) a member of an advisory committee of the Commission,
 - (c) a member of staff of the Commission.
- (2) A person must not disclose information obtained in connection with the administration or execution of this Act unless the disclosure is made—
 - (a) with the consent of the person from whom the information was obtained, or
 - (b) in connection with the administration or execution of this Act, or
 - (c) for the purposes of legal proceedings arising out of this Act, or

(d) with another lawful excuse.

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

25 Protection from personal liability

(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—

(a) in good faith, and

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

(2) The liability instead attaches to the Crown.

(3) In this section—

civil liability includes an action, claim or demand.

protected person means the following—

(a) a member of the Commission,

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

(c) a member of staff of the Commission.

Part 4 Miscellaneous

26 Review of Act

- (1) The Minister must review this Act to determine whether the policy objectives and purpose of the Act remain valid and whether the terms of this Act remain appropriate for securing the objectives and achieving the purpose.
- (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.

27 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

section 13(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
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns from office by a written instrument addressed to the Minister, or
 - (d) is removed from office by—
 - (i) for a commissioner—the Governor under subsection (2), or
 - (ii) for a temporary commissioner—the Minister under subsection (3), or
 - (e) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with the commissioner's or temporary commissioner's creditors or makes an assignment of the commissioner's or temporary commissioner's remuneration for the creditors' benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Governor may, on the recommendation of the Minister, remove a commissioner from office.

- (3) The Minister may remove a temporary commissioner from office.
- (4) The Minister must publish written reasons for a recommendation to the Governor under subsection (2) or for the removal of a temporary commissioner under subsection (3).

6 Quorum

The quorum for a Commission meeting is a majority of the members of the Commission for the time being.

7 Presiding commissioner

- (1) The chair of the Commission must preside at a Commission meeting.
- (2) If the chair is absent from a Commission meeting, a commissioner elected by the members of the Commission present at the meeting must preside at the meeting.
- (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.

- (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
 - (b) authorise changes to the code of conduct as recommended by the Commission.
- (2) Compliance with an approved code of conduct is a condition of the appointment of a member to whom the code of conduct applies.
- (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.

Schedule 2 Savings, transitional and other provisions

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

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.