



THE LAW SOCIETY
OF NEW SOUTH WALES

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Environment Protection Policy Section
Regulatory Policy & Reform Branch
Regulatory Policy, Initiatives & Advice Division
NSW Environment Protection Authority

By email: climatechange.review@epa.nsw.gov.au

Dear Sir/Madam,

Climate Change Policy and Action Plan 2022-25

The Law Society of NSW appreciates the opportunity to comment on the NSW Environment Protection Authority's (EPA) draft Climate Change Policy and Action Plan. We welcome the acknowledgement by the EPA that it is required to take this action to fulfil its statutory duty¹ and to support the NSW Government's overarching climate change objectives, which include reducing greenhouse gas (GHG) emissions and making NSW more resilient and adapted to a changing climate.²

Ensuring a whole of government approach

We acknowledge that the application of the Policy and Action Plan is necessarily limited by the EPA's specific regulatory remit. Both documents contain summary information about sources of emissions across a range of sectors, and the need for multi-agency coordination for a range of areas outside that remit, such as industry, transport and agriculture.

While outside the ambit of this consultation, this highlights, in our view, the need for the emission reduction targets set by the State Government to be enshrined in a legislative framework that details how these targets will be set, enhanced and progress reported on. Such a transparent approach will ensure certainty for all stakeholders and avoid potential regulatory duplication. Without such an approach, we suggest that questions remain in relation to how emission reductions may be achieved in otherwise unregulated sectors.

A further important question is how the NSW policy framework dovetails with other Australian jurisdictions, in particular how it overlaps with the federal climate change regime, including the Safeguard Mechanism.

¹ "to develop environmental quality objectives, guidelines and policies to ensure environment protection" *Protection of the Environment Administration Act 1991* s 9.

² Environment Protection Authority, *Climate Change Action Plan 2022-25*, 6.

Planning reforms

To meet the EPA's statutory objectives, we consider that it will be crucial to ensure that decision-making in relation to planning and development and environmental protection is consistent with the EPA's climate change targets and standards.³ While we strongly support increased partnership with the Department of Planning and Environment to ensure climate considerations are embedded in assessments, approvals and conditions, it is unclear how this could be achieved in the absence of planning law reform. The Law Society has previously advocated for such reform.⁴

Certainty and enforceability

We do not propose commenting on the detail of many of the proposed actions in the Action Plan. However, we suggest that to deliver on the EPA's statutory obligations and legal commitments, it is necessary for any proposed actions to promote legal certainty and be capable of enforcement. It is necessary to look at the detail of how the Policy's three key pillars will be implemented in the Action Plan to determine whether it will do so, and effectively address climate change in NSW.

The Action Plan includes a range of new and continuing actions to:

- Inform and plan – such as requiring government and industry reporting, licensee management plans to develop best practice guidelines and tools to improve the evidence base, and support regulated industries to take proactive action to reduce emissions and build resilience to climate change risks.
- Mitigate – including setting emission reduction targets, best practice guidelines and emission limits to support regulated industries where required to cost-effectively reduce greenhouse gas emissions over time.
- Adapt – such as implementing resilience programs, adaptation guidance, and harnessing citizen science to ensure the EPA, regulated industries and the community are more prepared for and resilient to climate change risks.

The Action Plan foreshadows that the EPA will progressively require licence-holders to prepare and implement climate change mitigation and adaptation plans (CCMAPS), and the plans (or parts of them) and progress reporting will have to be published on company websites. We suggest that the EPA needs to prescribe enforceable parameters for this data so that complete and accurate data is published to ensure both transparency and accountability.

The regulatory approach is foreshadowed as including progressive changes to licences over the next three years to:

- develop non-enforceable GHG emissions reduction targets for key industry sectors;
- potentially set enforceable emissions intensity limits in licences;
- potentially set limits on absolute emissions in licences; and
- potentially allow licensees to use offsets to achieve the new limits.

³ We note that the Action Plan provides at page 32 that “It is currently Government policy that the NSW 2030 target is not to be considered in the assessment or determination of development and infrastructure under the *Environmental Planning and Assessment Act 1979*” (DPIE 2021a).

⁴ The Law Society of NSW, [NSW Independent Flood Inquiry](#), 21 June 2022.

The Action Plan sets out a staged approach to setting sectoral or sub-sectoral targets. While consultation is necessary and feasibility and cost-effectiveness are valid considerations, there needs to be a requirement that targets will be based on scientific evidence of the level required to meet the Governments' targets. We recommend that the Policy and Action Plan set clear, science-based and enforceable targets within the next three years.

Implementation

The regulated community requires certainty in relation to the licensing regime. There needs to be further information provided about how this policy will be implemented and what further statutory steps might be needed to achieve the objectives of the policy. Providing greater clarity around what will be "reasonable" and "feasible"⁵ would both assist licensees in developing their plans and assist the EPA and the community in assessing their effectiveness.

If you have any questions about this submission, please contact Liza Booth, Principal Policy Lawyer, at liza.booth@lawsociety.com.au or on (02) 9926 0202.

Yours faithfully,



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Joanne van der Plaats
President

⁵ EPA (n 2), 36-37.