



**ACT**  
Government

**CABINET**

**2021**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**GOVERNMENT RESPONSE TO THE REVIEW OF THE *CLIMATE CHANGE  
AND GREENHOUSE GAS REDUCTION ACT 2010***

**Presented by  
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**CABINET**

## Introduction

The ACT Government is committed to emissions reduction as evidenced by its *Climate Change and Greenhouse Gas Reduction Act 2010* (the Act). The Act is the legislation through which Government ensures the ACT's emissions reduction and renewable energy targets and interim targets are met.

Under Section 26 of the Act, the Minister must review the operation of the Act as soon as practicable after every 10 years of the Act's operation and must present a report of the review to the Legislative Assembly.

In 2021, Government engaged an independent entity, Aither, to conduct a review of the Act (the Review). Aither produced 12 recommendations concerning the Act. Government's response to these recommendations is detailed in this document.

The four objects of the Act are to:

- set greenhouse gas emissions and renewable energy targets;
- provide for monitoring of and reporting on progress made to meet these targets;
- facilitate Government's development of policies and programs to meet these targets and to address and adapt to climate change; and
- encourage private entities to take action to address climate change and recognise the entities that take action.

The Act consists of four key parts:

1. Part 2: Targets;
2. Part 3: Functions of the Minister;
3. Part 4: The Climate Change Council; and
4. Part 5: Sector Agreements.

## Steering Committee

A Steering Committee was formed for the purposes of:

- Establishing the terms of reference for the Review;
- Providing input and feedback on the services provided by the consultant; and
- Considering and advising on how Government should respond to the recommendations of the Review.

The Steering Committee consisted of four members:

Member name	Role
Geoffrey Rutledge (Chair)	Deputy Director General, Environment, Water and Emissions Reductions – Environment, Planning and Sustainable Development Directorate (EPSDD), ACT Government
Sam Engele	Coordinator General, Climate Action – Chief Minister, Treasury and Economic Development Directorate (CMTEDD), ACT Government

Diane Favier	Manager (Climate Change Policy and Strategy) – Department for Environment and Water, Government of South Australia
Barbara Norman	Former Chair of Climate Change Council

### **Review process and terms of reference**

The consulting firm, Aither, were engaged to:

- Assess whether the objects of the Act are being achieved; and
- Identify any required changes to the policy setting in the operation of the Act.

The Review itself consists of:

- A foreword by the Steering Committee;
- An assessment of the effectiveness of the Act in achieving its objects from 2010 to 2020, including a section-by-section review of the Act, with analysis of the contribution of each part of the Act and its subordinate legislation and its connection to other key ACT legislation;
- Stakeholder engagement with relevant groups;
- An assessment of the appropriateness of the Act to achieve the intended outcomes to 2030; and
- Identification and recommendation of changes to the Act (including the Objects of the Act itself) so that it can achieve the intended outcomes to 2030 (the year of the next scheduled review).

## Recommendations

No.	Section in <i>CCGGR Act</i> <i>2010</i>	Recommendation
<b>Targets</b>		
1	6(2)(b)	Include 'but within Australia' to 'emissions offsets outside the ACT' so that offsetting activities be limited to within Australia (and not include international offsets).
2	6(3) - new	Include a requirement that the Minister 'seek, and have regard to, the advice of the Climate Change Council to assist the Minister' to determine appropriate emissions offsets used to meet the targets.
3	7(2)	Include a requirement that the Minister 'seek, and have regard to, the advice of the Climate Change Council to assist the Minister' setting or changing any interim targets.
<b>Functions of Minister</b>		
4	14	<p>Prioritise the functions of the Minister to have three main objectives from the current functions, with the other functions remaining as lower priorities:</p> <ul style="list-style-type: none"> <li>• 'to promote action to meet the ACT target and the other targets mentioned in part 2' (currently section 14(1)(b));</li> <li>• 'to develop, adopt or promote policies and programs relating to climate change' (currently section 14(1)(c)); and</li> <li>• to consider and recommend amending a territory law (including this Act) or a government policy or practice if the Minister reasonably believes an amendment is necessary to achieve the objects of this Act' (currently section 14(1)(k)).</li> </ul>
5	14 - new	Include a requirement that the Minister has the following additional function: 'to promote the use of a social cost of carbon within the ACT Government'.
6	15(1)(c)	Include a requirement that the social cost of carbon be included within the report on 'the findings of a cost-benefit analysis of any government policies or programs implemented to meet the targets mentioned in part 2 during the financial year' until it is superseded by a national or global social cost of carbon or carbon price.
7	15(1)	Include a requirement that the Minister report on 'the actions the Minister has undertaken to address or adapt to the impacts of climate change'.
8	15A - new	Include a new section which requires the Minister to 'ask an independent entity' to undertake a five-yearly assessment of policies to achieve climate action within the ACT including both mitigation and adaptation activities.

No.	Section in <i>CCGGR Act</i> <i>2010</i>	Recommendation
<b>Climate Change Council</b>		
9	17(5) - new	<p>Include a requirement that each year:</p> <ul style="list-style-type: none"> <li>the Minister notifies the council on the matters that he / she wishes to receive advice on that year,</li> <li>the Climate Change Council develop a proposed work plan for each year – including, but not limited to the matters notified by the Minister (above) – which must be submitted to the Minister for agreement, and</li> <li>the Climate Change Council may provide the Minister with advice that is not in the work plan (above), provided that either the Minister has requested it, or the council has suggested it and the Minister has agreed to receive it.</li> </ul>
10	20(2)(b)	<p>Clarify that in general membership of the Council should be based on specialist expertise and amend the membership of the Climate Change Council to:</p> <ul style="list-style-type: none"> <li>include an adaptation specialist and a First Nations representative, and</li> <li>remove the requirement for a public employee.</li> </ul>
<b>Sector Agreements</b>		
11	23 (1)	Amend the definition of a Sector agreement by removing ‘on a voluntary basis.’
12	23 (1)(c)	Include ‘adaptation’ to ‘other avoidance or mitigation activities’ as a strategy accepted under the Sector agreements.

# ACT Government Response to the Review of the *Climate Change and Greenhouse Gas Reduction Act 2010*

## **Part 2: Targets**

### Recommendation 1

Section 6(2)(b) – *Include ‘but within Australia’ to ‘emissions offsets outside the ACT’ so that offsetting activities be limited to within Australia (and not include international offsets).*

#### **Response: AGREE**

The ACT Government agrees to amend the *Climate Change and Greenhouse Gas Reduction Act 2010* (the Act) to limit offsetting activities to within Australia. This reflects concerns over the reliability and environmental impacts of international offsets schemes. Should there be a need for offsetting activities in the future, Government would assess options with consideration of expert advice, as per recommendation 2.

Currently, Government policy does not include any offsetting activities in its plan to meet emissions reduction targets legislated in the Act. This aligns with expert advice from the Climate Change Council that the ACT exclude offsetting from policy considerations.

### Recommendation 2

Section 6(3) (new) – *Include a requirement that the Minister ‘seek, and have regard to, the advice of the Climate Change Council to assist the Minister’ to determine appropriate emissions offsets used to meet the targets.*

#### **Response: AGREE**

The ACT Government agrees to amend the Act to include a requirement that Minister consult the Climate Change Council in determining offsetting activities to meet future targets. This better ensures any decisions are informed by leading and independent analysis. The Council would only be engaged as prescribed by the Act.

Consultation with the Council would facilitate public confidence in Government’s emissions reduction activities in line with the reporting objects of the Act. Advice from the Council is made publicly available in the Annual Report by the Council which is presented to the Legislative Assembly as per Section 19 of the Act.

### Recommendation 3

Section 7(2) – *Include a requirement that the Minister ‘seek, and have regard to, the advice of the Climate Change Council to assist the Minister’ setting or changing any interim targets.*

#### **Response: AGREE**

The ACT Government agrees to consult the Climate Change Council in setting or changing any interim targets. This better ensures any decisions are informed by leading and independent analysis. This recommendation recognises that the Council membership

includes expertise in climate changes science and responses. The Council would only be engaged as prescribed by the Act. Advice from the Council is made publicly available in the Annual Report by the Council which is presented to the Legislative Assembly as per Section 19 of the Act, which supports the objects of the Act.

### **Part 3: Functions of Minister**

#### **Recommendation 4**

Section 14 – *Prioritise the functions of the Minister to have three main objectives from the current functions, with the other functions remaining as lower priorities:*

- *‘to promote action to meet the ACT target and the other targets mentioned in part 2’ (currently section 14(1)(b));*
- *‘to develop, adopt or promote policies and programs relating to climate change and adaptation’ (currently section 14(1)(c)); and*
- *to consider and recommend amending a territory law (including this Act) or a government policy or practice if the Minister reasonably believes an amendment is necessary to achieve the objects of this Act’ (currently section 14(1)(k)).*

#### **Response: AGREE**

The ACT Government agrees to the specified prioritisation of the Minister’s functions. Existing functions are to remain within the Minister’s remit. This ensures the focus of the legislation remains on developing and delivering effective action on climate change mitigation and adaptation. Consultation with the Parliamentary Counsel’s Office would be undertaken to determine the necessary legislative changes once Government’s response has been agreed to by the Legislative Assembly.

This would allow Government to achieve the objects of the Act most effectively.

#### **Recommendation 5**

Section 14 (new) – *Include a requirement that the Minister has the following additional function: ‘to ‘promote the use of a social cost of carbon within the ACT Government’.*

#### **Response: NOTE**

The ACT Government notes the recommendation that a function requiring the Minister to promote the use of a social cost of carbon within Government be included in the Act.

The existing ‘high-level’ nature of the Act currently ensures that policy remains appropriate and effective to Government’s climate response.

Currently, Government is already committed to employing a social cost of carbon in its decision-making and operations as outlined in the *ACT Climate Change Strategy 2019-25* and the 2021-22 ACT Budget. The scale of this measure is appropriate for policy rather than legislation.

#### **Recommendation 6**

Section 15(1)(c) – *Include a requirement that the social cost of carbon be included within the report on ‘the findings of a cost-benefit analysis of any government policies or programs*

*implemented to meet the targets mentioned in part 2 during the financial year' until it is superseded by a national or global social cost of carbon or carbon price.*

**Response: NOTE**

The ACT Government notes the recommendation to include a requirement for a social cost of carbon in its cost-benefit analysis of relevant policy and programs. As detailed above, Government is already committed to employing a social cost of carbon in its decision-making and operations as outlined in the *ACT Climate Change Strategy 2019-25* and the 2020-21 ACT Budget.

The methodology for analysis of costs and benefits of policies and programs need not be specified at this level.

**Recommendation 7**

Section 15(1) – *Include a requirement that the Minister report on 'the actions the Minister has undertaken to address or adapt to the impacts of climate change'.*

**Response: AGREE**

The ACT Government agrees to include the requirement that the actions undertaken to address or adapt to the impacts of climate change be reported on. This explicitly ensures reporting covers both mitigation and adaptation actions.

This requirement aligns with the Act's object to facilitate Government's development of policies and programs to address and adapt to climate change. It would contribute positively to Government transparency and accountability.

**Recommendation 8**

Section 15A (new) – *Include a new section which requires the Minister to 'ask an independent entity' to undertake a five-yearly assessment of policies to achieve climate action within the ACT including both mitigation and adaptation activities.*

**Response: AGREE**

The ACT Government agrees to include the requirement for a five-yearly assessment of policies to achieve climate action. This does not replace more frequent and detailed policy evaluation or annual reporting on progress.

With the increase in need for action across Government, additional reporting requirements could be useful in tracking progress on policies developed across multiple Directorates.

***Part 4: Climate Change Council***

**Recommendation 9**

Section 17(5) (new) – *Include a requirement that each year:*

- *the Minister notifies the council on the matters that he / she wishes to receive advice on that year,*

- *the Climate Change Council develop a proposed work plan for each year – including, but not limited to the matters notified by the Minister (above) – which must be submitted to the Minister for agreement, and*
- *the Climate Change Council may provide the Minister with advice that is not in the work plan (above), provided that either the Minister has requested it, or the council has suggested it and the Minister has agreed to receive it.*

**Response: AGREE IN PRINCIPLE**

The ACT Government agrees in principle to the recommendation to include a requirement that the Minister notifies the Climate Change Council on matters they wish to be advised on, that the Council propose a yearly work plan for the Minister to agree to, and that the Minister must request or agree to receive advice from the Council on matters that are not included in the work plan.

This would enable the Council to continue providing impactful and focused advice to support Government in meeting the Act's objects. However, to the requirement that the Minister must request or agree to matters for advice outside of the work plan, the Council should be able to provide on their own initiative advice on matters that have a substantial impact on reducing greenhouse gas emissions and building resilience and adapting to climate change. This should be done only following the Council advising the Minister on the importance and urgency of such advice.

Recommendation 10

Section 20(2)(b) – *Clarify that in general membership of the Council should be based on specialist expertise and amend the membership of the Climate Change Council to:*

- *include an adaptation specialist and a First Nations representative, and*
- *remove the requirement for a public employee.*

**Response: AGREE**

The ACT Government agrees to clarify that general membership of the Climate Change Council should be based on specialist expertise, as opposed to the representation of relevant stakeholders, where appropriate.

Government agrees to include the requirement that the Council includes an adaptation specialist. This is to reflect that the Council is a body comprised of specific expertise rather than being a representative body of parts of the community. Specific legislative changes to reflect the Council's foundation on specialist expertise would be considered separately.

Further, Government agrees to the requirement for a First Nations representative. However, agreement comes with the condition that the requirement specify the membership of a Ngunnawal representative as the Council oversees matters that pertain directly to Ngunnawal Country.

Government agrees to remove the requirement for a public employee on the Council. Removing this requirement removes a source of potential conflict of interest in advising. A Senior Executive representative from the Environment, Planning and Sustainable

Development Directorate would instead continue to facilitate an effective working relationship between the Council and Government.

### ***Part 5: Sector Agreements***

#### **Recommendation 11**

Section 23 (1) – *Amend the definition of a Sector agreement by removing ‘on a voluntary basis.’*

#### **Response: AGREE**

The ACT Government agrees to removing the words ‘on a voluntary basis’ in relation to Sector Agreements. Given the urgency of climate change response, this allows more flexibility for possible actions in future. Further consideration of opportunities for Sector Agreements in the ACT is required.

This amendment would allow for commercial terms to be applied and commercial value to be given to Sector Agreements, encouraging further community and private sector engagement in achieving future emissions reduction and renewable energy targets.

#### **Recommendation 12**

Section 23 (1)(c) – *Include ‘adaptation’ to ‘other avoidance or mitigation activities’ as a strategy accepted under the Sector agreements.*

#### **Response: AGREE**

The ACT Government agrees to include the word ‘adaptation’ in the description of strategies included in Sector Agreements. This ensures Sector Agreements can deal with both mitigation and adaptation activities. Existing strategies considered under the Act would remain.

This amendment would expand the scope for potential Sector Agreements in the future. Further, it aligns with the Act’s object to facilitate Government’s development of policies and programs to address and adapt to climate change.