



# **Submission on the Draft NSW Renewable Energy Action Plan**

prepared by

**EDO NSW  
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## About EDO NSW

EDO NSW is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

**Successful environmental outcomes using the law.** With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

**Broad environmental expertise.** EDO NSW is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

**Independent and accessible services.** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

EDO NSW is part of a national network of centres that help to protect the environment through law in their [states](#).

### Submitted to:

Renewable Energy Action Plan  
Resources and Energy  
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## Summary of recommendations

### General comments

- The final Renewable Energy Action Plan (REAP) should set clear NSW targets for renewable energy production, attracting investment and greenhouse gas reduction.
- These targets should be backed by effective implementation, progress measurement and reporting obligations with specific timeframes (such as annual reports to Parliament).
- The final REAP needs a binding, regular review mechanism that requires actions and targets to be stepped up in accordance with new technological and regulatory developments.
- The Plan should commit to delivering additional education and information about climate change and energy (including NSW greenhouse gas emissions, energy consumption and fuel mix).
- To ensure good governance, the final REAP should clarify:
  - how the Government will coordinate agencies' actions, implementation and reporting;
  - how the REAP will interlink with key NSW Government policy agendas, including infrastructure and transport master plans and the NSW planning review;
  - the membership of the joint renewable energy taskforce (including representation from the Office of Environment & Heritage and the Department of Planning)
  - details on the establishment and resourcing for the Renewable Energy (RE) Advocate, including transparent criteria, independence, relevant expertise and experience.

### Attracting renewable energy investment

- The proposed RE Advocate should:
  - consult, examine and make recommendations on legislative amendments to further facilitate and increase certainty for renewables and grid connection;
  - develop guidance on: grid connection for commercial-scale wind energy (in addition to photovoltaics); and incorporation options/business structures for community RE;
- The forthcoming White Paper and draft planning laws need to demonstrate an integrated and fully operationalised commitment to ecologically sustainable development and the achievement of environmental outcomes – including by facilitating renewable energy developments, and assessing climate change impacts;
- The burning of 'wood waste' should not be considered a renewable energy source.
- The terms of reference for IPART's reports on feed-in tariff benchmarks should be broadened, to allow IPART to outline a range of scenarios and recommendations (which may include budgetary investment) that maximise uptake of RE incentives.

### Building community support for renewables

- Any finalised Wind Farm Planning Guidelines should recognise the beneficial public interest in increasing renewable energy use and investment, and in reducing greenhouse gas emissions; and must ensure renewable energy projects are not disadvantaged compared to non-renewable energy projects, or other jurisdictions' planning requirements.
- EDO NSW strongly supports the expansion and additional resourcing of the renewable energy precinct program.
- We strongly support additional resources for community-owned renewable energy projects, including funding for local feasibility studies. The Government should consider contributing additional funding for this proposal from NSW Trade & Investment, and examine successful models for community-owned renewable energy in Australia and overseas.

## **Attracting and growing renewable energy expertise**

- The Planning Review White Paper must outline a range of concrete proposals to promote clean industry. This should include a state-wide Planning Policy on *Sustainability* dealing with energy, water, waste and construction efficiency and climate-friendly design (including strengthening BASIX); measures to fast-track green development; full carbon accounting for major projects; integrating low carbon transport and 'green infrastructure'.
- The NSW Government should also consult with the clean energy industry, green building councils and sustainable business peak groups to further the development of renewable energy and related expertise.

## **Containing customer costs through energy efficiency**

- The final REAP should:
  - provide detail on what the proposed Energy Efficiency Strategy and review would cover, whether the strategy would be implemented in law, and outline opportunities for public comment;
  - clarify how NSW could integrate into a National Energy Savings Initiative;
  - demonstrate how COAG reforms to 'streamline' climate change and energy programs will ensure no backward steps in addressing climate change impacts and energy reform;
  - commit to updating and strengthening NSW building efficiency standards in the short-term, including the Building Sustainability Index and targets for NABERS; and,
  - empower consumers through increased mandatory data and information on carbon emissions from electricity sources, and on concessions/subsidies to energy producers.

## Introduction

EDO NSW is a community legal centre specialising in public interest environmental law. We have made extensive comment at both a state and national level on energy policy in Australia.<sup>1</sup> We welcome the release of the Draft Renewable Energy Action Plan (**Draft REAP**) and the opportunity to provide comment on how this policy should be finalised.<sup>2</sup>

The Draft REAP comes at a time of increasing importance for the renewable energy sector, internationally, nationally and in all states

It is internationally recognised that innovation is imperative. As the Executive Director of International Energy Agency (**IEA**) noted in March 2012:<sup>3</sup>

*The door is closing to achieving climate change goals which limit temperature increases to 2°C... The 2011 [World Energy Outlook] also shows that delaying action is a false economy: for every \$1 of investment in cleaner technology that is avoided in the power sector before 2020, an additional \$4.30 would need to be spent after 2020 to compensate for the increased emissions. The sooner we get going, the easier and cheaper our task will be; 2012 will therefore be a crucial year.*

We note that federally, the *Renewable Energy Electricity Act 2000* (Cth) establishes a legislative scheme for a national Renewable Energy Target (**RET**) of 20% by 2020. The Act is currently being reviewed in terms of whether it is meeting its objects to:

- encourage the additional generation of electricity from renewable sources;
- reduce emissions of greenhouse gases in the electricity sector; and
- ensure the renewable energy sources are ecologically sustainable.<sup>4</sup>

In NSW, the *State of Environment Report 2009* details the projected impacts of climate change. These impacts will affect the NSW economy, public health, and the natural and built environment – including many of our iconic values, landscapes and qualities of life.<sup>5</sup> NSW is

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<sup>1</sup> For example see: Submission on *Sydney Metropolitan Strategy - Sydney over the next 20 years* (June 2012); Submission on *Draft NSW Planning Guidelines for Wind Farms* (March 2012); Submission on *Renewable Energy (New South Wales) Bill 2007* (July 2007); Submission on the *Renewable Energy Target Review - Issues Paper* (September 2012); Submission on the Australian Government's *Draft Energy White Paper* (March 2012); Submission on the *Issues Paper for a National Energy Savings Incentive* (February 2012); Submissions on the *Clean Energy Future* Legislative Package (August and September 2011); Submission to the House of Representatives Committee Inquiry into Australia's biodiversity in a changing climate (August 2011); Submission to the *Senate Environment and Communications Legislation Committee Inquiry into the Carbon Farming Initiative Bills* (April 2011); Submission on *Enhancing the Renewable Energy Target Discussion Paper* (April 2010); Submission on *Discussion Paper 4: Treatment of new waste coal mine gas power generation in the RET* and *Discussion Paper 5: Treatment of Solar Credits and Renewable Energy Certificates under the RET* (Jan. 2010); Submission on the RET scheme Exposure Draft legislation (February 2009); Submission to the Inquiry into the *Renewable Energy (Electricity) Amendment (Feed in Tariff) Bill 2008* (August 2008); and Submission to the COAG Working Group on Climate Change and Water on *Design Options for the Expanded National Renewable Energy Target Scheme* (July 2008). All EDO NSW and ANEDO submissions are available at: [http://www.edo.org.au/edonsw/site/policy\\_submissions.php](http://www.edo.org.au/edonsw/site/policy_submissions.php).

<sup>2</sup> NSW Government, <http://haveyoursay.nsw.gov.au/renewableenergy>, accessed October 2012.

<sup>3</sup> Maria van der Hoeven, Executive Director, International Energy Agency in the 'Energy security: looking towards uncertainty' (8 March 2012) in *OECD Observer* at [http://iea.org/index\\_info.asp?id=2393](http://iea.org/index_info.asp?id=2393).

<sup>4</sup> *Renewable Energy Electricity Act 2000* (Cth), s 3.

<sup>5</sup> NSW Government, *State of Environment Report 2009*, Chapter 7, sections 2.1 and 2.3, available at: [http://www.environment.nsw.gov.au/soe/soe2009/chapter7/chp\\_7.2.htm#7.2.13](http://www.environment.nsw.gov.au/soe/soe2009/chapter7/chp_7.2.htm#7.2.13). Impacts will include increased weather variability, storm surges and sea level rise; bushfire threat; the urban 'heat island effect'; exacerbated pressures on native species and habitat; and greater drought exposure for agricultural land and water supply.

Australia's most populous State, and consumes more energy than any other State or Territory.<sup>6</sup> In NSW, the Stationary Energy sector (mainly electricity generation) accounts for almost half of total net greenhouse gas emissions.<sup>7</sup> These facts reinforce the need for the NSW electricity sector to increase renewable energy generation and to reduce emissions.

While these challenges are significant, there are clear triple bottom line benefits of early action on reducing greenhouse emissions and prioritising investment in renewable energy, including at the State policy level. Importantly, the cost of inaction on climate change mitigation is significantly greater than the cost of a constructive and proactive response, as the IEA (above), the Garnaut review and the federal *State of the Environment Report 2011* all confirm.<sup>8</sup> The Productivity Commission also notes that mitigation activities assist in meeting future adaptation costs.<sup>9</sup>

At this critical juncture, the final Renewable Energy Action Plan can have a significant influence on the shape of renewable energy investment, planning policies, community support, employment and training, and energy efficiency policies. A robust plan is critical for ensuring NSW plays a leading role in reducing Australia's greenhouse gas emissions, and embraces the opportunities provided by a low carbon economy. A clear plan must be implemented as part of a comprehensive government strategy to improve: use of renewable energy sources, resource and building efficiency, low carbon transport, consumer information and assistance, recycling and reuse, innovation and employment, skills development and sustainable procurement.<sup>10</sup>

This submission focuses on legal and regulatory mechanisms, and addresses the following 4 key areas raised in the Draft REAP:

1. General comments
2. Attracting renewable energy investment;
3. Building community support for renewables;
4. Attracting and growing renewable energy expertise; and
5. Containing customer costs through energy efficiency.

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<sup>6</sup> In 2008-09, NSW consumed approximately 27% of all energy resources in Australia (note this figure excludes wind, solar PV and biogas). ABARES, *Energy in Australia 2011* (2011) p 13, at <http://www.ret.gov.au/energy/Documents/facts-stats-pubs/Energy-in-Australia-2011.pdf>, accessed 5/10/12.

<sup>7</sup> 48.8% in 2007, according to the ABS, 1338.1 - *NSW State and Regional Indicators* (Sep 2010), 'Greenhouse gases', at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1338.1Main+Features12Sep+2010>.

<sup>8</sup> See for example, Garnaut Climate Change Review, 2011 Updates, at: <http://www.garnautreview.org.au/update-2011/update-papers/up1-weighting-costs-benefits-climate-change-action.html>. The federal *State of the Environment Report 2011* concluded that 'Early action by Australia to reduce emissions and to deploy targeted adaptation strategies will be less costly than delayed action.' See 'Headlines', at <http://www.environment.gov.au/soe/2011/summary/headlines.html>.

<sup>9</sup> Productivity Commission, *Barriers to Effective Climate Change Adaptation: Productivity Commission Draft Report* [www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0007/116539/climate-change-adaptation-draft-report.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0007/116539/climate-change-adaptation-draft-report.pdf).

<sup>10</sup> For a useful definition of a low carbon economy along these lines, see Ernst & Young (for Industry and Investment NSW), *Business opportunities in a low carbon economy* (December 2010), at 2.2 (p 11).

## 1. General comments

In this part, we make general comments and recommendations in relation to the following issues:

- a) *Setting specific goals for renewable energy generation, investment and GHG reductions*
- b) *Good governance, public reporting and regular review*
- c) *Inter-agency policy coordination and implementation*
- d) *Renewable Energy Advocate - independence and resourcing*
- e) *Review of the federal Renewable Energy Target*
- f) *Developments in other jurisdictions*

### **a) *Setting specific goals for renewable energy generation, investment and GHG reductions***

The Draft REAP is a positive means of raising the profile of renewable energy and its importance to the future of the NSW economy, community and environment. However, the REAP must include clear NSW targets and implementation pathways.

EDO NSW recommends the final REAP sets clear NSW targets for renewable energy production, attraction of investment and greenhouse gas reduction. These targets should be backed by effective implementation and reporting measures, and a commitment to additional education and information about climate change and energy use.

The State Plan, *NSW 2021*, is an important reference point for the Draft REAP.<sup>11</sup> One of the State Plan's 32 goals is to 'Protect our Natural Environment', with a corresponding target to '*Increase Renewable Energy – 20% renewable energy by 2020*'.<sup>12</sup> This target does not make clear whether NSW has adopted its own '20% by 2020' renewable energy target, or if (as we understand) it is pledging that NSW will 'contribute to the national renewable energy target' of 20%, without adopting a particular State percentage or goal.

In terms of identifying identify more specific, measurable goals, we note the following:

- Firstly, as with the State Plan, the Draft REAP itself does not appear to require or aim for a certain percentage of renewable energy – as a proportion of the State's energy consumption – over time. This stands in contrast to the national, legislated RET goal of 20% by 2020.
- Secondly, the Draft REAP does not require NSW, or set a goal, to capture a specific proportion of renewable energy investment in Australia. By way of example, in 2000

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<sup>11</sup> NSW Government (August 2011), *NSW 2021: A plan to make NSW number one*, at [www.2021.nsw.gov.au](http://www.2021.nsw.gov.au).

<sup>12</sup> NSW Government (2011), *NSW 2021*, Goal 22, p 44. The target continues: *We will contribute to the national renewable energy target by promoting energy security through a more diverse energy mix, reducing coal dependence, increasing energy efficiency and moving to lower emission energy sources. Specific initiatives include: Building the Moree solar power plant in partnership with the Commonwealth Government under the Solar Flagship Program; and Establishing a Joint Industry Government Taskforce to develop a Renewable Energy Action Plan for NSW to identify opportunities for investment in renewable energy sources.*

A separate target (goal 23) related to environmental protection and climate change is to 'Minimise impacts of climate change in local communities'.

an Australian Senate committee recommended setting a target that the Australian renewable energy industry capture 5% of the global market by 2015.<sup>13</sup>

- Thirdly, NSW does not have a legislative, State Plan or REAP target to reduce its greenhouse gas emissions by a certain percentage or trajectory. This is despite the State Plan's commitment to 'reducing coal dependence... and moving to lower emission energy sources.' For example, the former NSW State Plan included a target to achieve a 60% cut in greenhouse gas emissions by 2050.<sup>14</sup> Also, the Australian government has adopted a target of an 80 per cent reduction on the 2000 levels of emissions for the Australian economy by 2050.<sup>15</sup>
- Finally, existing hydroelectric power puts NSW in a starting position far ahead of other States and Territories for installed capacity for renewable energy generation.<sup>16</sup> The REAP should therefore set a range of ambitious and specific renewable energy goals beyond its existing endowment of hydroelectricity.

The REAP should also include more contextual information to clarify the current state of the NSW energy industry, and provide reference points by which renewable energy targets and policy progress can be assessed. This would accord with State Plan targets of 'reducing coal dependence' and 'moving to lower emission energy sources'. Further information should include for example: greenhouse gas emissions, and energy consumption and mix.<sup>17</sup>

#### **b) Good governance, public reporting and regular review**

The final REAP should state how progress of particular actions will be measured, and set out public reporting obligations and timeframes (such as annual reports to Parliament).<sup>18</sup> The Plan should also contain a binding, regular review mechanism that requires actions and targets to be stepped up in accordance with new technological and regulatory developments.

Assigning clear responsibility to implement policies is an important governance protection. It also assists the community to know where to direct specific enquiries. The Draft REAP assigns responsibility for implementing the proposed actions to particular agencies, such as NSW Trade & Investment, Office of Environment & Heritage (**OEH**), Department of Planning & Infrastructure (**Planning Department**) and the new Renewable Energy Advocate, a position proposed to sit within Trade & Investment. This should go a step further in relation to progress measurement, reporting and review. These additions, combined with more specific targets as noted above, will provide public reassurance that the REAP will be implemented transparently and effectively.

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<sup>13</sup> Australian Senate Committee on Environment, Communications, Information Technology and the Arts, *The Heat is On: Australia's Greenhouse Future* (2000), recommendations 41-44, cited in R. Lyster, 'The implications of electricity restructuring for a sustainable energy framework' (2003) 20 EPLJ 359, at 371.

<sup>14</sup> Referred to in ABS, *1338.1 - NSW State and Regional Indicators* (Sep 2010), 'Greenhouse gases', at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1338.1Main+Features12Sep+2010>.

<sup>15</sup> Australian Government Department of Climate Change and Energy Efficiency, 'National targets', at <http://www.climatechange.gov.au/en/government/reduce/national-targets.aspx>, accessed October 2012.

<sup>16</sup> See NSW Government, Draft REAP (September 2012), pp 6 and 12.

<sup>17</sup> For example, in 2007-8 only 7% energy generation in NSW was from renewable sources: ABARES, *Energy in Australia 2011* (2011) p 13, at <http://www.ret.gov.au/energy/Documents/facts-stats-pubs/Energy-in-Australia-2011.pdf>, accessed 5/10/2012 (note this figure excludes wind, solar PV and biogas). NSW consumed 815 PJ of black coal, 541 PJ of petroleum, 137 PJ of natural gas, 58 PJ of renewables (excluding wind or solar PV).

<sup>18</sup> The Draft REAP states that the RE Taskforce will oversee delivery, and work with the Parliamentary Secretary for Renewable Energy to track delivery and report on progress to Ministers/Cabinet, but not the public (p 28).

### c) **Inter-agency policy coordination and implementation**

In addition to allocating responsibility between agencies, it is important that the REAP is implemented in a coordinated way across government, and works effectively with other federal and state renewable energy, energy efficiency and planning policies. The Draft REAP notes that a Renewable Energy taskforce will guide the REAP's implementation in conjunction with relevant Ministers. The REAP should provide more detail on this process.

The final REAP should also clarify:

- how the Government will coordinate agencies' fulfilment and reporting of actions;
- how the REAP will specifically interlink with key NSW Government policy agendas, including infrastructure and transport<sup>19</sup> master plans and the NSW planning review;
- the membership of the REAP implementation taskforce, which should include senior representation from OEH (which is tasked with several actions but was not on the original joint taskforce) and the Planning Department (which is steering the planning system overhaul).

### d) **Renewable Energy Advocate – independence and resourcing**

EDO NSW supports in-principle the proposal to establish a Renewable Energy Advocate (**RE Advocate**) within NSW Government, to identify and assist communities and the renewable energy industry to resolve barriers to renewable investment, growth and support. The final REAP should outline further detail of the establishment, independence and resourcing for the RE advocate. All of these factors are critical to the position's success.

We recommend the appointment of the RE Advocate:

- be based on transparent criteria, preferably set down in legislation;
- require relevant expertise and experience relating to the renewable energy industry, climate change policy, global energy markets and energy regulation;
- include safeguards to ensure the Advocate's independence, including adequate resourcing and safe tenure for a particular period;<sup>20</sup>
- enable the Advocate to seek advice from, and have effective access to, government and non-government stakeholders (supported by appropriate transparency requirements);
- be finalised within a specific time period (being as soon as practicable).

In relation to resourcing of the RE Advocate and more broadly, the NSW Trade & Investment *Annual Report 2010-11* notes that the DPI, Resources & Energy (**R&E**) and Innovation & Investment Divisions have a combined total of 2990 staff.<sup>21</sup> It is not clear how many of these are R&E Division staff, or what proportion of R&E staff work on renewable energy as compared with other energy policy and regulation. However, we emphasise that the level of staff and resources for the Renewable Energy Advocate, and the relevant units in Trade & Investment and OEH, must reflect the Government's increased commitment to renewable energy under its Action Plan. The final REAP must clarify what increase in resources will be allocated to achieve the REAP's targets and objectives.

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<sup>19</sup> See for example, CSIRO/Australian Low Carbon Transport Forum, *Greenhouse gas abatement potential of the Australian transport sector*, at <http://www.csiro.au/en/Organisation-Structure/Flagships/Energy-Transformed-Flagship/Australian-Low-Carbon-Transport-Forum.aspx>, accessed October 2012.

<sup>20</sup> NSW led from the forefront in this regard when it established Australia's first such state agency under the *Sustainable Energy Development Authority Act 1995* (NSW) (no longer in force). See Lyster (2003), *ibid*, at 375.

<sup>21</sup> NSW Trade & Investment, *Annual Report 2010-11*, Appendices – 8. Staff statistics, p 151.

### **e) Review of the federal Renewable Energy Target**

The Draft REAP states that NSW will 'contribute to the national renewable energy target' of 20% by 2020. In its recent submission to the federal Climate Change Authority's two-year review of the national Renewable Energy Target (RET), EDO NSW as part of the Australian Network of Environmental Defender's Offices (ANEDO), recommended a number of amendments to the RET. ANEDO's recommendations included the following:<sup>22</sup>

- *The 2020 target should be increased beyond 20% in order to ensure that renewable energy becomes the major source of energy generation in Australia more rapidly,*<sup>23</sup>
- *The 20% target should be increased in the period of 2020 to 2030 to ensure that renewable energy continues to become an increasingly significant proportion of Australia's energy mix, rather than being fixed at 20%; and*
- *Prior to 2030, there should be a comprehensive review to establish how renewable energy will continue to be encouraged beyond 2030.*
- *In addition, ANEDO strongly supports increasing the LRET target to take account of activities funded by the Clean Energy Finance Corporation (CEFC).*<sup>24</sup>

The next part of this submission considers the Draft REAP's actions to attract renewable energy investment; build community support; attract and grow renewable energy expertise; and contain customer costs through energy efficiency.

### **f) Developments in other jurisdictions**

In setting a best-practice standard in the REAP, NSW should draw upon successful policies and leading practice in other jurisdictions. Other Australian States and Territories are moving ahead with their own renewable energy policies. For example:

- In the year to June 2012, South Australian wind farms generated 3,349 gigawatt hours, or 26% of the total supply (ahead of 24% supplied by coal).<sup>25</sup>
- The ACT Government put forward an ambitious re-election policy to increase its renewable energy target to 90%.<sup>26</sup> This is in addition to existing legislated greenhouse gas reduction targets of 40% below 1990 levels by 2020, and 80% below by 2050.<sup>27</sup>
- Tasmania's Renewable Energy Industry Development Board has handed down its recommendations on the State's Renewable Energy Strategy, suggesting that Tasmania adopt a target of 100% renewables by 2020 and specialise as a clean energy exporter.<sup>28</sup>

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<sup>22</sup> ANEDO, Submission on Renewable Energy Target Review – Issues Paper (September 2012), p 4, available at: [http://www.edo.org.au/policy/120910anedo\\_submission\\_renewable\\_energy\\_target\\_review.pdf](http://www.edo.org.au/policy/120910anedo_submission_renewable_energy_target_review.pdf).

<sup>23</sup> *'...(this would accelerate our transition from a high-carbon emitting economy, assist Australia's contribution to avoiding dangerous climate change, and help reduce the higher costs of future abatement.'* See also Productivity Commission, *Barriers to Effective Climate Change Adaptation: Draft Report* (April 2012), at [www.pc.gov.au/\\_\\_data/assets/pdf\\_file/0007/116539/climate-change-adaptation-draft-report.pdf](http://www.pc.gov.au/__data/assets/pdf_file/0007/116539/climate-change-adaptation-draft-report.pdf).

<sup>24</sup> *'...We welcome the CEFC initiative, and believe a "top up" of the LRET target is needed to ensure the initiative fully complements the RET objectives and goes beyond the minimum '20% by 2020' target.'*

<sup>25</sup> See J. Boland, 'Wind power: why is South Australia so successful?', *The Conversation*, 26/9/2012, at: <http://theconversation.edu.au/wind-power-why-is-south-australia-so-successful-9706>.

<sup>26</sup> N. Towell, 'ACT Labor's bid for 90pc clean energy', *The Canberra Times*, 19/9/2012. The plan includes 18 actions and involves a combination of large-scale renewables, energy efficiency, planning changes and public transport increases.

<sup>27</sup> See ACT Government, [http://www.environment.act.gov.au/climate\\_change/greenhouse\\_gases\\_in\\_the\\_act](http://www.environment.act.gov.au/climate_change/greenhouse_gases_in_the_act).

<sup>28</sup> Tasmanian Renewable Energy Industry Development Board, *Advice to the Tasmanian Government on a Tasmanian Renewable Energy Strategy* (August 2011), p 4 (accessed 5/10/2012) at [http://www.development.tas.gov.au/\\_\\_data/assets/pdf\\_file/0015/47121/DEDTA\\_TasRenewEnergyStrat.pdf](http://www.development.tas.gov.au/__data/assets/pdf_file/0015/47121/DEDTA_TasRenewEnergyStrat.pdf).

- The former Queensland Government's Renewable Energy Plan (2012) aimed to generate around 2900 MW of renewable energy by 2020,<sup>29</sup> and leverage \$8.9 billion in investment to contribute to the federal RET target.<sup>30</sup> At the time of writing, Queensland has over 247,000 PV solar installations (the highest number of any State or Territory, ahead of NSW with over 212,000 and Victoria with over 149,000).<sup>31</sup>
- Western Australia has just opened Australia's biggest solar PV project near Geraldton. The 10-megawatt capacity Greenough River Solar Farm includes 150,000 solar PV panels covering 50 hectares of farmland.<sup>32</sup>

NSW policy should also take into account useful international examples including:

- Germany has legislated to increase renewable energy to 35% of electricity production by 2020, 50% by 2030, 65% by 2040 and 80% by 2050.<sup>33</sup> To achieve this, the Renewable Energy Sources Act stipulates particular feed-in tariffs that grid operators must pay for renewable energy fed into the power grid.<sup>34</sup>
- Finland's Economy Minister has recently suggested Finland could be the first European country to phase out the use of (imported) coal in energy production by 2025.<sup>35</sup>
- Scotland's highly successful Community And Renewable Energy Scheme (CARES) offers loans for the pre-planning costs of renewables projects, with funding to support projects owned by communities, land managers, farmers and small/medium enterprises. All projects are required to demonstrate a minimum level of community benefit to the local area.<sup>36</sup> Scottish Government support for renewables has made a transition from grants to loans and revenue support, via feed-in tariffs and other renewable incentives.<sup>37</sup>

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<sup>29</sup> Former Queensland Government, *Queensland Renewable Energy Plan Section 5* (2012) 17, at <http://www.cleanenergy.qld.gov.au/documents/renewable-energy/QREP-section-5.pdf>, accessed 5/10/12.

<sup>30</sup> Former Queensland Government, *ibid*, Section 2 (2012) 8, at <http://www.cleanenergy.qld.gov.au/documents/renewable-energy/QREP-section-2.pdf>, accessed 5/10/12. The plan included solar access and solar hot water rebate schemes and a strong emphasis on wind energy.

<sup>31</sup> Australian Government Department of Climate Change, citing figures from the Clean Energy Regulator and Sustainable Energy Association (at <http://www.cleanenergyfuture.gov.au/queensland-shines-in-solar-stakes/>).

<sup>32</sup> Western Australian Government media release, 'Australia's biggest solar farm feeds into grid', 10/10/2012, at <http://www.mediastatements.wa.gov.au/Lists/Statements/DispForm.aspx?ID=151158>.

<sup>33</sup> Renewable Energy Sources Act (*Erneuerbare-Energien-Gesetz*) (Germany), 1 January 2012, BGBl I, 2011, 1634, s 1.

<sup>34</sup> See Dr M. Lang and Prof. U. Mutschler, *German Energy Blog*, 'Overview of the Renewable Energy Sources Act', [http://www.germanenergyblog.de/?page\\_id=283](http://www.germanenergyblog.de/?page_id=283), accessed October 2012.

<sup>35</sup> This would build on Finland's 2008 policy of government subsidies and taxes to boost the use of renewables and cut fossil fuel use. Bloomberg/Sydney Morning Herald, 'Finland may be first European country to halt coal use', 29/9/2012.

<sup>36</sup> This includes a 2011-12 budget of £5.35 million for supporting community owned projects and £2.4 million for supporting projects owned by land managers, farmers and small/medium enterprises. See Scottish Government, 'Renewable energy for Communities', at (<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Energy-sources/19185/Communities>), accessed October 2012 ; 'Community wind energy in Scotland' (<http://www.scotsrenewables.com/comwind.html>) and 'CARES' (<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Energy-sources/19185/Communities/CRES>).

<sup>37</sup> Scottish Government, *ibid* (<http://www.scotland.gov.uk/Topics/Business-Industry/Energy/Energy-sources/19185/Communities>).

## 2. 'Attract renewable energy investment' (actions 1-8)<sup>38</sup>

### 'Improve network connections'

EDO NSW supports policies to improve network connection process for all scales of renewable energy generation, and recommends additional related measures.

As a community legal centre, EDO NSW has issued a factsheet on incorporating environmental groups,<sup>39</sup> advised several NSW community renewable energy groups on business structures, and issued a comprehensive *Rural Landholders Guide to the Law in NSW* (now in its third edition).<sup>40</sup> In May 2012 EDO NSW attended a Community Renewables Forum hosted by the Total Environment Centre (TEC). Participants identified network connection processes as a significant barrier to community-owned renewable energy generation, which these additional actions could assist. In this context, we make 2 recommendations.

Firstly, the RE Advocate should consult, examine and make recommendations on legislative amendments to further facilitate and increase certainty for renewables and grid connection.

Secondly, in addition to the proposals under action 1, the RE Advocate should also develop guidance (in conjunction with OEH, IPART or the Office of Fair Trading) on:

- grid connection for commercial-scale *wind energy* (in addition to photovoltaic (PV));
- incorporation options and business structures for community RE projects.

### 'Streamline the planning process'

The Government's major planning blueprint, *A new planning system for NSW – Green Paper* (August 2012) is clearly lacking in references to promoting clean industry, renewable energy and climate change responses. For example, the Green Paper does not discuss the challenges of planning for climate change adaptation or reducing the carbon footprint of new development, nor the opportunities for renewable energy or a low carbon economy.<sup>41</sup>

This oversight must be addressed as both renewable energy and planning policies are further developed and coordinated. As EDO NSW and many other stakeholders have noted, these triple bottom line considerations are essential for a planning system that will serve NSW well into the 21<sup>st</sup> century.<sup>42</sup>

The forthcoming White Paper and draft planning laws must therefore demonstrate:

- a clear and integrated commitment to ecologically sustainable development (ESD) and the achievement of environmental outcomes – including by facilitating renewable energy developments and assessing climate change impacts; and
- how the new planning Act interacts with and facilitates other legislation – such as for energy efficiency, climate change and environmental protection laws.

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<sup>38</sup> The Draft REAP proposes eight actions focused on 'practical steps to remove barriers to investment in renewable energy'. We address these actions under relevant headings below.

<sup>39</sup> EDO NSW, Factsheet 10.5, at [http://www.edo.org.au/edonsw/site/factsh/fs10\\_5.php](http://www.edo.org.au/edonsw/site/factsh/fs10_5.php).

<sup>40</sup> See EDO NSW, 'Guides to the law', at <http://www.edo.org.au/edonsw/site/publications.php#landholder>.

<sup>41</sup> Compare, for example, Ernst & Young, *Business opportunities in a low carbon economy* (September 2010), report for Industry and Investment NSW on behalf of the NSW Innovation Council.

<sup>42</sup> See, for example, submissions to NSW Planning Review Green Paper (September 2012) from EDO NSW; from the Local Government and Shires Association; from Nature Conservation Council and Total Environment Centre; and from numerous other community groups, local councils and environmental law and planning stakeholders.

A number of key recommendations from EDO NSW's recent Green Paper submission are also relevant to integrating renewable energy into the planning system and finalising the REAP.<sup>43</sup>

### **'Create a supportive policy and regulatory environment'**

NSW needs to establish a more supportive policy and regulatory environment for renewable energy. Importantly, this environment must be consistent with ESD and its principles.<sup>44</sup> For example, the Act that underpins the federal RET scheme includes an object: 'to ensure the renewable energy sources are ecologically sustainable.'<sup>45</sup>

In terms of specific measures, EDO NSW's submission on the planning Green Paper called for:<sup>46</sup>

- a state-wide *NSW Planning Policy on Sustainability*, including:
  - energy, water, waste and construction efficiency (strengthening the Building Sustainability Index (BASIX)) – discussed under energy efficiency below,
  - other building quality and design standards, and
  - climate change mitigation and adaptation requirements;
- fast-tracking green development that demonstrates best social/environmental practice;
- sustainability measures as a prerequisite for industrial growth zones (among others);
- full carbon accounting for State Significant Development or Infrastructure proposals;<sup>47</sup>
- better integration of public transport (noting that road transport contributes 88% of Australia's transport sector's emissions)<sup>48</sup> and 'green infrastructure' considerations.<sup>49</sup>

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<sup>43</sup> Recommendations from EDO NSW's *Submission on the Green Paper – A new planning system for NSW* (September 2012) include:

- ESD must be the overarching objective of the new Act (see recommendation 1)
- All decisions, powers and functions must be exercised consistent with ESD (rec 2);
- All strategic plans should: integrate environmental outcomes and natural resource management, ensure cumulative impacts are considered, and build-in urban sustainability, design quality, and climate change considerations (rec 18);
- The new Planning Act must set out clear legislative requirements for assessing State significant development, including best practice independent environmental assessment – such as full carbon accounting to assess the full impact of major proposals (rec 25);
- The new Act should require all developments meet an objective test of whether a development maintains or improves environmental outcomes (rec 28);
- Create mechanisms to fast-track innovative green development and design (rec 30);
- Adopt a comprehensive range of sustainability performance indicators (recs 37, 39);

<sup>44</sup> These include the precautionary principle, intergenerational equity, conservation of biodiversity, and the polluter pays principle, as well as broad public participation and engagement. See for example, *Protection of the Environment Administration Act 1991* (NSW), s 6. See also *National Strategy for Ecologically Sustainable Development* (endorsed by COAG December 1992), Objective 8.1: 'to limit harmful emissions arising from energy production and distribution wherever economically efficient, and to promote alternative energy sources', at <http://www.environment.gov.au/about/esd/publications/strategy/energy.html>.

<sup>45</sup> See *Renewable Energy Electricity Act 2000* (Cth), s 3 and definition of 'ecologically sustainable' in s 5. See also *National Strategy for Ecologically Sustainable Development*, endorsed by COAG December 1992. For example, Objective 8.1: 'to limit harmful emissions arising from energy production and distribution wherever economically efficient, and to promote alternative energy sources', at <http://www.environment.gov.au/about/esd/publications/strategy/energy.html>

<sup>46</sup> EDO NSW, *Submission on the Government's Green Paper – A new planning system for NSW* (Sept 2012).

<sup>47</sup> As Justice Pain noted in the recent *Ulan* case (*Hunter Environment Lobby Inc v Minister for Planning* [2011] NSWLEC 221) at [59]: 'There is no formal document setting out the government's position on the treatment of scope 1, 2 and 3 GHG emissions and the risk of climate change in the development assessment process under the EP[&]A Act.' On full carbon accounting see also EDO NSW *Submission on Planning Green Paper* (2012), 44.

To further create a supportive environment for renewables, NSW energy and planning laws should prioritise renewable energy use and project development over fossil fuels; and review existing policies to the contrary. This includes analysing and comparing current policies in regard to grid requirements, subsidies, incentives, planning assessment and approval (including solar access for energy purposes).<sup>50</sup> Germany's RESA Act includes a number of prioritising mechanisms, such as for grid connection, feed-in and upgrades.<sup>51</sup>

Prioritising renewables is wholly consistent with the State Plan priority action to promote 'energy security through a more diverse energy mix, reducing coal dependence, increasing energy efficiency and moving to lower emission energy sources.'<sup>52</sup> This requires leadership and long-term vision that acknowledges the difficult policy challenges and potential opportunities involved, and builds community support and resilience in the face of change.

In creating an appropriate regulatory environment, EDO NSW reiterates that the burning of wood waste should not be considered a renewable energy source.<sup>53</sup> We note that as well as requiring that renewable energy sources be 'ecologically sustainable', the federal RET scheme Act includes wood waste but excludes native logging as a source.<sup>54</sup>

### ***'Promote investment opportunities in NSW' (including RE Advocate and national RET)***

Creation of a Renewable Energy Advocate (or office) is a significant and positive proposal, subject to relevant governance safeguards and additional functions discussed above. In particular, the Advocate must be well-resourced, independent and expert-based; and must have access to high-quality staff and expertise, internal and external to government.

We are also encouraged by the commitment to work with innovation councils and research bodies to advance the renewable energy sector. We look forward to more specific detail in the final REAP. It is also important that the findings of relevant research and reports are acted on and built into government policy, including in regular reviews of the REAP. For example, the final REAP should discuss and respond to the findings and opportunities

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<sup>48</sup> 2005 figures (Department of Climate Change, *Transport Sector Greenhouse Gas Emissions Projections 2007* (2008), p 17 at: [www.greenhouse.gov.au/projections/pubs/transport2007.pdf](http://www.greenhouse.gov.au/projections/pubs/transport2007.pdf)). See also CSIRO/Australian Low Carbon Transport Forum, *Greenhouse gas abatement potential of the Australian transport sector* (2012).

<sup>49</sup> On the benefits of cycleways, parks, waterways, and green space on public health, economy and community, see Husqvarna/Kairos Future, *Global Garden Report 2012*, at <http://www.kairosfuture.com/en/news/global-garden-report-2012>; see also A. Schaffler, M. Swilling, 'Valuing green infrastructure in an urban environment under pressure — The Johannesburg case', article in press, *Ecological Economics* (2012).

<sup>50</sup> See for example, A.J. Bradbrook, 'Solar access law: 30 years on' (January 2010) 27 EPLJ 5. Also, the draft Wind Farm Planning Guidelines are discussed under 'Building Community Support' below.

<sup>51</sup> For example, the *Renewable Energy Sources Act* (Germany) requires grid system operators to:

- connect RE sources to a suitable grid connection point 'immediately and as a priority...' (s 5(1));
- give RE generators a timetable with steps for connection, grid testing and likely connection costs (s 5(6));
- purchase, transmit and distribute all available electricity from a RE source 'immediately and as a priority' (s 8(1)) (this requirement is subject to feed-in management provisions to protect grid reliability – s 11);
- '...immediately optimise, strengthen and expand their grid systems in accordance with best available technology... to guarantee the purchase, transmission and distribution' of RE, where requested by those interested in feeding in electricity – though not if this is economically unreasonable) (s 9).

<sup>52</sup> NSW Government, *NSW 2021 State Plan* (2011), Goal 22, 'Increase renewable energy' target, p 44.

<sup>53</sup> To the extent that such waste removes carbon sinks, encourages native logging, impacts on biodiversity or contributes to particulate pollution, the EDO opposes the inclusion of wood waste in renewable schemes, incentives and calculations. See further EDO NSW *Submission on Renewable Energy (New South Wales) Bill 2007* (July 2007), at <http://www.edo.org.au/edonsw/site/policy/renewenergibill070727.php>.

<sup>54</sup> See *Renewable Energy (Electricity) Regulations 2001* (Cth), cl 8.

outlined in an Ernst & Young report prepared for the NSW Innovation Council on *Opportunities in a low carbon economy* (December 2010).<sup>55</sup>

Finally, while inter-sectoral collaboration is positive, it must not come at the expense of appropriate resourcing to the OEH, Environment Protection Authority and other relevant agencies to deal with the growing challenges of climate change and energy policy.

### ***Establish a fair price for solar and provide a sustainable future for the solar industry***

Feed-in tariffs are one of several useful ways to encourage take-up of renewable energy, reduce our dependence on fossil fuels, and mitigate our contribution to climate change. The Draft REAP proposes that the Government will 'Annually request IPART to estimate a benchmark range for a fair price for small-scale generated solar energy.' (Action 6) We understand this reflects a recommendation from IPART itself.<sup>56</sup>

We welcome a continued role for IPART as an independent expert statutory authority, noting that its mandate includes the consideration of protection of the environment.<sup>57</sup> In addition, the terms of reference for IPART's reports should be broadened to allow IPART to outline a range of scenarios (including budgetary investment) for renewable incentives such as feed-in tariffs. These scenarios and recommendations should aim to maximise uptake while being fiscally responsible. The REAP should also clarify a process for implementing IPART's recommendations. The terms of reference proposed in the Draft REAP (no increase to electricity prices or additional budget funding (p 16)) may serve to artificially hamper the consideration of best public policy options.

IPART's reviews should include consideration of incentive schemes in other nations.<sup>58</sup> The rise of a European wind turbine manufacturing industry has been directly credited to legislative feed-in laws in Germany, Spain and Denmark.<sup>59</sup> This suggests that the co-benefits of such schemes may well justify well-planned budgetary contributions.

Finally, with regard to holding a seminar on Environmental Upgrade Agreements legislation (action 7), the final REAP could do more to publicise and expand the availability of these agreements to a range of new local council areas; publicly report on progress; and use case studies to increase industry, council and community awareness of relevant provisions.<sup>60</sup>

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<sup>55</sup> Ernst & Young, *Business opportunities in a low carbon economy* (September 2010), report for Industry and Investment NSW on behalf of the NSW Innovation Council, <http://www.business.nsw.gov.au/innovation-and-research/innovation-in-nsw/innovation-resources-and-publications/cross-sectoral-analyses>.

<sup>56</sup> ...'that IPART should determine and publish an annual benchmark range for a fair and reasonable feed-in tariff' to guide retailers in setting feed-in offers and to guide customers in assessing these offers. See IPART, Consumer Fact Sheet, *A fair and reasonable solar feed-in tariff for NSW* (March 2012), at 1.2.

<sup>57</sup> See IPART website, 'About IPART', at [http://www.ipart.nsw.gov.au/Home/For\\_Consumers/About\\_IPART](http://www.ipart.nsw.gov.au/Home/For_Consumers/About_IPART).

<sup>58</sup> For example, Germany's *Renewable Energy Supply Act* is an example of a highly successful and well developed model, which guarantees feed-in prices for a range of renewables (see discussion above). See also Dr M. Lang and Prof. U. Mutschler, *German Energy Blog*, 'Overview of the Renewable Energy Sources Act', [http://www.germanenergyblog.de/?page\\_id=283](http://www.germanenergyblog.de/?page_id=283), accessed October 2012.

<sup>59</sup> See S. Espey, 'Renewable Portfolio Standard: A Means for Trade with Electricity from Renewable Energy Sources' (2001) 29 *Energy Policy* 557, at 559, cited in Lyster (2003), *ibid*, at 382.

<sup>60</sup> Part 2A *Local Government Act 1993* deals with Environmental Upgrade Agreements (commenced Feb. 2011).

### 3. Build community support (actions 9-11)<sup>61</sup>

#### ***'Prepare new planning guidelines for wind energy projects'***

The Draft REAP's action 9 is to 'finalise wind energy planning guidelines...'. To build community support and attract investment, the previous draft guidelines must be substantially amended to ensure renewable energy projects are not disadvantaged in NSW compared to non-renewable energy projects, or compared to other jurisdictions.<sup>62</sup>

Any standards for wind farm developments should begin by enabling the industry to compete on a level playing field. Guidelines should include a clear recognition of the beneficial public interest in increasing NSW and Australia's use of and investment in renewable energy; and reducing greenhouse gas emissions and the impacts of climate change.

The previous draft guidelines proposed inappropriate double standards for wind farms when compared with planning approval processes for other energy-related projects such as coal mining and coal seam gas (CSG) extraction. While wind energy is projected to be the most economical form of large scale renewable energy over the next decade,<sup>63</sup> the guidelines may unintentionally make investment in wind energy less viable or attractive, and make it harder to achieve government aims and policies on renewable energy and climate change.

The EDO's main concerns with the draft Wind Farm Guidelines are as follows:

- The double standard created by the requirement for a 2km setback from houses for wind farm developments (unless the consent of all landowners is obtained), which prohibits development or triggers an additional upfront 'gateway' assessment.
- A strict 35 decibel (dB) noise limit that would apply to all NSW wind farms, but not necessarily other development.<sup>64</sup> Indeed, significantly higher noise limits are often allowed for NSW coal mines.<sup>65</sup> The draft guidelines' noise limit is also stricter than those of potential investment competitors.<sup>66</sup>
- EDO NSW supports early and genuine public participation and consultation on *all* forms of development.<sup>67</sup> It is important that wind farms are not penalised by these requirements compared to other development types.

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<sup>61</sup> The draft REAP states: 'The NSW Government will give the community a say on decisions that affect them and build community support for renewable energy'. We address these actions under corresponding headings.

<sup>62</sup> The Government's *Draft NSW Planning Guidelines Wind Farms* (December 2011), at [http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=5yeY6yw\\_wRE%3d&tabid=205&mid=1081&language=en-AU](http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=5yeY6yw_wRE%3d&tabid=205&mid=1081&language=en-AU), proposed to set limits on the distance a wind farm can come to dwellings without consent, limits on noise and visual amenity, and additional community consultation requirements. These sorts of provisions, while not themselves problematic, are far more onerous than the limits imposed on other forms of energy production. A table attached to EDO's *Submission on Draft NSW Planning Guidelines for Wind Farms* (March 2012), while not exhaustive, highlighted some of these inconsistencies in planning requirements (at [http://www.edo.org.au/edonsw/site/pdf/subs/120314draft\\_nsw\\_guidelines\\_wind\\_farms.pdf](http://www.edo.org.au/edonsw/site/pdf/subs/120314draft_nsw_guidelines_wind_farms.pdf)).

<sup>63</sup> See *Draft NSW Planning Guidelines Wind Farms* (December 2011), 'Executive summary'.

<sup>64</sup> See *Draft NSW Planning Guidelines Wind Farms*, pp 6, 29. For other types of development, project-specific noise levels may be set in the consent and licence conditions. The *NSW Industrial Noise Policy* (EPA, 1999) recommends a maximum limit for a rural area as 45 dB at night and 55dB in daytime, Table 2.1 p 16, at [http://www.environment.nsw.gov.au/resources/noise/ind\\_noise.pdf](http://www.environment.nsw.gov.au/resources/noise/ind_noise.pdf).

<sup>65</sup> For example, for the Warkworth mine, noise limits are up to 42 dB day and night in Bulga village; the Integra mining complex near Camberwell also has higher cumulative noise limits for private homes.

<sup>66</sup> For example, Victoria (40 dB), South Australia (40dB), New Zealand (40dB), Europe (40-55dB) and USA (50dB). See draft Wind Farm Guidelines, Fig. 2.

<sup>67</sup> Community understanding, input and buy-in is more likely to lead to sound development decisions. This is a key aspect of EDO NSW submissions to the ongoing Planning Review, available via [www.edonsw.org.au](http://www.edonsw.org.au).

- EDO NSW also supports rigorous environmental assessment, which should reflect the potential environmental and social impact of the development. We are not confident that the draft guidelines reflected this principle when compared with more polluting energy resources that face less rigorous standards.<sup>68</sup>
- Given the potential range of negative environmental and health impacts of developments such as coal mining and CSG, we believe those sources should be subject to more stringent standards. This should occur before, or as well as, targeting new and cleaner industries.<sup>69</sup>

***‘Engage communities effectively’ (expand the renewable energy precinct program)***

EDO NSW strongly supports the expansion of the renewable energy precinct (REP) program. This should include additional resources to enable REP coordinators to engage with the community and fulfil their roles effectively. We look forward to further information on the extension of the REP and the integration of OEH’s role with that of the RE advocate and other agencies. This should include participating in the REAP implementation taskforce.

***‘Support community-owned renewable energy projects’***

EDO NSW strongly supports additional funding and resources for community-owned renewable energy projects, including funding for local feasibility studies. Although responsibility for this action lies with OEH (Draft REAP, action 10), the Government should consider contributing additional funding for this proposal from NSW Trade & Investment. The Government should also examine successful models for community-owned renewable energy in Australia and overseas, such as Scotland’s CARES program (see above).

**4. Attract and grow renewable energy expertise (actions 12-21)<sup>70</sup>**

EDO NSW supports actions to attract and grow renewable energy expertise, although this submission does not provide specific comments on these proposals. A number of our broader recommendations in this submission are relevant – for example, we reiterate that the Planning Review White Paper must outline a range of concrete proposals to promote clean industry (see ‘Creating a supportive policy and regulatory environment’ above).<sup>71</sup> More specifically, we recommend that the NSW Planning Department consult with the clean energy industry, green building councils and sustainable business peak groups to further the development of renewable energy and related expertise.

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<sup>68</sup> See, for example, table attached to EDO NSW submission on draft wind farm guidelines (March 2012).

<sup>69</sup> EDO NSW has elsewhere highlighted the need to improve assessment, regulation and scrutiny of mining projects in NSW. See, for example, EDO NSW, *Mining law in NSW: Discussion paper* (June 2011); *Submission to NSW Legislative Council Inquiry into Coal Seam Gas* (October 2011); and *Ticking the Box: Flaws in the environmental assessment of coal seam gas projects* (November 2011).

<sup>70</sup> The draft REAP states: ‘The NSW Government will attract and grow expertise in NSW and focus on moving renewable energy technologies from R&D to demonstration and deployment.’ Broadly these actions propose to *create renewable energy hubs, lead on research and innovation, and support the commercialisation of renewable technologies*.

<sup>71</sup> EDO NSW, *Submission on the Government’s Green Paper – A new planning system for NSW* (Sept 2012).

## 5. Contain customer costs through energy efficiency (actions 22-28)<sup>72</sup>

EDO NSW strongly supports energy efficiency initiatives as part of a suite of measures to cut consumer costs but also to educate the community about the importance of reducing greenhouse emissions. We recommend that the final REAP:

- provide detail on what the proposed Energy Efficiency Strategy and review would cover, whether the strategy would be implemented in law, and provide opportunities for public comment;
- discuss how NSW could integrate into a National Energy Savings Initiative;
- demonstrate how COAG reforms to 'streamline' climate change and energy programs will ensure no backward steps in addressing climate change impacts and energy reform;
- commit to improving NSW building efficiency standards by strengthening BASIX and adopting more ambitious NABERS targets.

We discuss these matters in further detail below.

### ***'Release a new strategy for energy efficiency'***

We submit that the scope of the proposed Energy Efficiency Strategy and review should be clarified. This should include considering legislative options, including a National Energy Savings Initiative.

The Draft REAP outlines a range of positive proposals that build on existing energy savings programs, consumer toolkits, green power and access to information (actions 25-28). Nevertheless, there are clear benefits to establishing a nationally consistent legislative scheme to promote energy efficiency. As Lyster has argued, 'legally binding energy efficiency standards are an important mechanism for overcoming the market barriers that block cost-effective energy savings, including lack of awareness and uninformed consumers.'<sup>73</sup>

### ***'Work to harmonise energy efficiency schemes'***

#### *National Energy Savings Initiative*

Although the Draft REAP commits to working with Victoria to harmonise energy efficiency schemes,<sup>74</sup> it does not refer to the current National Energy Savings Initiative proposal (NESI), which would potentially harmonise the energy savings schemes across Australia.<sup>75</sup>

EDO NSW, as part of the Australian Network of Environment Defenders Offices, has strongly supported the NESI as a major step towards improving Australia's energy efficiency, reducing our greenhouse gas emissions, and helping consumers to save on power bills. ANEDO recommended that a NESI be implemented without delay via Commonwealth

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<sup>72</sup> The draft REAP states: 'The NSW Government will place downward pressure on electricity costs to customers by driving energy efficiency and maximising use of our existing networks. We address the proposed actions under corresponding headings.

<sup>73</sup> See Lyster (2003), *ibid*, at 381.

<sup>74</sup> NSW Government, Draft REAP, p 25: "...the NSW Government has agreed to work with Victoria to increase harmonisation between the NSW and Victorian energy efficiency schemes. This can then be used to inform possible further harmonisation at a national level."

<sup>75</sup> See the Australian Government Department of Climate Change and Energy Efficiency, at <http://www.climatechange.gov.au/government/initiatives/energy-savings-initiative.aspx>, accessed Oct 2012.

legislation, in consultation with the States; and made a number of recommendations regarding its objectives, design and interaction with other schemes.<sup>76</sup>

#### *COAG reforms to streamline climate change and energy efficiency programs*

ANEDO has expressed significant concerns about the COAG April 2012 announcement to streamline environmental approval laws, and 'rationalise' energy efficiency and climate change programs.<sup>77</sup>

EDO NSW strongly supports the development of efficient and effective environmental laws in Australia. However, it is concerning that the introduction of a carbon price has been used as a justification for reducing other climate change programs. A significant problem with this is that the carbon price does not have bipartisan support. This means that if the carbon price is repealed by a future federal government, the COAG reforms could result in a loss of a range of state and federal climate change policies, as well as the carbon price itself. This would leave a gaping hole in Australia's climate change policy and be inconsistent with international obligations. Any COAG reforms must ensure no backward steps in addressing climate change impacts and energy reform.

#### **'Improve standards of energy efficiency in buildings and appliances'**

The Draft REAP refers to the existing Building Sustainability Index (**BASIX**), but does not make any recommendations for improvement.<sup>78</sup> Although EDO NSW supports the premise of BASIX, it needs to be strengthened to be more effective.<sup>79</sup>

As a significant new action on energy efficiency and sustainability, the NSW Government should commit to overhaul and strengthen BASIX in the short term.<sup>80</sup> We recommend:

- strengthening minimum requirements of BASIX to reflect technological advances;<sup>81</sup>
- extending its operation to commercial and industrial sites (not dwellings only);
- raising standards for multi-unit dwellings that are currently subject to lesser targets;<sup>82</sup>
- establishing mandatory sustainability requirements in law for retrofitting existing buildings (in particular commercial and industrial); and
- setting minimum baselines, but removing the prohibition on consent authorities (such as local councils) from imposing more stringent water and energy use limits.<sup>83</sup>

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<sup>76</sup> ANEDO, *Submission on the Issues Paper for a National Energy Savings Incentive* (February 2012), at [http://www.edo.org.au/policy/120227national\\_energy\\_savings\\_incentive.pdf](http://www.edo.org.au/policy/120227national_energy_savings_incentive.pdf).

<sup>77</sup> See ANEDO, *COAG Environmental Reform Agenda: ANEDO Response - In Defence of Environmental Laws* (May 2012), available at [http://www.edo.org.au/policy/ANEDO\\_-\\_In\\_defence\\_of\\_environmental\\_laws.pdf](http://www.edo.org.au/policy/ANEDO_-_In_defence_of_environmental_laws.pdf).

<sup>78</sup> Draft REAP, p 26. The *State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004* (BASIX SEPP) is the principal building regulation relating to sustainability.

<sup>79</sup> Shortcomings include that BASIX only applies to the residential sector; that its standards have not been updated for over five years; and that despite the lack of recent updates, councils cannot require developers to meet higher standards for energy and water efficiency than those prescribed by BASIX. See for example EDO NSW submission to NSW planning review Green Paper (Sept 2012), pp 32-33.

<sup>80</sup> This could be integrated into a new NSW Planning Policy on *Sustainability*.

<sup>81</sup> At their most stringent, the BASIX energy and water efficiency targets require energy and water use reductions of 40% over existing dwellings (set by comparison to average NSW water consumption and greenhouse gas emissions as at 2002-03). See further N. Landreth, K. WK Yee and S. Wilson, 'Assessing the Effectiveness of Building Simulation to Regulate Residential Water Consumption and Greenhouse Gas Emissions in New South Wales, Australia, *Proceedings of Building Simulation 2011: 12<sup>th</sup> Conference of International Building Performance Simulation Association, Sydney, 14-16 Nov. 2011*.

<sup>82</sup> Multi-unit residential developments of over 6 storeys are only required to meet reduction targets of 20%.

<sup>83</sup> The BASIX SEPP overrides any environmental planning instrument that is inconsistent with it (cl 7).

EDO NSW strongly supports retro-fitting initiatives as a means of reducing climate change contributions and supporting the clean industry sector (see action 7, discussed earlier, and action 24). Establishing targets for NABERS<sup>84</sup> energy-rated buildings is a specific and measurable action, and a positive step in principle. However, the Draft REAP does not indicate the existing percentage of NSW floorspace in four-star NABERS rated buildings, nor compare this to other jurisdictions. This would better enable an assessment of the ambition of the 50% target. In addition to a target for four-star NABERS ratings, the final REAP should include sub-targets for higher NABERS ratings (up to six stars).

In relation to appliance efficiency, we submit that NSW and other governments could consider schemes such as the former *Maryland Clean Energy Incentive Act 2000*, which offered a range of tax incentives to residents and businesses for energy efficiency and renewable energy products and services.<sup>85</sup>

### ***'Arm consumers with better information'***

EDO NSW strongly supports empowering energy customers with appliance information to change behaviour and reduce energy bills. In addition, this action should include:

- more detailed mandatory data and information to consumers on carbon emissions from electricity sources,<sup>86</sup> and
- clear, comparable and accessible information around concessions and subsidies to energy producers (renewable and non-renewable, at the federal and state level).

Finally, EDO NSW notes an innovative tool which compares and ranks energy efficiency schemes across US jurisdictions. The American Council for an Energy Efficient Economy recently released its 2012 scorecard.<sup>87</sup> The benefits of such an independent, comparative reporting tool are three-fold. It provides an incentive for States to improve their performance relative to other jurisdictions; it allows governments and citizens to investigate and compare other States' initiatives; and promotes the benefits of energy efficiency to a wider audience.

*For further information on this submission, please contact  
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<sup>84</sup> The National Australian Built Environment Rating System (NABERS) is an intergovernmental initiative to measure and compare the environmental performance of a building against its market. See *Factsheet 1: About the NABERS program*, at <http://www.nabers.gov.au>.

<sup>85</sup> See Lyster, *ibid* (2003), 378. The US Department of Energy notes that this scheme expired in 2004. See [http://www.afdc.energy.gov/laws/laws\\_expired/MD](http://www.afdc.energy.gov/laws/laws_expired/MD), accessed October 2012.

<sup>86</sup> See Lyster (2003), *ibid*, at 381: *There is strong support in the literature for legally requiring retailers and wholesalers to disclose the fuel mix and the carbon dioxide, nitrous oxide and sulphur dioxide emissions associated with electricity generation in a standard format on customer bills. ... It is crucial in a contestable market that consumers have access to information about the price, source and environmental characteristics of their electricity.* By 2002, over 20 US states had environmental disclosure policies relating to fuel sources and in some cases emissions.

<sup>87</sup> See American Council for an Energy Efficient Economy blog, 'Massachusetts Retains Top Spot on ACEEE State Energy Efficiency Scorecard', at <http://aceee.org/blog/2012/10/massachusetts-retains-top-spot-aceee-> *The report examines six of the primary policy areas in which states typically pursue energy efficiency: utility and "public benefits" programs and policies; transportation policies; building energy codes; combined heat and power (CHP) policies; state government-led initiatives around energy efficiency; and appliance and equipment standards.*