



Briefing paper

The Climate Change Bill 2016

This week the Victorian Government introduced [the Climate Change Bill 2016](#) into Parliament. The Government says this legislation will make Victoria a world leader on climate action. But will it? Here we analyse the Bill and give our views.

Environmental Justice Australia has been advocating for Victoria to implement strong climate laws for many years and many elements of [our proposal for Climate Charter legislation](#) have been picked up in this Bill.

The argument that climate emissions reduction should be left to the Commonwealth – for example via a national emissions trading scheme – and that States should just tinker around the edges has never rung true for us. And with the repeal of the federal carbon price by the federal coalition government, State action has never been more important. So we are pleased that the Victorian Government recognised the need and the opportunity and are taking responsibility for reducing Victoria's emissions.

If passed, this Bill will repeal our current *Climate Change Act 2010*, legislation that was already inadequate when Labor introduced it in 2010, and later weakened even further by the Coalition government.

In a nutshell – what do we think of the Bill?

The Bill has many important and useful measures in it such as emission reduction targets, a mandate for the EPA to regulate greenhouse gas emissions, and a strong 'whole of government' focus on emission reduction. If implemented by a government that is committed to climate action it should do a lot to drive emission reduction and adaptation and focus government agencies on the opportunities that could arise from tackling climate change.

However, the Bill could go further in mandating government action, and our concern is that in the hands of any future government which does not share the current government's commitment to action on climate change, many key parts could be ignored. [It is critical therefore that the current government embed the plans and actions under the Bill into practice as soon as possible to demonstrate that there is nothing to fear from taking strong action on climate, and that in fact there will be numerous benefits to Victoria.](#)

Will this legislation drive emissions reduction?

The Bill contains three key elements that are intended to drive emissions reductions.

1. Emission reduction targets

The Bill sets a long-term target of zero net emissions by 2050, which is a sound target. The government must also set interim five-yearly targets once the Act is in force but they don't start until 2021. The Premier and Environment Minister must decide on the first one by 2020. The interim targets will not be in legislation which is their major weakness. The Premier and Environment Minister have responsibility for meeting the long term target, but not the interim targets. Overall, the fact that there will be numerical emission reduction targets is a very good thing for accountability, action and tracking progress.

2. Regulate greenhouse gas emissions

Also driving emission reductions is the amendment to the Environment Protection Act to empower the EPA to regulate greenhouse gas emissions from industry. The EPA in fact already has this power implicitly but it has been the source of confusion and delay by governments. The Bill gives the EPA a clear mandate now to do so using tools they already have or new ones they can develop.

3. Pledging to reduce emissions

The third key element of the Bill is the system of **'pledges' to reduce emissions**. It mirrors the approach now being taken internationally, where each country is pledging the emission reduction it will make in its own country with the hope that these pledges (and some international pressure) will be enough to meet global emission reduction requirements.

This pledge system is a cornerstone of the Victorian Bill and the key way the government will meet its emission reduction targets. There are three types of pledges - the Environment Minister must 'pledge' emission reductions from government's own operations, and local councils can opt in to pledge their own reductions. Neither of these will have a significant impact on the State's emissions, however the third category of pledges will – sector pledges. The Environment Minister will decide which sectors should have sector pledges, and will then nominate a Minister to develop a plan for how emissions will be reduced in that sector via the government's policies, programs and regulation.

The government intends these pledges to focus on the following sectors:

- energy (including stationary energy, transport and fugitive emissions);
- industrial processes and product use;
- agriculture;
- waste;
- land use, land use change and forestry.

The critical thing to note here though is that the determination of sector-based pledges will not be mandated by the legislation – the Minister will decide which if any sector pledges are required and then make regulations to that effect. [A reluctant government, or one that is heavily lobbied by a particular sector may not require these at all, or could quickly repeal any that are made.](#)

The climate test

One of the key things that we and others were advocating for in this legislation was a **'climate test'** – a requirement that when government agencies are considering major decisions that would make it difficult for Victoria to meet our climate targets, they would reconsider the decision until it didn't have that impact. The aim of this was to embed climate considerations across every area of government so that we don't have emission reductions in one area that are completely wiped out by increases in another.

The government fell short of including a climate test in the Bill and instead has included **climate principles, policy objectives and considerations** that certain decision-makers need to have regard to. These are split into two categories:

- a) **Climate change considerations.** Certain decision-makers, when making certain decisions, will need to have regard to the impacts of climate change and the impact of the decision on Victoria's emissions. The way this provision is written makes it pretty weak. Decision-makers only have to *consider* climate change, but can then ignore it when making a decision; plus the list of decisions that it applies to is very small. Only those within the environment portfolio are included such as the Flora and Fauna Guarantee Act, the Environment Protection Act and the Coastal Management Act – ones where, frankly, if decision-makers are not already considering climate change we should be alarmed. Planning decisions under the Planning and Environment Act are not included. This is not the whole of government approach that we would have expected, but it could be – there is the ability for this list to be expanded at any time, and it should be done as a priority.
- b) **Policy objectives and guiding principles.** These are not binding on any decision maker, but the government will 'endeavour to have regard to' them. It is unclear why the government felt the need to include the 'endeavour to' weasel words in this section – the objectives and guiding principles only need to be 'considered' by government not actioned. The objectives and principles themselves are a very good statement of what all governments should be doing to properly factor climate change into their decisions.

So while good in theory, in practice these provisions are weak – i.e. there is no requirement to ensure government decisions are in line with Victoria's targets, and are being made in a way that will assist Victoria to adapt to the impacts of climate change. If the government of the day is committed to meeting the targets through proactive emissions reduction action the lack of a climate test is not significant, but without that commitment the above provisions are too weak to guarantee action.

Planning and accountability

The Bill requires the government to develop a number of **plans and reports** that on their own will not mandate climate action, but which will go a long way to embedding climate thinking and climate accountability in government.

The key ones are the **climate strategy** setting out the government plans on tackling climate change which will be developed every five years starting in 2020, and an **adaptation action plan** every five years from 2021. There will also be a **climate science report** and an annual **emissions report** setting out Victoria's emissions and progress towards targets.

What's missing?

The key thing missing from the Bill that we strongly advocated for is the **right of the community to take legal action** if government or others don't comply with the Act. The independent panel making recommendations to government agreed that this power should be included but the government have failed to include it. [Every person in Victoria will be directly affected by climate change, and therefore the Bill should give a right to a broad range of people to bring an action against the Government if they don't comply or are making an incorrect decision.](#) This is a significant omission.

Final thoughts

While not perfect, this Bill is far better than the current Climate Change Act. It's a significant reform and a genuine attempt by the Victorian Government to live up to its commitment to 'subnational' (State) leadership on climate change. The Bill sets out a clear statement of intent for action on climate change, particularly the preamble (which is unusual for legislation) and the principles.

So while the Bill is welcome, there are questions about whether the mechanisms under the Act will be enough to ensure that these aspirations are met, and particularly whether future governments who may or may not share the current government's commitment to climate action will nonetheless be accountable for implementation of the legislation's objectives.

About Environmental Justice Australia

Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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Publication date: 28 November 2016