



National  
Environmental Law  
Association  
Limited  
ACN 008 657 761

**Western Australian Division**  
GPO Box U1942  
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29 November 2019

Climate Change Consultation  
Department of Water and Environmental Regulation  
Locked Bag 10  
Joondalup DC WA 6919

To whom it may concern,

### **Climate change in Western Australia – Issues Paper**

Set out below are the submissions made on behalf of the West Australian Division of the National Environmental Law Association Ltd ABN 62 008 657 761 (**NELA(WA)**) regarding the West Australia Government's *Climate Change in Western Australia – Issues Paper (Issues Paper)*. The feedback received on the Issues Paper is intended to assist the development of Western Australia's new Climate Policy (**Climate Policy**).

NELA thanks Ruby Hamilton, Sarah Flynn, Lara Scott and Mariko Hunt for drafting this submission that was considered and approved by the national NELA Board.

### **About NELA**

NELA is Australia's only national, multi-disciplinary, member-based association focused on environmental law and sustainability. NELA serves the needs of practitioners in law, planning, natural resources and environmental science and management. NELA obtains and exchanges information on issues relevant to environmental law and policy.

One of NELA's objectives is to provide a forum for and otherwise assist in the discussion, consideration and advancement of environmental law among the legal profession and the wider community.

### **Executive Summary**

NELA(WA) submits that the Issues Paper should address the:

1. adoption of a State Emission Reduction Target, Zero-Net Emission Target and a State Renewable Energy target;
2. embedding of climate change in decision-making;
3. establishment of carbon management plans;
4. support of carbon farming initiatives; and
5. support of collaborative action and initiatives.

NELA(WA) submits that incorporating the above elements into a climate policy for Western Australia will:

- better align Western Australia with other state jurisdictions; and
- assist in Australia meeting its international obligations.

## Background

Climate change is both a global and national issue which requires policy coordination at international, national and state levels. With the CSIRO reporting an increase in extreme weather conditions including fire weather and the length of the fire season, rising sea-levels and a warming in Australia's climate and oceans by approximately 1°C since 1910,<sup>1</sup> Western Australia needs to ensure that its legislative and policy framework is positioned to address matters relating to climate change.

On 10 November 2016, Australia ratified the Paris Agreement (2016). As a signatory to the Agreement, Australia committed to global efforts to limit warming to below 2 °C above pre-industrial levels and to reducing its 2005 emissions by 26-28% by 2030.

Long term changes to the global climate system caused by anthropogenic emissions such as CO<sub>2</sub> are predicted to persist.<sup>2</sup> As highlighted by the Environmental Protection Authority in its *Background Paper on Greenhouse Gas Assessment Guidance*,<sup>3</sup> Western Australia's greenhouse gas emissions have significantly increased and 'new resource industry facilities are anticipated in the coming decade that can be expected to add significantly to Western Australia's emissions'.<sup>4</sup>

The Western Australian Government should endeavour to provide a clear and concise policy roadmap for action to ensure the State can contribute to reaching our Paris Agreement targets. On that basis, in addition to addressing the specific issues and questions outlined in the Issues Paper, NELA(WA) has included some high-level submissions about climate change policy in Western Australia to bring the state in-line with climate policies across Australia. Given the high-level nature of NELA(WA)'s submissions, it has not sought to address the specific questions contained in the Issues Paper.

## Submission 1

NELA(WA) notes that the regulation of emissions is a national issue. As a result, the Commonwealth Government should have the primary responsibility for the regulation of emissions. In the absence of Commonwealth regulation, State governments should be charged with regulating emissions.

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<sup>1</sup> CSIRO & Australian Government Bureau of Metrology, 'State of the Climate: 2018' <<https://www.csiro.au/~media/OnA/Files/State-of-the-Climate-2018-CSIRO-BOM-Dec2018.pdf>>, 2.

<sup>2</sup> IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R. Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)].

<sup>3</sup> Environmental Protection Authority, *Background Paper on Greenhouse Gas Assessment Guidance*, June 2019 <<http://www.epa.wa.gov.au/sites/default/files/EPA%20GGAGC%20Background%20paper.PDF>>

<sup>4</sup> Ibid, 9.

## State Emissions Reduction Target

Western Australia is the last state to commit to a state emissions reduction target that is formally embedded in policy and/or legislation.<sup>5</sup> NELA(WA) submits that Western Australia should incorporate a state emissions reduction target in the Climate Policy to guide climate action and greenhouse gas emission reduction efforts.

This emissions reduction target should be based on and be consistent with contemporary climate science and action that is required to reach the objectives of and Australia's obligations under the Paris Agreement. It should also be supported by detailed pathways and action plans.

## State Net-Zero Emissions Target

To minimise emissions in the resources and mining industries, NELA(WA) submits that the Climate Policy should provide a target of achieving net-zero emissions by at the latest 2050. Whilst the Western Australian Government (**WA Government**) published a Greenhouse Gas Emissions Policy for Major Projects in August 2019, which sets out a guide for decision making on major projects, the government should go further and provide binding targets for industry.

This target needs to be supported by detailed pathways and strategies such as increased research to ensure that suitable solutions for the integration of renewable energy solutions into large-scale projects are available and encouraged.

## State Renewable Energy Target

With the exceptions of Western Australia, New South Wales<sup>6</sup> and South Australia, all other Australian jurisdictions have introduced renewable energy targets. These targets are more ambitious than the Commonwealth renewable energy target of 23.5% renewable sourced electricity by 2020<sup>7</sup> and have been commended for driving the energy transition<sup>8</sup> and being more commensurate with the level of action and renewable energy required to achieve Australia's obligations under the Paris Agreement.<sup>9</sup>

NELA(WA) submits that the task of reducing Western Australia's emissions would be assisted by introducing a state-specific renewable energy target. A Western Australian renewable energy target should consider the existing Commonwealth Renewable Energy Target scheme,<sup>10</sup> and how additional financial incentives for the establishment of renewable energy can be adopted on a large-scale by industry and the mining and resources sector, and on a small scale for households, small business and community groups within the state to support existing national policy.

To support this state-wide target, Western Australia could consider introducing compulsory targets for large resources projects as conditions for environmental approvals or licences or otherwise partnering with industry to support self-regulatory measures. Many of the large mining and resources companies are already voluntarily adopting similar targets and have pledged to support and endorse the Paris Agreement targets. For example, Rio Tinto signed the Paris Pledge and as of

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<sup>5</sup> See for example: <<https://alga.asn.au/wa-aspires-to-zero-emissions-by-2050/>>, NSW Climate Change Policy Framework (NSW), *Climate Change and Greenhouse Emissions Reduction Act 2007* (SA), *Climate Change (State Action) Act 2008* (TAS), *Climate Change Act 2017* (Vic), *Climate Change Response* (NT), and the *Queensland Climate Transition Strategy*.

<sup>6</sup> NSW Department of Planning, Industry & Environment, *NSW Electricity Strategy* (2019)

<sup>7</sup> Petra Stock et al, 'Renewables Ready: States Leading the Charge' (Report, Climate Council, 2017) <<https://www.climatecouncil.org.au/uploads/9a3734e82574546679510bdc99d57847.pdf>>, 38.

<sup>8</sup> Ibid II.

<sup>9</sup> Ibid 38.

<sup>10</sup> See *Renewable Energy (Electricity) Regulations 2001* (Cth).

2018 uses 71% low-carbon renewable energy across its business.<sup>11</sup> Formalising these targets and voluntary renewable energy commitments into a climate change policy will build on notions of corporate social responsibility to encourage the industry to accept greater accountability and responsibility for their energy consumption, in accordance with the polluter pays principle.

Following the example of other Australian states and territories, the renewable energy target should be supported by complementary policies and initiatives that incentivise investment in renewable energy, such as reverse auction and feed-in tariff schemes.

### **Submission 2 – Embed climate change in decision-making**

State emission reduction, net-zero emissions and renewable energy targets should be supported by policy reforms which require that climate change, including greenhouse gas emissions, be considered by the Western Australian Environmental Protection Authority, the State Environment Minister, the Western Australia Planning Commission, local governments and other relevant bodies and decision making authorities in the assessment and approval of developments and proposals under the *Environmental Protection Act 1986* (WA) (**EP Act**), *Planning and Development Act 2005* (WA) (**PD Act**) and the *Mining Act 1978* (WA) (**Mining Act**). This is consistent with the recent decision of the Land and Environment Court of New South Wales in *Gloucester Resources Ltd v Minister for Planning* [2019] NSWLEC 7 where approval for a greenfield open cut coal-mine was rejected partially on the basis of its greenhouse gas emissions and contribution to climate change. Preston CJ held that the cumulative impact of the mine's direct and indirect greenhouse gas emissions (including scope 3 emissions) were relevant considerations in assessing whether it was environmentally acceptable and should be approved.<sup>12</sup>

The Climate Policy should therefore ensure that a proposal's contribution to climate change are relevant considerations in decision-making, by adopting measures such as new guidelines or amending legislation such the EP Act, PD Act and Mining Act.

### **Submission 3 – Establish Carbon Management Plans**

The Climate Policy should establish carbon management plans to help support the renewable energy and net-zero emission targets. The strategic pathway should specify actions and management plans that will enable those targets to be realised through adaptation and mitigation strategies.

Carbon management plans should be sector-specific and identify which industries need the most support in transitioning to lower-emissions intensive operations. The management plans will be supported by increased reporting frameworks and data management, including public access to information and data relating to state electricity consumption, gas consumption, renewable energy generation, major direct and indirect emissions, and sector-specific emissions. These databases should be reviewed and utilised as a tool for mapping the progress of a carbon management plan.

### **Submission 4 – Support Carbon Farming Initiatives**

Carbon farming initiatives assist Australia in meeting its domestic and international emissions reductions targets by creating market-based, financial incentives to reduce or modify existing

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<sup>11</sup> Rio Tinto, 'Our Approach to Climate Change 2018' (Report, 2018)

<[https://www.riotinto.com/documents/RT\\_Our\\_approach\\_to\\_climate\\_change\\_2018.pdf](https://www.riotinto.com/documents/RT_Our_approach_to_climate_change_2018.pdf)>, 1.

<sup>12</sup> *Gloucester Resources Ltd v Minister for Planning* [2019] NSWLEC 7.

practices, and allowing for abatement projects on farm and forest lands. There is potential to sequester a large amount of carbon from land in Western Australia.

Whilst the WA Government has provided in-principle support for eligible pastoral lessees to register certain carbon sequestration projects under the Emissions Reductions Fund (ERF) over pastoral land,<sup>13</sup> there is significant uncertainty about whether the WA Government will provide 'eligible interest holder consent' as required under the ERF in order to acquire Australia Carbon Credit Units (ACCUs) for the purposes of the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth). To address this, the Western Australian government should develop a coherent policy for carbon farming which will incentivise participation in carbon farming initiatives.

### **Submission 5 – Support Collaborative Action and Initiatives**

NELA(WA) submits that the new state Climate Policy should encourage partnerships and ongoing collaboration between the WA Government, local governments, businesses and communities in relation to climate mitigation and adaptation action. Local government initiatives in Western Australia have an important role to play in contributing to climate change adaptation and mitigation.<sup>14</sup> Local governments have the capacity to contribute to the establishment of programs and initiatives in an attempt to reduce carbon emissions, and the Climate Policy should encourage their participation in such actions.

The WA Government can support collaborative and innovative initiatives aimed at reducing carbon emissions and adapting to climate change by providing funding for local and regional programs and introducing incentive mechanisms to encourage these initiatives.

Please contact me if you have any questions in relation to the above submissions.

Yours sincerely

  
**Jess Handorf**  
President  
WA Chapter of the National Environmental Law Association

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<sup>13</sup> Department of Primary Industries and Regional Development, Government of Western Australia, 'Unlocking carbon potential for pastoralists' (Media Release, 18 April 2018).

<sup>14</sup> <https://www.climatecouncil.org.au/uploads/c3750ec60a68a868a0fbc4bee3ea3567.pdf>