

# ***Climate Change and Greenhouse Gas Emissions Reduction Bill 2021***

## **EXPLANATORY MEMORANDUM**

The *Climate Change and Greenhouse Gas Emissions Reduction Bill 2021* (Bill) provides an opportunity for Western Australia to contribute to reducing the effects of climate change by setting targets for the reduction of greenhouse gas emissions and increasing the generation and consumption of electricity from renewable energy sources.

The Bill imposes targets which aim to:

- achieve 90% of electricity generated in the State by 30 June 2030 to be from renewable energy sources. Renewable energy sources are sources of energy that are naturally replenished, such as energy derived from solar, wind, geothermal, hydro or various actions of the oceans,
- Achieve a 50% reduction in Western Australia's greenhouse gas emissions.
- promote and support the State's regions, industries and communities in the transition to a net zero emissions economy including taking advantage of the opportunities and addressing the impacts from it.

In general terms, the Bill has the following aims –

- the government of the day, through the Minister, is to take the lead in addressing the impacts of climate change, by requiring the Minister to prepare a climate change strategy and other policies that provide pathways for meeting the targets and address the impacts on the vulnerable sectors of the community and industry that will be most impacted by climate change.
- to provide accountability for meeting the targets, by requiring the Minister to make annual determinations on progress towards meeting the targets.
- to provide transparency, by requiring the Minister to report annually to Parliament on progress towards meeting the targets and if they are not met, explain why not; and to report on the advice or recommendations received from the Climate Change Council and other independent expert advice.
- to ensure that decisions under this Act should be consistent with limiting the increase in global warming to well below 2°C and pursuing efforts to limit it to 1.5°C above pre-industrial levels.

A Climate Change Council is established under the Bill to provide independent and expert advice and recommendations to the Minister on matters such as reducing greenhouse gas emissions, removing greenhouse gases from the atmosphere, promoting the renewable electricity industry and addressing climate change and its effects including mitigation, adaptation and disaster risk reduction measures. It is also required to review the progress in meeting the targets and how the Minister is performing his or her functions under the Bill.

The Bill also requires government decision makers to consider climate change considerations as part of their decision-making process. This applies to making a decision or recommendation on a particular application or matter, or preparing or implementing a broader policy, program, strategy or similar document or process, if it would be likely to have certain climate change related impacts.

The Bill expressly prohibits a decision maker from taking one of these actions if it would have the effect of allowing specified thresholds for greenhouse gas emissions or generation or consumption of electricity from non-renewable energy sources to be exceeded.

Decision makers are required to have regard to the intergenerational principle, the precautionary principle, and the social equity principle as well as other enumerated considerations and any guidelines made by the Minister.

A detailed explanation of the clauses in the Bill follows.

Part 1	Preliminary
Clause 1	provides that the short title of the Act is the <i>Climate Change and Greenhouse Gas Emissions Reduction Act 2021</i> .
Clause 2	sets out the commencement provisions. Subclause (a) provides that clauses 1 and 2 of the Bill commence on Royal Assent and subclause (b) provides that the rest of the Bill commences on a day fixed by proclamation.
Clause 3	sets out the objects of the Bill, which in general terms relate to the State's contribution and response to climate change particularly through greenhouse gas emissions, electricity generation from renewable and non-renewable energy sources and mitigation, adaptation and disaster risk reduction measures; the transition to a net zero emissions economy; and supporting those who are vulnerable to the impacts of climate change.
Clause 4	sets out the guiding principles for the Bill, which are the <i>precautionary principle</i> , the <i>principle of intergenerational equity</i> and the <i>principle of social equity</i> .  The guiding principles apply for the following purposes under the Bill: <ul style="list-style-type: none"> <li>• the pursuit of the objects of the Bill (clause 3(2));</li> <li>• the exercise of the Minister's functions (clause 14(2));</li> <li>• a decision maker taking any action under Part 4 (clause 26(1)(c)); and</li> <li>• the preparation of guidelines by the Minister (clause 27(4)).</li> </ul>
Clause 5	sets out the defined terms used in the Bill. Some of the terms are self-explanatory or refer to the relevant provision in the Bill where the term is defined in detail.  An explanation of other, more detailed, defined terms are as follows:  <b>agency</b> is broad in its application so that the decision-making considerations in Part 4 apply to all government departments, statutory authorities and government trading enterprises, by being defined to mean any of the following –

- (a) a public sector body as that term is defined in section 3(1) of the *Public Sector Management Act 1994*, which includes an agency as that term is defined in that same section; and
- (c) a statutory authority as that term is defined in the *Financial Management Act 2006*.

**climate change strategy** means the strategy prepared under clause 15, or as it is amended or replaced under clause 17.

**Council** means the Climate Change Council established under clause 19.

**greenhouse gas** defines the gases to which the Bill applies. Greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007*, and includes any of the following –

- (a) carbon dioxide;
- (b) methane;
- (c) nitrous oxide;
- (d) hydro fluorocarbons;
- (e) perfluorocarbons;
- (f) sulphur hexafluoride;
- (g) any other gas that is prescribed for the purposes of this definition.

**greenhouse gas emissions** means the emission of one or more greenhouse gases in Western Australia or outside Western Australia (but within the Commonwealth of Australia) as a result of energy that was sourced, produced or processed in Western Australia.

**fossil fuel** is defined to mean any of the following –

- (a) petroleum as defined in section 5(1) of the *Petroleum and Geothermal Energy Resources Act 1967*;
- (b) coal;
- (c) oil shale as defined in section 8(1) of the *Mining Act 1978*;
- (d) methane clathrates.

**interim emissions target** has the meaning given in clause 7(1). Clause 7(2) defines the interim emissions target to be the reduction of net greenhouse gas emissions by at least 50% of the 2005 levels of greenhouse gas emissions, by 30 June 2030.

**interim renewable energy target** has the meaning given in clause 8(2). Clause 8(2) sets the target that by 30 June 2025, 50% of electricity generated in Western Australia is to be from renewable energy sources.

**long term renewable energy target** has the meaning given in clause 8(1). Clause 8(1) defines the long term renewable energy target to be 90% of electricity generated in Western Australia is to be from renewable sources by 30 June 2030.

**member** means a member of the Climate Change Council appointed under Division 2 of Part 3.

**net emissions** means the number determined as the net emissions in the following equation –

$$\text{net emissions} = E - R$$

where —

*E* is the amount of greenhouse gas emissions for the relevant period determined in accordance with the target methodology (prescribed or set under clause 10) for the emissions target.

*R* is the amount of greenhouse gases removed from the atmosphere for the relevant period determined in accordance with the target methodology (prescribed or set under clause 10) for the emissions target.

**net zero emissions** means the net emissions for the relevant period is equal to or less than zero, i.e. net zero emissions or net removal of greenhouse gases from the atmosphere.

**non-renewable energy source** means any of the following –

- (a) fossil fuels;
- (b) nuclear;
- (c) native forest biomass.

**prescribed target** means a target prescribed under clause 9(1).

**renewable electricity** means electricity generated from renewable energy sources.

**renewable energy source** means any of the following —

- (a) hydro;
- (b) wave;
- (c) tide;
- (d) ocean thermal;
- (e) wind;
- (f) solar;
- (g) geothermal;
- (h) any other energy source that is prescribed for the purposes of this definition but which may not include a non-renewable energy source.

**reporting year** means the 12 month period ending on the immediately preceding 30 June, prior to the relevant date.

**target** means each of the following —

- (a) a prescribed target

	<p>(b) interim emissions target;</p> <p>(c) long term renewable energy target; and</p> <p>(d) interim renewable energy target.</p> <p>.</p> <p><b>target date</b> means the date by which a target must be met under clause 7, 8 or 9. The target dates are for —</p> <p>(a) the interim renewable energy target, 30 June 2025;</p> <p>(b) the long term renewable energy target and the interim emissions target, 30 June 2030;</p> <p>; and</p> <p>(c) a prescribed target, the target date that is prescribed for the purposes of the target under clause 9(3).</p> <p><b>target methodology</b> means the method for determining compliance with the relevant target which is —</p> <p>(a) prescribed by regulation under clause 10(2); or</p> <p>(b) set by the Minister under clause 10(3); or</p> <p>(c) a method set by the Minister under clause 10 as amended by clause 11.</p> <p><b>transition to a net zero emissions economy</b> means the collective efforts by all sectors of the economy, being the government, agencies, industries, communities and individuals, to meet the targets.</p>
Clause 6	provides that the Act binds the Crown in right of Western Australia and in all of its other capacities.
Part 2	deals with the targets set by the Bill.
Clause 7	<p>sets out the targets for the reduction of greenhouse gas emissions as being:</p> <p>(a)</p> <p><b><i>interim emissions target</i></b> – to reduce net greenhouse gas emissions by at least 50% of the 2005 levels of greenhouse gas emissions, by 30 June 2030 (subclause (2)).</p>
Clause 8	<p>sets out the targets for the increase in renewable energy generation as being:</p> <p>(a) <b><i>long term renewable energy target</i></b> – 90% of electricity generated in the State by 30 June 2030 is from renewable energy sources (subclause (1));</p> <p>(b) <b><i>interim renewable energy target</i></b> – 50% of electricity generated in the State by 30 June 2025 is from renewable energy sources (subclause (2)).</p>

<p>Clause 9</p>	<p>Subclause (1) provides targets that are supplementary to the targets in clauses 7 and 8 may be set by regulations in the future, in relation to one or more of the following —</p> <ul style="list-style-type: none"> <li>(a) greenhouse gas emissions;</li> <li>(b) the removal of greenhouse gases from the atmosphere;</li> <li>(c) renewable energy sources in the State;</li> <li>(d) the generation of electricity from renewable energy sources in the State.</li> </ul> <p>Subclause (2) reinforces the importance of meeting the targets by or before the target date, by allowing a prescribed target to bring forward a target date but it may not extend a target date to a later date.</p> <p>Subclause (3) provides that if a new target is prescribed, the regulation must also prescribe a target date for the new target.</p>
<p>Clause 10</p>	<p>relates to the method for determining compliance with each target, i.e. whether the target has been met or determining the progress that is being made towards meeting the target.</p> <p>Under subclause (1)(a), the method for determining compliance with the interim emissions target includes —</p> <ul style="list-style-type: none"> <li>(a) the method for determining the amount of greenhouse gas emissions;</li> <li>(b) determining the activities that remove greenhouse gases from the atmosphere;</li> <li>(c) the method for determining the amount of greenhouse gases removed from the atmosphere due to those activities;</li> <li>(d) setting the baseline 2005 levels of greenhouse gas emissions.</li> </ul> <p>Under subclause (1)(b), the method for determining compliance with the long term or interim renewable energy target includes —</p> <ul style="list-style-type: none"> <li>(a) determining the energy sources that generate electricity in the State and which of those are renewable energy sources;</li> <li>(b) the method for determining the amount of electricity generated from energy sources.</li> </ul> <p>Subclause (2) provides that the method for determining compliance with a target may be prescribed in the regulations.</p> <p>Subclause (3) provides that if the regulations do not prescribe a method of determining compliance with a target, the Minister must set the method within 6 months of the day on which the clause comes into operation.</p> <p>Under subclause (4), before setting a method for determining compliance with a target the Minister is required to:</p>

	<p>(a) consult with the Council and try to reach consensus with it on the proposed method; and</p> <p>(b) obtain independent expert advice on the proposed method.</p> <p>Under subclause (5) the Minister must ensure the method for determining compliance with a target is consistent with the best national and international practices that relate to the method for determining compliance with the target.</p> <p>If the Minister sets a method for determining compliance with a target (i.e. it is not prescribed by regulation), the Minister is required to publish the method within 28 days of setting it, in the manner set out in clause 31 (subclause (6)).</p>
<p>Clause 11</p>	<p>The Minister may amend the method for determining compliance with a target that the Minister has set under clause 10(3), under clause 11(1).</p> <p>Clause 11(2) provides that clauses 10(1), (4) and (5) apply similarly to the amendment of a method for determining compliance with a target.</p> <p>Under subclause (3) the Minister is required to publish an amendment of a method for determining compliance with a target within 28 days of the amendment, in the manner set out in clause 31.</p>
<p>Clause 12</p>	<p>requires the Minister to make determinations, by 31 August in each year, for the reporting year (i.e. up to the immediately preceding 30 June) of various matters relating to the targets and the general objects of the Bill. The determinations are to be made in accordance with any applicable target methodology.</p> <p>Under subclause 10(1), the Minister must determine –</p> <p>(a) the amount of greenhouse gas emissions;</p> <p>(b) the amount of greenhouse gases removed from the atmosphere;</p> <p>(c) the amount of net greenhouse gas emissions expressed as a percentage of the 2005 levels of greenhouse gas emissions;</p> <p>(d) the net emissions;</p> <p>(e) the average amount of greenhouse gas emissions per individual in Western Australia;</p> <p>(f) the percentage of electricity generated in the State from renewable energy sources; and</p> <p>(g) any other matter prescribed under subclause (3).</p> <p>The purpose of this provision is to show whether the State is on track to achieve the targets by the relevant target dates.</p> <p>Under subclauses 10(2) and 10(1)(c) the Minister will need to provide a percentage figure of greenhouse gas emissions based on the 2005 levels of greenhouse gas emissions each year until the later of 30 June 2030, or when the emissions target is met.</p>

	Under subclause (3), if a supplementary target is prescribed under clause 9(1), the regulations may also prescribe matters that the Minister is to make a determination on under subclause (1) relating to that supplementary target.
Part 3 Division 1	sets out the Minister's role and functions under the Bill.
Clause 13	defines, for the purposes of Division 1, the <b>Minister's determinations</b> as being the annual determinations the Minister is required to make under clause 12.
Clause 14	<p>Subclause (1) sets out the Minister's functions under the Bill, which are wide ranging and are broadly intended to –</p> <ul style="list-style-type: none"> <li>(a) provide policies that are aimed at achieving the targets and respond to climate change in Western Australia;</li> <li>(b) provide support for sectors of the community and industry vulnerable to the effects of climate change and the transition to a net zero emissions economy;</li> <li>(c) promote opportunities arising from the transition to a net zero emissions economy; and</li> <li>(d) monitor, promote research into, and publish information in relation to the effects of climate change.</li> </ul> <p>Under subclause (2) the Minister is required to apply the guiding principles and take into account advice received from the Council when exercising the Minister's functions under subclause (1).</p>
Clause 15	<p>Subclause (1) requires the Minister to prepare a climate change strategy, and publish it in accordance with clause 31, within 12 months from the date on which the clause comes into operation.</p> <p>Subclause (2) sets out what is required to be included in the climate change strategy, which are the following –</p> <ul style="list-style-type: none"> <li>(a) the proposed pathways for meeting the targets;</li> <li>(b) the government's priorities and timelines for undertaking the pathways;</li> <li>(c) the likely impact of the transition to a net zero emissions economy on low income households and vulnerable industries, regions and communities.</li> </ul> <p>The climate change strategy must also include a transition plan which sets out fair and just measures that are proposed to address the expected impact of the transition to a net zero emissions economy on low income households and vulnerable industries, regions and communities (subclause (3)).</p> <p>Under subclause (4), the climate change strategy shall also include measures relating to the mitigation of or adaptation to the effects of climate change, the reduction of societal vulnerabilities, particularly</p>

	<p>among socio-economically disadvantaged populations, resilience building, and disaster risk reduction.</p> <p>The Minister is required to consult with the Council in preparing the climate change strategy (subclause (5)).</p>
Clause 16	<p>The Minister is required to review the climate change strategy at least once every 5 years (subclause (1)), and prepare a report based on the review (subclause (2)).</p> <p>The Minister may, as a result of the review, amend the climate change strategy, or revoke it and immediately replace it with another climate change strategy under clause 17 (subclause (3)).</p> <p>Details of the review are required to be included in the Minister's next report to Parliament under clause 18(8).</p>
Clause 17	<p>Under subclause (1) the Minister may amend the climate change strategy, or revoke and immediately replace it with another climate change strategy.</p> <p>Under subclause (2), any amended or replacement climate change strategy must –</p> <ul style="list-style-type: none"> <li>(a) include the requirements in clause 15(2) (various statements) and 15(3) (transition plan); and</li> <li>(b) may include any of the matters set out in clause 15(4).</li> </ul> <p>Also under subclause (2), the Minister must consult with the Council in relation to any amendment to, or revocation and replacement of the climate change strategy.</p> <p>Under subclause (3) the Minister is required to publish an amendment to, or revocation and replacement of the climate change strategy within 28 days of the amendment or revocation and replacement, in the manner set out in clause 31.</p>
Clause 18	<p>provides for mandatory reporting by the Minister to Parliament each year, to ensure accountability and transparency for the performance of the Minister's functions under the Bill.</p> <p>The Minister's report is to be prepared and laid before each House of Parliament by 31 October in each year (subclause (1)).</p> <p>Under subclause (2) the Minister must report on the following matters every year –</p> <ul style="list-style-type: none"> <li>(a) what are the targets and the methodology used to determine compliance with each target;</li> <li>(b) the Minister's determinations made under clause 12 in relation to greenhouse gas emissions and renewable energy generated, for the year to the previous 30 June;</li> </ul>

- (c) a comparison of the Minister's determinations for the year with the annual determinations made since the Act came into force;
- (d) detailed information in relation to greenhouse gas emissions; the removal of greenhouse gases from the atmosphere; and electricity generation;
- (e) an explanation for any difference in the Minister's determinations for the current reporting year with the immediately preceding reporting year;
- (f) an analysis of –
  - (i) the annual and cumulative progress towards meeting the targets;
  - (ii) how effective the pathways set out in the climate change strategy are;
  - (iii) how any policies or schemes that promote greenhouse gas emissions reduction, the removal of greenhouse gases from the atmosphere or the generation of electricity from renewable energy sources (as set out in subclause (3)) are performing;
  - (iv) how any strategies or actions being taken by agencies that promote greenhouse gas emissions reduction, the removal of greenhouse gases from the atmosphere or the generation of electricity from renewable energy sources (as set out in subclause (3)) are performing;
- (h) any other matter prescribed;
- (i) any other information relevant to the targets that the Minister considers appropriate to be included in the report.

Under subclause (4) the regulations may prescribe information in relation to a prescribed target that is to be included in the report.

Subclause (5) provides that every second year the report must report also include further information as follows –

- (a) what the Minister has done in the performance of his or her functions under the Bill and the results;
- (b) the levels of investment and employment in relation to greenhouse gas emissions reduction, the removal of greenhouse gases from the atmosphere and the generation of electricity from renewable energy sources; and
- (c) what the Minister has done to promote or achieve an increase in the levels of investment and employment as described under paragraph (b).

Each report that is due next after a target date, must state if the target was met (subclause (6)).

	<p>Under subclause (7), if a target has not been met by the target date, the Minister must in the next report (and in each report until the target is met) include –</p> <ul style="list-style-type: none"> <li>(a) an explanation why the target was met;</li> <li>(b) what action the Minister is taking so the target will be met or, in the case of an interim target, so the final target will be met; and</li> <li>(c) how the Minister's new actions are different from the previous actions that were taken, in the case of a target that was not met.</li> </ul> <p>Each report that is due next after a review of the climate change strategy under clause 16 must include a summary of the outcome of the review and –</p> <ul style="list-style-type: none"> <li>(a) what action has been taken or is proposed to be taken as a result of the review including an amendment to, or revocation and replacement of the climate change strategy; or</li> <li>(b) an explanation why no action has been taken and none is proposed as a result of the review (subclause (8)).</li> </ul>
<p>Part 3 Division 2</p>	<p>makes provision for a Climate Change Council.</p>
<p>Clause 19</p>	<p>formally establishes the body called the Climate Change Council.</p>
<p>Clause 20</p>	<p>provides for the Council's membership.</p> <p>Under subclause (1) the Council may have between 7 and 9 members who are appointed by the Minister in writing.</p> <p>Under subclause (2) the Minister must ensure the people who are appointed members of the Council meet certain criteria –</p> <ul style="list-style-type: none"> <li>(a) the members must have a broad range of skills and knowledge relating to climate change;</li> <li>(b) at least one member must an Aboriginal person;</li> <li>(c) at least one member is qualified to represent each of the environment and conservation sector; the scientific community and socially or financially disadvantaged persons;</li> <li>(d) the other members must have an interest, expertise, experience or skills in a range of relevant backgrounds, as provided for in subclause (2)(d).</li> </ul> <p>This criteria is designed to provide a Council membership that has a broad range of representation and skills, commensurate with the broad ranging impacts of climate change.</p> <p>Subclause (3) reinforces the criteria for Council membership, by requiring all members to demonstrate to the Minister's satisfaction that –</p> <ul style="list-style-type: none"> <li>(a) the person is committed to action to address climate change; and</li> </ul>

	<p>(b) the person has an understanding of the issues and impacts associated with climate change.</p> <p>A public service officer may not be a member of the Council, to ensure the independence of the Council and any such officer who is otherwise qualified will be available to provide advice to the Minister via the relevant department (subclause (4)).</p> <p>The procedure for appointing persons as Council members may be prescribed in the regulations (subclause (5)).</p> <p>The Minister must appoint one of the Council members to be the chairperson of the Council (subclause (6)).</p>
Clause 21	<p>provides for the functions of the Council (in subclause (1)), which are to –</p> <p>(a) to provide independent and expert advice to the Minister on various matters relating to the objects of the Bill; and</p> <p>(b) to review progress in meeting the targets and the performance by the Minister of its functions under the Bill.</p> <p>Under subclause (2) the Council has additional functions as are imposed by the Minister or the Bill.</p> <p>Subclause (3) details the matters on which the Council may advise the Minister, in performing the Council's functions, which include in general terms:</p> <p>(a) energy efficiencies;</p> <p>(b) renewable electricity generation and use;</p> <p>(c) the targets;</p> <p>(d) the impact of climate change on the business sector and the community, including barriers;</p> <p>(e) encouraging private entities to take actions in relation to climate change;</p> <p>(f) practices and policies of business and other jurisdictions that might be applicable to Western Australia; and</p> <p>(g) costs.</p>
Clause 22	<p>provides that Schedule 1 of the Bill applies to the Council. Schedule 1 deals with the Council membership, proceedings of the Council and related matters.</p>
Clause 23	<p>relates to the annual report of the Council.</p> <p>Under subclause (1) the Council is required to submit a report to the Minister by 30 November in each year. The report is to detail the Council's proceedings and activities for the year to the previous 30 June.</p>

	<p>Under subclause (2) the annual report is also to include –</p> <ul style="list-style-type: none"> <li>(a) a summary of any advice or recommendations given to the Minister by the Council; and</li> <li>(b) the Council's review of the progress in meeting the targets and the performance by the Minister of his or her functions under the Bill, as required under clause 21(1)(b).</li> </ul> <p>The Minister is then required to table the Council's report in each House of Parliament within 14 sitting days of receiving the report and to table a statement that explains –</p> <ul style="list-style-type: none"> <li>(a) how much the Minister has acted on any advice or recommendations from the Council or an independent expert under clause 10(4)(b) for that reporting year; or</li> <li>(b) if the Minister has not acted on any such advice or recommendations, the reason for not acting on it (subclause (3)).</li> </ul> <p>The purpose of the report and the Minister's statement is to advise Parliament on how the State is progressing towards meeting the targets and how the Minister is performing under the Bill, and so will provide accountability and transparency.</p>
Part 4	provides for decision makers to take into account climate change related considerations in taking defined actions.
Clause 24	<p>Subclause (1) sets out the defined terms which only apply in Part 4 of the Bill.</p> <p>A <b>decision maker</b> is defined widely to include any Minister of the Crown, agency (as defined in clause 5) or other person who exercises a power or takes an action (as defined in subclause (2)) under a written law.</p> <p>Some actions, such as policies and strategies, may not involve the exercise of a specific power under an Act. The Bill is intended to apply to both the exercise of a specific power under an Act, and an 'action' being taken that more broadly relates to the objectives of an Act.</p> <p>Subclause (2) defines an <b>action</b>. It can be –</p> <ul style="list-style-type: none"> <li>(a) a specific recommendation or decision, which more often arises in the context of the exercise of a specific power under an Act; or</li> <li>(b) more broadly, a policy, program, strategy, report, practice or process, which need not necessarily arise as a result of the exercise of a specific power under an Act but may relate to the objectives or implementation of an Act.</li> </ul>

	<p>However, Part 4 only applies to an '<b>action</b>' if the action has the potential, if acted on or applied, to do any of the following –</p> <ul style="list-style-type: none"> <li>(a) impact the State's ability to adapt to climate change or undertake disaster risk reduction measures;</li> <li>(b) contribute to greenhouse gas emissions; or</li> <li>(c) impact the removal of greenhouse gases from the atmosphere.</li> </ul> <p>In other words, Part 4 only applies to those actions, if acted on (such as a decision to approve a project) or applied (such as a policy or program) that would have the potential to impact (positively or negatively) on the various climate change related matters listed in clause 24(2)(c) – (e).</p> <p>It is the outcome of the action (such as the development of a project pursuant to a decision to approve it, or the application or implementation of a government policy or program) which is to have the necessary potential to impact on the climate change related matters listed in clause 24(2)(c) – (e), not the action itself (such as the decision to approve, or the making of the government policy or program).</p>
<p>Clause 25</p>	<p>Subclause (1) prohibits a decision maker from taking an action that will, or is likely to, have the effect of permitting a new project, development or facility that would exceed a threshold specified in subclause (2).</p> <p>The thresholds are –</p> <ul style="list-style-type: none"> <li>(a) the total amount of greenhouse gases emitted per year associated with the project, development or facility must not be, or exceed, a carbon dioxide equivalence of 25 kilotonnes;</li> <li>(b) the total amount of energy produced each year by the project, development or facility from a non-renewable energy source must not be, or exceed, 100 terajoules;</li> <li>(c) the total amount of energy consumed each year by the project, development or facility from a non-renewable energy source must not be, or exceed, 100 terajoules.</li> </ul>
<p>Clause 26</p>	<p>provides that a decision maker must, before taking an action, consider the climate change related matters listed in clause 26(1)(a) – (d), which are –</p> <ul style="list-style-type: none"> <li>(a) the potential impacts of climate change that are relevant to the action, if it is acted on or applied;</li> <li>(b) the potential contribution to greenhouse gas emissions of the action, if it is acted on or applied;</li> <li>(c) the guiding principles set out in clause 4, being the <i>precautionary principle</i>, the <i>principle of intergenerational equity</i> and the <i>principle of social equity</i>;</li> <li>(d) any guidelines made under clause 27, that are relevant to –</li> </ul>

	<ul style="list-style-type: none"> <li>(i) the action itself, such as making a decision or developing a government policy or program; or</li> <li>(ii) the action if it is acted on or applied, such as the development of a project pursuant to a decision to approve it, or the application or implementation of a government policy or program.</li> </ul> <p>Under subclause (2), if a decision maker is considering an action that has the potential to impact the State's ability to mitigate or adapt to climate change or undertake disaster risk reduction measures, the decision maker must have regard to the potential biophysical, economic, environmental, health and social impacts; in addition to the matters provided for in subclause (1). The consideration of these additional impacts must include long and short term, beneficial and detrimental, direct and indirect, and cumulative impacts.</p> <p>Under subclause (3), if a decision maker is considering an action that has the potential to contribute to greenhouse gas emissions, the decision maker must have regard to potential emissions that are long and short term, direct and indirect, increases and decreases, and cumulative impacts of those emissions; in addition to the matters provided for in subclause (1).</p> <p>Under subclause (4), if a decision maker is considering an action that has the potential to impact the removal of greenhouse gases from the atmosphere, the decision maker must have regard to potential removal of greenhouse gases in the long and short term, increases and decreases, and cumulative impacts of the removal; in addition to the matters provided for in subclause (1).</p> <p>Subclause (5) confirms that the decision maker may take into account any other matter before taking an action.</p> <p>To provide a degree of accountability and transparency, a decision maker must record in writing how the matters provided for in clause 26 that are relevant to the action were had regard to before taking the action.</p>
<p>Clause 27</p>	<p>Subclause (1) gives the Minister the power to make guidelines that provide policy or practical guidance to decision makers on how they can take an action under Part 4 or otherwise comply with Part 4 (such as how to record an action under clause 26(6)).</p> <p>Subclause (2) sets out in more detail the types of matters that the guidelines may relate to, being in general terms any of the following –</p> <ul style="list-style-type: none"> <li>(a) climate change related matters;</li> <li>(b) matters a decision maker must have regard to under clause 26;</li> <li>(c) the potential of an action, if acted on or applied, to impact the State's ability to adapt to climate change or undertake disaster risk reduction measures, to contribute to greenhouse gas emissions, or impact the removal of greenhouse gases from the atmosphere;</li> </ul>

	<p>(d) the possible application to an action of a State policy on the State's ability to adapt to climate change or undertake disaster risk reduction measures, to contribute to greenhouse gas emissions, or impact the removal of greenhouse gases from the atmosphere.</p> <p>Subclause (3) gives the Minister power to vary or revoke any guidelines.</p> <p>The Minister must have regard to the guiding principles in making or varying any guidelines (subclause (4)).</p> <p>Subclause (5) requires the Minister to consult with the Council before making, varying or revoking any guidelines.</p>
<p>Clause 28</p>	<p>provides that the guidelines made under clause 27 are not subsidiary legislation for the purposes of the <i>Interpretation Act 1984</i> (WA).</p> <p>However, sections 41, 43 (other than subsection (6)) and 44 of the <i>Interpretation Act 1984</i> (WA) apply to the guidelines as if they were subsidiary legislation (subclause (2)).</p> <p>Section 41 provides that subsidiary legislation is required to be published in the Government gazette and that it comes into effect on the date of publication (or other day specified in the subsidiary legislation). Therefore, the guidelines will need to be published in the Government gazette and will come into effect on the publication date (or other day specified in the guidelines).</p> <p>Section 43 (other than subsection (6)) has general provisions relating to making subsidiary legislation which will apply to the guidelines. These provisions include guidelines may not be inconsistent with the Bill; all steps to make the guidelines will be presumed to have been complied with; and the guidelines may be extended or limited in their application including to geographical areas, time periods and classes of case.</p> <p>Section 43(6) relates to the power to impose penalties, which is not applicable here.</p> <p>The effect of section 44 is that words defined in the guidelines will have the same meaning as they have in the Bill.</p> <p>Subclause (3) confirms that if there is an inconsistency between a provision of the Bill and the guidelines, the Bill provision prevails.</p> <p>A reference to guidelines in clause 28 includes a variation or revocation of the guidelines. So, for example, a variation or revocation of the guidelines must be published in the Government gazette.</p>
<p>Clause 29</p>	<p>confirms that if a provision of Part 4 is inconsistent with a provision in another Act, the provision in Part 4 prevails. So, for example, if an action may be permitted under another Act but would not be permitted under section 25 as a threshold would be exceeded, the action may not be approved under the other Act.</p>

Part 5	Miscellaneous
Clause 30	confirms that nothing in the Act affects a person from taking take legal proceedings to enforce a right to prevent, control or abate the impacts of climate change, greenhouse gas emissions or the generation of electricity from non-renewable energy sources; or to obtain damages. The provision does not give a new right to take proceedings, but merely confirms the Bill does not affect a right that the person may otherwise have.
Clause 31	<p>provides for the publication of the following documents (as defined in subclause (1)) made under the Bill –</p> <p>(a) a method for determining compliance with a target (set by the Minister under clause 10(3)), or an amendment of that method (made under clause 11);</p> <p>(b) the climate change strategy (made under clause 15) or an amendment or replacement of the climate change strategy (made under clause 17).</p> <p>The documents are to be published in either of the following ways –</p> <p>(a) publication of the document itself in the Government gazette; or</p> <p>(b) publication of a notice in the Government gazette stating the document has been made and that the contents of the document are available from the head office of the department or on its website (subclause (2)).</p> <p>The documents described above, and any guidelines made or varied by the Minister under clause 27 are required to be made available at the head office of the department and on its website (subclause (3)).</p>
Clause 32	<p>gives the Governor power to make regulations that are required or permitted by the Bill to be made or are necessary to give effect to the purposes of the Act (subclause (1)).</p> <p>In addition, the regulations may set out requirements for persons to provide information to the Minister so the Minister can better perform his or her functions under the Bill, such as making the annual determinations under clause 12 and reporting on various matters to Parliament under clause 18. In many cases the relevant information will be held by industry rather than the Minister or government agencies (subclause (2)).</p> <p>Regulations made under subclause (2) may also include an offence provision with a penalty (fine not exceeding \$10,000) for non-compliance (subclause (3)).</p>
Clause 33	provides for a standard form of protection from liability for wrongdoing for a person doing anything in good faith in the performance or purported performance of a function under the Bill.

Clause 34	<p>Subclause (1) requires the Minister to carry out a review of the Bill every 5 years.</p> <p>Under subclause (2), the review must consider whether the objects of the Act, including the targets, are being achieved; whether other legislative measures are necessary to achieve the objects of the Act; and anything else considered relevant by the Minister to the operation and effectiveness of the Act.</p> <p>The Minister must prepare a report based on the review (subclause (3)).</p> <p>The Minister must consult with the Council as part of the review, and must include in the report a summary of any advice or recommendations given by the Council in relation to the review (subclause (4)).</p> <p>The Minister is required to cause the report to be laid before each House of Parliament (subclause (5)).</p>
Part 6	Consequential amendments to other Acts
Clause 35	<p>consequentially amends the <i>Constitution Acts Amendment Act 1899</i> by inserting reference to the Council in Schedule V Part 3. Under section 37(3) of that Act, if a person is declared elected as a member of Parliament, then that person's membership of any of the Boards listed in the Schedule is vacated.</p> <p>The effect of the amendment is to include the Council as one of the Boards listed in the Schedule, and so section 37(3) will apply to a Council member.</p>
Clause 36	<p>consequentially amends section 5 of the <i>Environmental Protection Act 1986</i>, the effect of which is that if there is an inconsistency between that Act and a provision in Part 4 of the Bill, the provision in Part 4 of the Bill prevails.</p> <p>So, for example, a project could not be approved under that Act if the project would exceed one of the thresholds in clause 25.</p>
Schedule 1	Provisions about the Climate Change Council
Clause 1	provides that a member of the Council can only hold office for up to 3 years, but they may be reappointed.
Clause 2	<p>provides that a member's office is vacated if the member resigns, dies or the appointment is terminated under the clause.</p> <p>The Minister has the power to terminate the appointment of a member for a range of reasons, including if the member misses 3 meetings in a row without leave or with no excuse; is bankrupt or are under insolvency laws; mental or physical incapacity; neglect of duty; misconduct; incompetence; or any other reasonable cause.</p>
Clause 3	provides that a member is to be paid such remuneration and allowances as the Minister determines, based on recommendations of the Public Sector Commissioner.

Clause 4	<p>outlines the administrative requirements for Council meetings including –</p> <ul style="list-style-type: none"> <li>(a) the Council must meet at least 4 times a year;</li> <li>(b) the quorum for a meeting is any 4 members.</li> </ul>
Clause 5	allows for members to attend meetings via telephone or other instantaneous communication.
Clause 6	<p>outlines the administrative requirements for voting. In the case of an equal number of votes –</p> <ul style="list-style-type: none"> <li>(a) the member presiding at a meeting has a casting vote in addition to a deliberative vote;</li> <li>(b) the Council must provide to the Minister a summary of the minority view and the reason for it, if requested to do so at the meeting by a member of the minority, at the same time as providing to the Minister the advice or recommendation that was so passed at the meeting.</li> </ul>
Clause 7	provides that a member is required to disclose any material personal interest he or she has in a matter being considered by the Council. The member presiding at a meeting may call on a member to make such a disclosure and if they fail to do so the member presiding may determine that the member has such an interest.
Clause 8	<p>allows for participation by a member with a personal interest in a matter (as disclosed or determined under clause 7) in the consideration or discussion on the matter, but they must not be present or take part in voting to advise the Minister on the matter.</p> <p>A member with a personal interest in a matter (as disclosed or determined under clause 7) may nevertheless take part in the consideration or discussion on the matter, and be present and take part in voting to advise the Minister on the matter if:</p> <ul style="list-style-type: none"> <li>(a) the Council has passed a resolution to the effect that the other members are satisfied that the interest is not significant enough to likely influence the member in considering or voting on the matter; and</li> <li>(b) the interested member was not present while the resolution in paragraph (a) was being considered at a Council meeting and did not vote on the resolution.</li> </ul>
Clause 9	allows the Council to determine its own meeting procedures, subject to any provisions in the Act (including this Schedule 1).
Clause 10	requires minutes of each Council meeting to be kept.
Clause 11	provides that a resolution may be made without a meeting taking place, if the resolution is in writing and is agreed by each member in writing.

	The resolution must be recorded in the minutes of the next Council meeting.
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