



Environmental
Defenders Office

A Climate Change Act for the Northern Territory

JUNE 2020

Introduction

The climate in the Northern Territory (NT) is characterised by high temperatures and extreme weather events, such as cyclones, flooding and drought. The rise of temperatures already underway due to climate change will only push this to greater extremes¹, with subsequent severe impacts on community health and well-being, the environment and the economy. Yet there is no NT legal framework aimed at limiting warming to within globally agreed goals.

Failing to implement adequate legal and policy responses to these serious and system-wide climate change impacts will have far-reaching and long-term consequences for Territorians, in particular for remote Aboriginal communities, as well as for the spectacular natural environment at the heart of the NT lifestyle and economy.

The international community, through the Paris Agreement, has agreed to aim for a limit in temperature rise to well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees. Global greenhouse gas (GHG) emissions need to be significantly reduced for this to be achieved.² Australia has shown its commitment to these temperature goals by ratifying the Paris Agreement. All jurisdictions in Australia will need to reduce their emissions in a way that contributes to achieving these goals, to ensure Australia's compliance with the Paris Agreement.

The NT Government has developed the draft 'Climate Change Response – Towards 2050' (**draft Climate Change Response**) as central to its climate change policy, which includes an aspirational target of net zero emissions by 2050. However, no targets or other response obligations are embedded in law. In this, the NT is behind other Australian jurisdictions, many of which already have climate legislation in place in addition to targets.

To respond to the systemic climate change impacts already being experienced, the NT needs a clear and coordinated legal framework.

A Climate Change Act would be a key part of the NT's response to the challenges it faces.

Such an Act would clearly and unequivocally deliver an accountable decision-making and policy framework for action to align the NT Government's policies with the global goals set by the Paris Agreement and ratified by Australia, and to appropriately respond to the many, escalating challenges climate change presents.

¹ A changing climate will see average temperatures rise (for example, CSIRO estimates that the number of days above 35 degrees in Darwin could increase from 22.2 days to 275 days per year in 2070) and an increase in the severity of extreme weather events, resulting in changes to water availability and an increase in the number of extreme sea-level events. The NT's remote communities are particularly vulnerable because of limited access to health, education and other services. As at June 2016, the ABS estimates that Aboriginal identified peoples made up 30.3% of the NT's population, with approximately 76.6% of that population living in remote or very remote areas.

² IPCC, Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, n 13.

Why a Climate Change Act?

A Climate Change Act is the best way to deliver strong and lasting positive action on climate change in the NT. It would:

- deliver a clear, strategic and accountable plan to achieve the required GHG emissions reductions;
- send a clear signal of a government's intention, commitment and level of ambition;³
- function as a significant political statement, ensuring the government is accountable to the NT Parliament and the public for its performance on climate change;
- drive low-carbon investment and innovation, and lower the cost of a just transition to a low-carbon economy;
- provide certainty and confidence for business and civil society, with positive influence on investor confidence; and
- deliver a range of positive economic and social benefits.

A Climate Change Act would ensure the NT proactively responds to climate change risk and reduces its GHG emissions across all sectors, consistent with the goals established in the Paris Agreement and the overarching aim of the NT Government's draft Climate Change Response.

To meet the challenges posed by climate change for the NT, a Climate Change Act would establish binding obligations on government to act – by requiring mandatory targets, strategies and policies and by ensuring climate change considerations are integrated into all levels of government decision-making, to drive a just transition to a low carbon economy and adaptation measures to support the most vulnerable in the NT.

Multiple Australian states and territories, and other countries, have taken this step to adopt climate change legislation. The NT Government can draw on the experiences of other Australian jurisdictions, including Victoria,⁴ South Australia,⁵ the ACT⁶ and Tasmania,⁷ as well as laws enacted in other countries, including Canada, the UK, various US states (such as California and New York) and New Zealand.⁸

³ Institute for Government, *Legislated Policy Targets: commitment device, political gesture or constitutional outrage?* (2012).

⁴ Victoria is said to have made good progress with a reduction in emissions already, and emissions are projected to fall further to 18% below 2005 levels by 2020: Independent Expert Panel on Interim Emissions Reduction Targets for Victoria, *Interim Emissions Reduction Targets for Victoria (2021-2030)*, March 2019

⁵ SA enacted the Climate Change and Greenhouse Emissions Reduction Act 2007, which made them the first Australian state to legislate targets to reduce greenhouse emissions.

⁶ The ACT enacted the Climate Change and Greenhouse Gas Reduction Act 2010, which was updated in 2016 to set targets for the ACT of 40% on greenhouse gas emission on 1990 levels by 2020 and zero net emissions by 2050 (ACT is reported to be on track to meet 2020 targets).

⁷ Tasmania has an emissions reduction target of 60% below 1990 levels by 2050. ACT targets are 40% below 1990 levels by 2020, 80% below 1990 levels by 2050 and zero net emissions by 2060.

⁸ New Zealand recently passed the Zero Carbon Bill into law, which commits New Zealand to zero carbon by 2050 or sooner, sets a legally binding pathway to this target, and requires the Government to make a plan.

What would a Climate Change Act do?

1. Establish clear objectives and guiding principles

A Climate Change Act would set clear climate change objectives for the NT, with principles to guide the delivery of these objectives. They would be drafted to ensure the Act is framed around:

- limiting emissions consistent with the Paris Agreement's temperature goals
- plans for a rapid and just transition away from fossil fuel production to a low carbon economy,
- ensuring adaptation measures are taken, focusing on the most vulnerable communities, and
- is implemented consistent with the principles of ecologically sustainable development and the best available science.

The objectives and principles would be used to guide all decisions made under the Climate Change Act by decision-makers across the NT Government, including in relation to the setting and review of targets, and developing sectoral policies and plans. They would establish a clear and consistent approach to frame and guide delivery of all aspects of the Climate Change Act.

2. Set binding targets (interim and long term)

A Climate Change Act would set binding GHG emissions reductions targets to ensure the NT makes a fair and equitable contribution to the international temperature goal set by the Paris Agreement.

This would include a long-term target of net zero emissions by 2050, with interim (5 year) targets, and carbon 'budgets' included to establish a pathway to the interim and long-term targets, consistent with the temperature goal. The interim targets drive accountability and allow performance to be tracked over time, with adjustment mechanisms available to ensure the long-term target is met. There would be a prohibition on the weakening of targets.

There could also be specific targets for different sectors; for example, specific targets for renewable energy. The NT Government has expressed a commitment to achieving 50% renewable energy by 2030. This should be specifically entrenched in the Act.⁹



⁹ The ACT is a successful example of a jurisdiction that has legislated a target under its Climate Change and Emissions Reduction Act and will deliver 100% renewable energy by 2020.

What would a Climate Change Act do?

3. Place duties on decision-makers to meet targets

A Climate Change Act would include clear obligations and duties on the NT Government to ensure GHG emissions reduction targets are met. This is critical to establish genuine accountability to deliver on the legislated targets.

For example, a 'pledge and review' model would require the NT Government to commit, or pledge, the amount of emissions reductions it will deliver based on the emissions of each portfolio and the policy tools available to that portfolio. This can help strengthen the integration of climate change into existing planning processes and strengthen institutional cooperation and mutual accountability.¹⁰ Guidelines could be used to assist decision-makers across portfolios to understand their statutory obligations.

4. Establish an independent expert climate advisory council

A Climate Change Act would establish an independent, expert NT Climate Advisory Council. This would provide objective oversight and expert advice to assist government with delivering its various obligations under the Act.

An Advisory Council would provide objective, evidence-based and transparent information and advice, operating as a key avenue for government to access the advice required to advance emissions reductions and adaptation plans, and achieve a just transition to a low carbon economy.

5. Ensure monitoring, reporting and verification of progress

A Climate Change Act would establish a monitoring, reporting and verification framework to require the NT Government to track, periodically review and publicly report on progress to the Act's goals, including the legislated targets. An independent audit and analysis of reporting would be an essential component, underpinned by public access to data and information.

This framework would be a critical way to drive action, enhance ambition over time, and deliver public transparency and accountability around climate action, particularly the progress towards emission reductions targets. Both the ACT's and Victoria's climate change laws have robust reporting requirements.

¹⁰ This model has been used in the Victorian Climate Change Act 2017, which includes a requirement for whole-of-government and sector-based emissions reduction 'pledges' to be made. Similarly, Part 1, Section 1 of the Climate Change (Scotland) Act 2009 imposes a broad obligation on Ministers to 'ensure net Scottish emissions account for the year 2050 is at least 80% lower than [1990] baseline'.

What would a Climate Change Act do?

6. Establish a framework for strategic planning and action planning

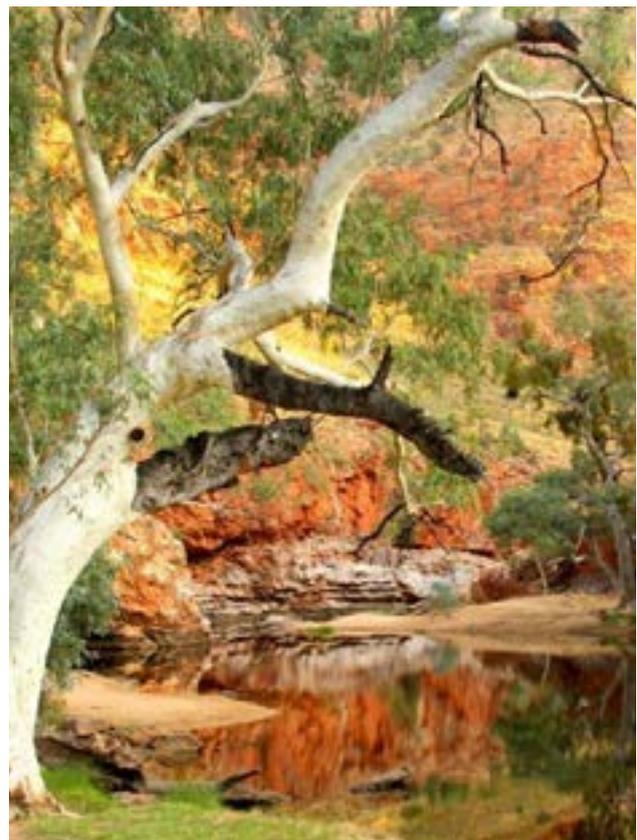
A Climate Change Act would require the NT Government to develop a whole-of-government strategy for climate change action. This would provide the platform for integrating climate change considerations across the NT economy, by defining the risk posed by climate change and providing a framework for mitigation and adaptation strategies across different sectors, including energy, remote community housing and water supply, health, transport, planning and infrastructure, as well as guiding a just transition to a low-carbon economy.

A strategy would include:

- an emissions reduction component containing the policies and actions for meeting the NT's interim target, each sector's pledge and actions to be taken to ensure its share of the NT's emissions reduction 'budget' is met for the forthcoming five-year period; and
- an adaptation and disaster risk reduction component outlining the risks and economic costs of climate change to the NT, setting medium and long-term adaptation and disaster risk reduction objectives, opportunities for non-government and private sector involvement, and risk assessment and priorities for the five-year period; and
- priority policies and programs to support low income households, remote communities and vulnerable sectors adapt to the long-term impacts of climate change, and transition to a low carbon economy in a way that maximises their access to low emission, reliable and affordable services.

Sector-specific Action Plans would sit under the Strategy, containing short to medium-term objectives for adaptation and disaster risk reduction, an assessment of the sector's disaster and adaptation readiness, proposals and actions to address risks (especially for those most vulnerable sectors and communities), and performance indicators against which progress would be measured.

Adopting a legislative basis for a Strategy and Action Plans would signal the commitment of the NT Government to responding to climate change, ensuring climate change action is elevated and prioritised across all sectors, and would support accountability for the delivery of strong, positive climate action.



What would a Climate Change Act do?

7. Integrate climate change in government decision-making across sectors

Finally, a Climate Change Act would include the appropriate integration of climate change in all relevant sector laws (such as planning, water, environment and energy laws).

A general obligation would be included in a Climate Change Act to ensure a broad range of decisions made or actions taken under various Acts integrate climate change (mitigation and adaptation) in those decision-making processes. Mechanisms could include setting clear legal duties to consider climate change in exercising decision-making functions,¹¹ and developing institutional guidance and support on technical matters. To assist decision-makers, guidelines should be developed and published to provide support for how climate change is to be considered in relevant decision-making processes.



Conclusion

A Climate Change Act would be a key part of a legislative and policy agenda for NT Government action on climate change. It would demonstrate strong leadership by setting clear objectives and emissions reductions targets, establishing standards of accountability for government action, and integrating climate change into all aspects of government planning and decision-making. Most significantly, it would demonstrate a commitment to climate justice for all Territorians, especially its vulnerable remote communities, and future generations.

¹¹ See for example, s 17 and Schedule 1 of the Climate Change Act 2017 (Vic).