

NSW Environmental Protection Authority (EPA)

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

Dear EPA,

Feedback on the EPA's draft Climate Change Policy and draft Climate Change Action Plan

Thank you for the opportunity to provide feedback on this draft policy and action plan.

Lawyers for Climate Justice Australia

Lawyers for Climate Justice Australia (LCJA) is a national network of lawyers, barristers, legal academics and law students who are exploring ways the legal system can be harnessed to address the climate crisis. We are volunteers, giving our time to stand with other professions including doctors, psychologists, veterinarians and diplomats who all advocate for fast and fair climate action. We seek climate justice for all Australians, in particular for First Nations peoples and children, from the perspective of human rights and the principle of intergenerational equity.

LCJA supports the EPA's draft Climate Change Policy and Action Plan. In our view, some aspects of the Action Plan can be strengthened. We outline these below.

Time critical reform

We note at the outset that this reform is *time critical*. More than 11,000 scientists across the globe, including more than 350 from Australia, have warned of untold suffering if action on climate change is delayed:

The climate crisis has arrived and is accelerating faster than most scientists expected. It is more severe than anticipated, threatening natural ecosystems and the fate of humanity (IPCC 2019). Especially worrisome are potential irreversible climate tipping points and nature's reinforcing feedbacks (atmospheric, marine, and terrestrial) that could lead to a catastrophic "hothouse Earth," well beyond the control of humans (Steffen et al. 2018)...[and] cause significant disruptions to ecosystems, society, and economies, potentially making large areas of Earth uninhabitable.¹

It is apparent from the high-level statements in the draft Policy that the EPA is keenly aware of the international expert advice that 2020-2030 is the critical decade for action. By the time this draft policy and action plan is approved, there will be fewer than eight years to deliver the deep and drastic cuts to emissions that are needed to avert climate catastrophe at a global level.

As a time critical reform, LCJA recommends that Pillars 2 and 3 (mitigate, adapt) of this action plan are rolled out concurrently with Pillar 1 (inform and plan). Industry certainty will still be achieved if

¹ William J Ripple et al, 'World Scientists' Warning of a Climate Emergency' (2020) 70(1) *BioScience* 8, 10.

these timeframes are brought forward; consultation is an iterative process that can proceed concurrently alongside robust mitigation and adaptation action.

Legal duty to address climate change

L4CJA commends the NSW EPA for being the first jurisdiction in Australia to regulate greenhouse gases as a form of pollution. The explicit acknowledgment that the EPA has a ‘legal duty to protect the community and environment from harm including that caused by climate change’ (EPA Climate Change Policy, Foreword, p5) is significant. This recognition of legal duty positions the NSW EPA as a national leader in the regulation of greenhouse gas (GHG) emissions. We hope that it will incentivise other states and territories to follow NSW’s lead.

Voices of affected communities

Through its regulatory remit, the NSW EPA has the legislative authority to deliver environmental justice to affected communities. As lawyers for climate justice, we consider it vital that this policy and plan centre the voices of people and communities who are deeply affected by the intensifying impacts of climate change. We note with approval, recognition of the role of First Nations peoples and the importance of intergenerational equity, and the perspectives of young people that will be heard via an EPA Youth Advisory Council. We stress the importance of embedding procedural justice and justice-as-recognition throughout the lifespan of this policy and action plan.

Regulatory language

Both the draft policy and action plan rely on the softer regulatory elements of the EPA’s regulatory approach (Figure 1, Action Plan, p10) i.e., listen, educate, enable. We think there is a risk in words not being met with decisive action and we therefore encourage the EPA to use more robust language, including for enforcement action. As already highlighted, the gap between plans and action must close if we are to have any hope of keeping 1.5 degrees warming within reach.

Timeframes and triggers for enforceable action

The soft language about enforceability of targets (Action Plan, page 35) is a clear example where L4CJA recommends a strengthened regulatory approach. We recommend the inclusion of explicit timeframes and triggers for enforceable requirements, and greater willingness by the EPA to escalate the regulatory approach when necessary. L4CJA would also like to see more specific Key Performance Indicators (KPIs) across all industries, in particular key emitters, with enforceable limits on emissions for both existing and new licence holders.

Action pillars - some specific aspects

Pillar 1 - Inform and Plan

- Action item 2(c) *Partner with DPE* - it is vital that climate change becomes a core consideration in decision-making across all regulatory activities. We recommend that this action item be further strengthened to ensure climate change is embedded in all planning assessments, approvals and decisions.

- Action item 2(b) *Climate Change Mitigation and Adaptation Plans (CCMAPs)* - L4CJA supports the requirement for industry to develop and implement CCMAPs, however in our view this regulatory approach as drafted is too soft. We recommend additional elements (monitoring and enforcement) to ensure CCMAPs are implemented, periodically reviewed and strengthened, and fail to receive approval if they contain any greenwashing features.

Pillar 2 - Mitigate

- Action item 5 *streamlining project approvals in renewable energy zones* - L4CJA fully supports the rapid transition to renewables, however we note there is a lack of detail in this action item about the impact of REZs on First Nations heritage, access to Country, and the need for free, prior and informed consent. We recommend additional cultural safeguards be added to this action item.
- Action items 8 and 9 - *prepare mitigation guidance and place GHG limits on licences for key industry sectors* - L4CJA fully supports robust, enforceable requirements for emissions reduction across key sectors. As flagged, we also recommend that this action be brought forward. As drafted, it is planned to commence in 2026 which is too late and too close to the end point of a three-year plan. We further recommend that actions 8 and 9 focus explicitly on enforceable emissions reduction, and less on emissions guidance, tracking and monitoring.

Pillar 3 - Adapt

- Action item 12 *Environmental resilience programs and initiatives* - L4CJA supports the emphasis on prevention and preparedness in this action item. A key component of environmental and climate resilience is an investment in disaster prevention and preparedness, not merely response and recovery. As flagged, L4CJA considers it essential that the voices of affected communities, in particular First Nations and young people, are centred in any plans about environmental and climate resilience.

In relation to further specific comment on existing and new actions for the Action Plan, L4CJA supports the comprehensive feedback provided by the Environmental Defenders Office to this review.

Please contact contact@lawyersforclimatejustice.org.au in relation to this submission.

Lawyers for Climate Justice Australia – 3 November 2022