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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Climate Change (National Framework for Adaptation and Mitigation) Bill 2020

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of
the Member for Warringah, Ms Zali Steggall OAM MP

Climate Change (National Framework for Adaptation and Mitigation) Bill 2020

OUTLINE

Climate change is real for Australia, with immediate and deepening risks to our natural environment, economy and way of life. The 2019-20 summer bushfires were a clear indication of the worst of those risks, and how they will affect some communities more than others.

Almost at the same time, the COVID-19 pandemic has given the world a prelude to the kind of widespread disruption climate change will cause. The virus has put much of the world into recession including Australia – which entered recession for the first time in over two decades. Although we are among the nations who have coped with that challenge best, our economy will need support for many years to come.

But there is cause for optimism, by transitioning to a net zero emissions economy, Australia can right its economic course and benefit from the jobs, productivity and growth that will be created by new clean industries. This is the opportunity for our Government to make its most positive mark on Australia's future, a mark that will have widespread popular support.

Australia is uniquely positioned to prosper through this transition, given our financial wealth, human capacity, scientific innovation, zero-emission energy resources, and potential for soil regeneration and carbon sequestration.

To protect our economy and environment and to prosper in the future, Australia must have strong national plans to transition to a net zero emissions economy, adapt to climate change, to and reduce and mitigate its risks.

This Bill sets out a clear framework for development of national plans as our climate changes, and for progress to be rigorously monitored and reported.

This national framework will ensure that Australia has:

1. **a positive response to the challenges of climate change** that is effective, fiscally responsible and fair, and part of an effective international effort;
2. **national plans for adapting to a changing climate**, so that the different parts of our continent and economy can respond positively to changing physical conditions and international policies;
3. **national plans for reducing greenhouse gas emissions**, to meet emissions reduction targets that align with scientific imperatives and State government and international commitments, which may change over time; and
4. **transparent monitoring, reporting and accountability** for national adaptation planning and emission reduction actions, with an independent Climate Change Commission (the Commission) to advise Government and Parliament.

In putting this framework in place, Australia is fortunate to be able to learn from the debate and experience of other countries, including the United Kingdom, Germany, France, and New Zealand. The framework proposed in this Bill has been effective, particularly in the United Kingdom, where it has driven significant emissions reductions and the implementation of effective adaptation measures.

1. A positive response to the challenges of climate change

The Bill aims to ensure Australia has a clear and positive national response to the challenges of climate change: see Part 1 Division 1.

It recognises that climate change is a serious challenge to Australia's prosperity and security and this requires action to limit global warming to no more than 2°C above pre-industrial levels and pursue efforts to limit to 1.5°C, to protect livelihoods and the environment.

The Bill leaves national action in the hands of our elected Government but mandates an effective process for national targets, actions and reporting, with the Government guided by a respected Commission whose independence is assured by a Parliamentary Joint Committee.

The Bill's specific objectives are to:

- set a target for achieving net zero emissions by the year 2050;
- provide for a system of emissions budgeting;
- assess and prepare for climate change impacts;
- assist the national economy to adapt to climate change;;
- establish an independent body to ensure accountable and transparent plans to manage the climate challenge; and
- providing policy certainty to assist the private sector in decision making; and
- assisting and guiding the taking of action to meet Australia's obligations under the United Nations Framework Convention on Climate Change, the Kyoto Protocol, the Paris Agreement and any other international agreement relating to climate change.

Both the Government and the Commission must act consistently with the principles outlined in the Bill: see Part 1 Division 2. The principles state that action on climate change should be based on:

- effective, efficient and equitable action;
- informed decision making;
- risk-based integrated decision making;
- fiscal responsibility;
- fair employment transition;
- community engagement and self-determination; and
- national and international co-operation..

2. National plans for adapting to our changing climate

Australia is experiencing more severe and frequent bushfires, droughts, floods and heatwaves. While we cannot avoid their impacts, we can better prepare for them.

The Bill requires:

- the Commission to complete an annual National Climate Change Risk Assessment: see Part 2. The risk assessment identifies risks across Australia’s economy, society and environment, to which the Commonwealth will need to respond; and
- the Government to set five-year national adaptation plans (see Part 3) considering a range of economic and social issues, the distribution of the effects of climate change across society, international obligations and other relevant advice.

3. National plans for reducing greenhouse gas emissions

To play its part in keeping global warming within safe limits, Australia must reduce its own emissions and constructively fulfil obligations under international agreements.

The proposed legislation would require:

- a long-term national emissions target that aligns with scientific imperatives, State government policies and global commitments: see Part 4. Currently, that target is net zero emissions by 2050. The target is reviewed every five years by the independent Climate Change Commission taking into account a range of factors and may only increase in ambition;
- five-year national emissions budgets set in advance, with safeguards to ensure an achievable yet equitable reduction path through to the long-term target: see Part 5 Division 1; and
- five-year plans set at least five years in advance, to ensure that Australia meets those emissions budgets: see Part 5 Division 2.

4. Transparent monitoring, reporting and accountability

The Climate Change Commission will advise the Government on the adaptation plans, long-term target, emissions budgets and emission reduction plans (the Bill’s “elements”) in a transparent and accountable way.

It will:

- prepare national climate change risk assessments;
- advise the Minister on the adaptation plans, emissions budgets and emissions reduction plans, seeking to ensure they align with the guiding principles and are equitable across generations, regions and industries;
- advise the Minister of the effect of emissions from Australia’s fossil fuel exports in meeting the objects of the Act. These emissions will not be included in the initial national budgets; and
- monitor and report on progress towards implementing the adaptation and emission reduction plans, and towards meeting the emissions budgets and the net zero target: Part 6 Division 1. and
- prepare low emissions technology statements

To ensure that the Climate Change Commission is empowered, independent and accountable:

- the Commission has all the powers it needs to fulfil those functions;
- the Government cannot direct the Commission in relation to its functions or powers; and

- the Joint Parliamentary Commission approves Commission appointments and reviews its budget and expenditure: Part 6 Division 2.

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If passed, this Bill will enable Australia to make an immediate, positive and nationally supported response to the risks, challenges and opportunities of climate change.

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Part 1 – Introduction

Division 1 - Preliminary

Clause 1: Short Title

1. This clause is a formal provision and specifies the short title of the Bill as the *Climate Change (National Framework for Adaptation and Mitigation) Bill 2020*.

Clause 2: Commencement

2. This clause provides for the commencement of the Act on the day it receives Royal Assent.

Clause 3: Objects of this Act

3. This clause sets out the objects of the Bill, which are to recognise that climate change is a serious challenge to Australia's prosperity and security and that this requires a planned transition to a net zero emissions economy. The Bill sets out a framework to address the climate challenge by providing for a regular national risk assessment and the development of a national adaptation plan, setting an emissions reduction target by a target day (which is 31 December 2050) unless a Minister determines an earlier day, providing for a system of emissions budgeting, and establishing an independent body to ensure accountable and transparent plans to manage the climate challenge. By setting this national framework in law, the Bill builds the resilience of the national economy to climate change, aligns the Government and private sector in assessing risks, provides policy certainty for the private sector in decision making and assists Australia in meeting obligations under various international agreements.

Clause 4: Simplified outline of this Act

4. This clause sets out a simplified outline of the Bill. It should be noted that, while simplified outlines are included to assist readers to understand the substantive provisions, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

Clause 5: Definitions

5. This clause defines key terms used in the Bill.

Clause 6: Crown to be bound

6. This clause specifies that the Bill binds the Crown and does not make the Crown liable to be prosecuted for an offence.

Clause 7: Extension to the external territories

7. This clause specifies that the Bill extends to every external territory.

Clause 8: Interaction with other laws

8. This clause specifies that the Bill has effect despite any other law of the Commonwealth.

Division 2 – Guiding Principles

9. Division 2 sets out the principles decision makers must have regard to when making decisions under the Bill

Clause 9: Decision makers must apply guiding principles

10. This clause provides that decision makers must have regard to the guiding principles when making any decision or acting under this Bill.

Clause 10: Principle of effective, efficient and equitable action

11. This clause provides that decision makers must have regard to being effective in reducing the impact of climate change, be efficient in doing so and consistent with holistic Australian policy objectives and be equitable in terms of the impact on all parts of the Australian community.

Clause 11: Principle of informed decision making

12. This clause provides that any decision or action under this Bill must have regard to the best available academic peer reviewed research, public reports, any Technology Investment Roadmap and the most recent low emissions technology statement.

Clause 12: Principle of risk-based, integrated decision making

13. This clause provides that provides that any decision or action under this Bill must have regard to assessing and addressing the full risks relating to climate change and apply the precautionary principle.

Clause 13: Principle of fiscal responsibility

14. This clause provides that any decision or action under this Bill must have regard to seeking to maintain economic prosperity and public finances over the long term, taking into account the established evidence the direct costs of climate change, the impact of those costs and the costs of mitigation/early action.

Clause 14: Principle of fair employment transition

15. This clause provides that any decision or action under this Bill that may affect employment in an industry or geographic region must have regard to applying a range of measures to ensure a fair employment transition.

Clause 15: Principle of community engagement and self-determination

16. This clause provides that any decision or action under this Bill must have regard to providing adequate public consultation and provision of appropriate information to those affected.

Clause 16: Principle of national and international cooperation

17. This clause provides that any decision or action under this Bill must have regard to pursuing a coherent policy framework across the Commonwealth, States and Territories, fulfils Australia's obligations under international agreements and enables Australia to play a leadership role internationally by demonstrating that Australia's efforts reflect Australia's highest possible ambition and fair share of international action.

Part 2 – National Climate Change Risk Assessment

18. This part requires the Climate Change Commission to complete an annual National Climate Change Risk Assessment.

Clause 17: Commission must complete assessment

19. This clause provides that the Climate Change Commission must prepare and give to the Minister national climate change risk assessments within specified timeframes. The national climate change risk assessment must identify the full risks of climate change to Australia. The national climate change risk assessments, and the evidence to support the assessments must be published on the Commission's website as soon as practicable.

Clause 18: Factors to be taken into account

20. This clause provides that when preparing the national climate change risk assessment, the Climate Change Commission must consider a range of factors.

Part 3 – National adaptation plan

21. This part requires the Government's to set 5 year adaptation plans to respond to the risks outlined in the National Climate Change Risk Assessment.

Clause 19: Minister must prepare national adaptation plan

22. This clause provides that in response to each national climate change risk assessment, the Minister must prepare a national adaptation plan. This must be completed within one year of the assessment being made public. The Plan must set out objectives, strategies, policies and proposals, the timeframes for implementation, the monitoring regime and funding. In preparing the plan, the Minister must consider a range of factors and undertake public consultation.

Clause 20: Tabling and publication of plans

23. This clause provides that the Minister must table national adaptation plans in both Houses of Parliament within 15 sitting days of each House of the plan being prepared and the plan is to be published on the Commission website as soon as practicable after it is tabled.

Clause 21: Progress reports

24. This clause provides that the Commission must provide the Minister with an annual progress report on the national adaptation plan and that the Minister must prepare a statement in response to the report. Both the report and the Minister's statement must be published on the Commissions website and the Minister's statement must be tabled in both Houses of Parliament

Part 4 – Emissions reduction target

25. This part provides for the setting of a long term zero net accounting emissions target (the *Target*). The review of the Target, the response to recommendations to amend the target and the tabling and publications of responses.

Clause 22: The Target

26. This clause provides for a target of net zero emissions by a target day, which is 31 December 2050. The Minister can vary the target by legislative instrument to move the target date to an earlier day. The Minister can vary the target if there has been significant change to certain factors but only after receiving and considering the recommendations of the Commission.

Clause 23: Reviews of the Target

27. This clause provides for reviews of the Target by the Commission if setting an emissions budget and following a request from the Minister. The Commission must advise the Minister in writing of the outcome of the review.

Clause 24: Recommendations to amend the Target

28. This clause provides as a result of a review, the Commission may recommend changes but only if certain factors have occurred. This clause provides for the publication of the Commission's recommendations, the Ministers statement in response to those recommendations and the tabling of the Minister's statement in both Houses of Parliament.

Clause 25: Fossil fuel export emissions

29. This clause provides that the Commission must report the effect of Australia's fossil fuel export emissions in meeting the objects of the Act every two years. The Minister may by legislative instrument determine the meaning of fossil fuel export emissions and the method of accounting for them. Part 5 – Setting emissions budgets etc.

30. This part provides for the setting of emissions budgets and emissions reduction plans with safeguards to ensure an achievable and equitable pathway through to Target.

Division 1 – Emissions budgets

Clause 26: Minister to set emissions budgets

31. This clause defines an emissions budget and provides that the Minister must, by legislative instrument, set emissions budgets for each emissions budget period based on the advice of the Commission. The clause specifies the first emissions budget period beginning 1 January 2022 and sets a schedule for establishment of future emissions budgets. Emissions budgets must be publicly available.

Clause 27: Commission to advise Minister

32. This clause provides that the Commission must advise the Minister on a range of factors relevant to setting an emissions budget. The advice must be published on the Commission's website as well the Minister's statement in response to the advice. The Minister's statement must also be tabled in both Houses of Parliament. The Commission's advice for the first 2 emissions budgets is due by 1 February 2021.

Clause 28: Matters relevant to emissions budgets

33. This clause specifies matters relevant to emissions budgets that the Commission must have regard to when preparing advice for the Minister and that the Minister must have regard to when setting an emissions budget.

Clause 29: Commission to report at end of emissions budget period

34. This clause provides that the Commission must prepare a report evaluating the progress made in that emissions budget period no later than one year after the end of an emissions budget period. This clause provides that the Minister must prepare a response to the Commission's report and table the response in both Houses of Parliament within 15 sitting days response being prepared and the response is to be published on the Commission website as soon as practicable after it is tabled.

Division 2 – Emissions reduction plans

Clause 30: Requirement for emissions reduction plan

35. This clause provides that the Minister must prepare an emissions reduction plan for meeting each emissions budget prior to the commencement of the emissions budget period. The clause specifies a range of components that the plan must include. In doing so, the Minister must obtain and consider the advice of the relevant State and Territory ministers and the Commission. This clause provides that the Minister must table the emissions reduction plan in both Houses of Parliament within 15 sitting days of that House sitting after the plan is completed and published on the Commission's website as soon as practicable after it is tabled.

Clause 31: Commission to advise on emissions reduction plans

36. This clause requires the Commission to provide advice on the policy direction for an emissions reduction plan 24 months prior to the commencement of the relevant emissions budget period.

Part 6 – Climate Change Commission

37. This part establishes the Climate Change Commission (the *Commission*). An independent statutory body to assist Australia in meeting emissions budgets and adapting to climate change impacts. This part also establishes a Joint Parliamentary Committee on Climate Change Adaptation and Mitigation to review proposals for appointees to the Commission as well as the Commission's administrative functioning and expenses.

Division 1 – Establishment, functions and powers

Clause 32: Climate Change Commission

38. This clause establishes the Climate Change Commission

Clause 33: Functions of the Commission

39. This clause specifies the functions of the Commission under the Bill which include advising the Minister on preparing and amending emissions budgets, to monitor and report on progress towards meeting emissions budgets and the 2050 target, prepare national climate risk assessments, low emissions technology statements and report on the implementation of national adaptation plans.

Clause 34: Powers

40. This clause establishes the powers of the Commission.

Clause 35: Commission not subject to direction

41. This clause provides that the Commission is not subject to the direction of the Commonwealth Government.

Division 2 – Membership of the Commission etc

Clause 36: Commission members

42. This clause provides for the membership of the Commission.

Clause 37: Appointment of members of the Commission

43. This clause provides for the appointment of members of the Commission.

Clause 38: Approval of proposed appointment by Parliamentary Joint Committee on Climate Adaptation and Action

44. This clause provides for appointments to the Commission to be referred to and approved by the Parliamentary Joint Committee on Climate Adaptation and Action.

Clause 39: Period of appointment for members of the Commission

45. This clause provides for the period of appointment of members of the Commission.

Clause 40: Acting members of the Commission

46. This clause provides for arrangements for acting appointments to the Commission.

Division 3 – Terms and conditions for members of the Commission

Clause 41: Remuneration

47. This clause provides for arrangements for the remuneration of members of the Commission as determined by the Remuneration Tribunal. Subsection 3 specifies that subsection 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of a member of the Commission. That is, remuneration or allowances of a member of the Commission will be paid out of money appropriated by the Parliament by an Act other than the *Remuneration Tribunal Act 1973*.

Clause 42: Disclosure of interests

48. This clause provides for arrangements for the disclosure of interests by members of the Commission.

Clause 43: Paid work

49. This clause provides for arrangements for paid work outside the duties of a member of the Commission by members of the Commission appointed either on a full-time or part-time basis.

Clause 44: Leave of absence

50. This clause provides for arrangements for leave of absence by members of the Commission appointed either on a full-time or part-time basis.

Clause 45: Resignation

51. This clause provides for arrangements for the resignation of a member of the Commission.

Clause 46: Termination of appointment

52. This clause provides for the basis for the termination of appointment of a member of the Commission by the Minister.

Clause 47: Other terms and conditions

53. This clause provides for arrangements for other terms and conditions not covered by this Bill as determined by the Minister.

Division 4 – Parliamentary Joint Committee on Climate Adaptation and Action

Clause 48: Parliamentary Joint Committee on Climate Adaptation and Action

54. This clause establishes the Parliamentary Joint Committee on Climate Adaptation and Action.

Clause 49: Powers and proceedings of the Committee

55. This clause provides that the powers and proceedings of the Committee are determined by resolution of both Houses of Parliament.

Clause 50: Functions of the Committee

56. This clause specifies the functions of the Committee.

Division 5 – Decision making of the Commission

Clause 51: Convening meetings

57. This clause establishes the arrangements for convening meetings of the Commission.

Clause 52: Presiding at meetings

58. This clause establishes that the Chair must preside over all the meetings of the Commission at which the Chair is present, and that when they are not, the Commission members appoint one of themselves to preside.

Clause 53: Quorum

59. This clause establishes the quorum for meetings of the Commission.

Clause 54: Voting at meetings

60. This clause establishes the arrangements for voting at meetings.

Clause 55: Conduct of meetings

61. This clause gives the Commission the authority to determine how meetings are regulated.

Clause 56: Minutes

62. This clause establishes that, in addition to the authority given in Section 64, minutes of Commission meetings must be kept.

Division 6 – Chief Executive Officer of the Commission

Clause 57: Establishment

63. This clause establishes the position of Chief Executive Officer of the Commission.

Clause 58: Role

64. This clause specifies the role of the Chief Executive Officer.

Clause 59: Appointment

65. This clause specifies the appointment process for position of Chief Executive Officer of the Commission.

Clause 60: Acting appointments

66. This clause provides for acting appointments as Chief Executive Officer.

Clause 61: Paid work

67. This clause prohibits the Chief Executive Officer from engaging in outside paid work without the approval of the Minister.

Clause 62: Remuneration

68. This clause provides for the arrangements for the remuneration of the Chief Executive Officer. Subsection 3 specifies that subsection 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of the CEO. That is, remuneration of the CEO will be paid out of money appropriated by the Parliament by an Act other than the *Remuneration Tribunal Act 1973*.

Clause 63: Leave

69. This clause provides for the leave arrangements for the Chief Executive Officer.

Clause 64: Resignation

70. This clause specifies the arrangements for the resignation of the Chief Executive Officer.

Clause 65: Termination of appointment

71. This clause specifies the basis for the termination of the Chief Executive Officer.

Clause 66: Other terms and conditions

72. This clause provides for arrangements for other terms and conditions not covered by this Bill as determined by the Minister for the Chief Executive Officer.

Division 7 – Staff of the Commission

Clause 67: Staff

73. This clause establishes the arrangements for the staff of the Commission.

Clause 68: Persons assisting the Commission

74. This clause establishes the arrangements for persons assisting the Commission.

Clause 69: Consultants

75. This clause establishes the arrangements for consultants to the Commission.

Part 7 – Miscellaneous

76. This part deals with ordinary reporting of the Climate Change Commission and the tabling of those reports in Parliament. This part makes provisions for the compatibility of the operation of this Bill with Laws of State and Territories and also confers powers to the Minister to make rules for the purposes of the functioning of the Bill.

Clause 70: Annual Report

77. This clause provides for the preparation of an annual report by the Commission in accordance with section 46 of the *Public Governance, Performance and Accountability Act 2013*. The annual report must include details of specified details.

Clause 71: Response to annual report

78. This clause provides that the Minister must within a specified time period prepare a response to the Commission's annual report.

Clause 72: Tabling and publication of response

79. This clause provides that the Minister must table the response prepared under section 80 in both Houses of Parliament within 15 sitting days of each House of the response being prepared and the response is to be published on the Commission website as soon as practicable after it is tabled.

Clause 73: Minister or Commission may request information

80. This clause provides for the arrangements for the Minister or the Commission to request information from a constitutional corporation on a range of specified matters.

Clause 74: Concurrent operation of State and Territory Laws

81. This clause provides that the Bill is not intended to exclude or limit the operation of a State or Territory law that is capable of operating concurrently with this Bill.

Clause 75: Rules

82. This clause provides the Minister may, by legislative instrument, make rules prescribing matters for this Bill but also prevents rules being made for certain matters.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Climate Change (Establishing a National Framework for Adaptation and Action) Bill 2020

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Disallowable Legislative Instrument

The objective of the Bill is to establish a national climate change adaptation and action framework. The Bill recognises that the challenge posed to Australia's prosperity and security by climate change requires a planned transition toward a net zero emissions economy by 2050 and the implementation of adaptation measure to protect livelihoods, businesses and the environment.

To achieve a net zero emissions economy by 2050 and establish effective adaptation measures, the Bill:

1. Establishes the Climate Change Commission (**Commission**).
2. Requires the Commission to prepare a national climate change risk assessment within a year of the commencement of the Act and every five years after that.
3. Requires the Minister to prepare a national adaption plan in response to each national climate change risk assessment.
4. Requires the Commission to evaluate the implementation of these plans annually.
5. Requires the Minister to set emissions budgets and prepare emissions reduction plans for each budget on the advice of the Commission.

Human rights implications

This Bill engages the following rights:

- the right to life in, for instance, Article 6(1) of the International Covenant on Civil and Political Rights (**ICCPR**);
- the right to an adequate standard of living in Article 11(1) of the *International Covenant on Economic Social and Cultural Rights (ICESCR)* and Article 27(1) of the Convention on the Rights of the Child (**CRC**);
- the right to enjoy the highest attainable standard of physical and mental health in Article 12(2) of the ICESCR and Article 24(1) of the CRC;

- the right to self-determination in Article 1(1) of the ICESCR and Article 1(1) of the ICCPR;
- the right to work in Article 6(1) of the ICESCR;
- the right to privacy in Article 17 of the ICCPR; and
- the right to justice and a fair trial in Article 14 of the ICCPR.

The right to life

The right to life is the most fundamental of human rights, set out in the Universal Declaration on Human Rights. For the purposes of the Human Rights (Parliamentary Scrutiny) Act 2011 it is recognised in Article 6(1) of the ICCPR.

Climate change threatens the right to life in myriad ways. In Australia, climate change is contributing to more frequent and intense heatwaves, droughts, and bushfires, all of which threaten lives through, for example, heat stress, dehydration, smoke inhalation, respiratory stress and physical injury.

Failure to mitigate and adapt to the impacts of climate change will result in deaths. This Bill, in its object to transition Australia to a net zero emissions economy and through its provision for a national plans to reduce emissions and adapt to the effects of climate change, goes toward protecting the right to life.

The right to an adequate standard of living

Article 11(1) of the ICESCR provides that everyone is entitled to an adequate standard of living, which includes adequate food and housing. Article 27(1) of the Convention on the Rights of the Child specifically enshrines the right for children to a standard of living that is adequate for their physical, mental, spiritual, moral and social development. In order to protect this right, governments have an obligation to ensure the availability and accessibility of the resources necessary for the realisation of the right.

Climate change threatens the right to an adequate standard of living due to the extreme weather events and rising sea levels that can compromise both food and housing. Food production in particular is affected by shifting precipitation patterns, higher temperatures, droughts, floods and salinisation. These weather patterns have the ability to undermine major crops and resultantly threaten access to adequate food.

Given the threat posed by climate change to the right to an adequate standard of living, the objective of the Bill - to transition toward a net zero emissions economy - protects this right. The Bill promotes the right to an adequate standard of living by providing emissions reduction plans and 5 yearly emissions budgets, which alongside adaptation plans, mitigate the risks posed by climactic stressors to Australia's economy, society, environment and ecology. The realisation of this objective will accordingly uphold the adequacy of individuals' standard of living, including individuals' access to adequate food and housing.

The right to health

Article 12 of the ICESCR recognises that everyone has a right to enjoy the highest attainable standard of physical and mental health. Article 24(1) of the CRC specifically sets out this right to health for children. Climate change threatens the enjoyment of the right to health both directly, through extreme weather conditions and extreme temperature changes, and indirectly through changes to natural ecosystems that result in resource scarcity, disease proliferation and stressors on social systems.

The impact of climate change on the right to health is recognised by Article 1 of the United Nations Framework Convention on Climate Change, which defines the “adverse effects of climate change” as being “changes in the physical environment or biota resulting from climate change which have significant deleterious effects... on human health and welfare”

The right to health is contingent on the right to an adequate standard of living and so any effect that climate change has on the latter will resound on the former. As the key social and environmental determinants of health are threatened by climate change, such as access to adequate food, water and clean air, the right to health is also threatened. The highest attainable standard of health depends on access to essential foods which are nutritionally adequate and safe, access to basic shelter, housing and sanitation, and an adequate supply of safe water.

In regards to the direct effects of climate change on the right to health, the findings of the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) confirm that these will include increasingly frequent extreme weather events and natural disasters, rising sea levels, floods, heatwaves, and drought. These extremes will alter ecosystems and disrupt food production and water supply.

In regards to the indirect effects of climate change on the right to health, the IPCC divides these into two classes:

1. those mediated by natural systems, such as food and water contamination, distribution of infectious diseases and the spread of tropical water-borne and vector-borne diseases such as malaria and Dengue fever; and
2. those mediated by human and social systems, via climactic stressors on social processes including health care services, which result in issues such as food and water insecurity, forced migration and psychological and emotional stress.

Climate change presents a multifaceted threat to the full and effective enjoyment of the right to the highest attainable standard of both physical and mental health. Given this threat, the mitigation and adaptation plans provided for by the Bill alongside the emissions budgets that will move Australia toward a net zero emissions economy will, by guarding against the risks posed by climate change, protect the right to health.

Right to self-determination and right to work

The right to self-determination in Article 1 of the ICESCR and the ICCPR includes the right to freely pursue economic development. The right to work and self-determination to freely choose or accept work is enshrined in Article 6(1) of the ICESCR. A person's employment in a specific industry or geographic region may be impacted by a decision, policy or program occurring under the proposed Bill. Progressing toward a net zero emissions economy will necessitate changes to Australia's economic and industrial landscape, which may have a limiting effect on a person's ability to freely pursue their choice of employment and business activities.

Section 8 of the proposed Bill provides that decision makers must apply the Guiding Principles contained in sections 10, 14 and 15 in the performance of any function or duty or in the exercise of any power under the proposed Bill. These guiding principles direct the attention of decision makers toward vulnerable groups in society who maybe disproportionately affected by the transition toward a net zero emissions economy and escalating climate impacts, and provide protections to ameliorate any potential adverse effects that decisions, policies or processes under the proposed Bill could have on an individual's right to self-determination and work.

Subsection 10(c) requires that all decisions, policies or processes occur equitably in regard to Australia's households, businesses, workers, communities and regions taking into account their social and economic differences. Section 14 specifically addresses any limitation on the right to work by requiring that all decisions, policies or processes occurring under the Act are guided by the principle of fair employment transition. This principle requires engagement with affected communities; the pursuit of sustainable economic, social and ecological solutions for those communities, prioritisation of employment transition opportunities to new or existing industries within those communities, accompanied by appropriate education and training; allowance of reasonable time for the implementation of those solutions; and mechanisms for appropriate compensation and redeployment.

Any limiting effect that the Bill may have on the right to self-determination enshrined in Article 1 of the ICESCR is specifically ameliorated by the guiding principle in section 15 of ensuring community engagement and self-determination. Pursuant to this section, a decision, policy, program or process which occurs in accordance with the performance of functions or duties, or exercising of powers under the proposed Bill must be accompanied with appropriate information provided to members of affected communities, especially vulnerable communities, and must allow for community involvement in consultation, decision-making and implementation.

In regards to specific policies provided for under this bill, the bill recognises the potential for any adaptation plan to exacerbate social inequality or disproportionately affect already disadvantaged people within the community. To safeguard against the concentration of

these effects on certain groups within society, particularly vulnerable groups, in preparing a national adaptation plan, the minister *must*, under subsection 18(a), take into account economic, social, health, environmental, ecological and cultural effects of climate change across society, including effects on Indigenous Australians; and the distribution effects of climate change across society, taking particular account of vulnerable groups or sectors.

In regards to the Target, The Bill gives the Commission the power to review the Target and recommend changes to the time frame, the reduction of emissions, and the means of meeting the Target. These powers of review and recommendation specifically provide for distributional impacts to be accounted for under subsection 24(2)(vi) and (vii). These provisions also allow for emissions budgets, developed with the final Target in consideration, to cater for transitional challenges concentrated within discrete groups within society.

Similarly, the Bill recognises the effect emissions reduction budgets may have. Subsection 28(2)(b) provides adequate safeguards to mitigate the potential disproportionate concentration of challenges faced by certain sectors and communities. This subsection requires that, when setting emissions budgets, the Minister and Commission must have regard to the following: the results of public consultation on a proposed emissions budget; the likely impact of actions taken to achieve an emissions budget, including on the ability to adapt to climate change; the distribution of those impacts across the States and Territories, the likely impact on employment and works, from generation to generation; and the implications, or potential implications, of land use change for communities. Subsection 28(2)(b)(vi) is of particular relevance as it requires the Minister to consider the results of public consultation on a proposed emissions budget, providing a channel for community participation and input into policy developments.

Finally, subsection 30(3)(c) provides that any emissions reduction plan must include a strategy to address the disproportionate impacts that reducing greenhouse gas emissions and increasing removals of greenhouse gases will have on employees and employers, regions, Indigenous Australians and wider communities. In accordance with section 14, this strategy may include transition, redundancy and redeployment solutions that could act to counteract any employment and community related impact from the implementation of emission reduction plans.

To the extent that the adaptation and mitigation plans anticipated under the proposed Bill limit the right to self-determination and the right to work, this is necessary to ensure that Australia is on track to achieve net zero emissions economy and mitigate the risks posed by climate change. The Guiding Principles in conjunction with aforementioned sections provide adequate safeguards, as they allow decision makers to identify and circumvent any disproportionate limitation on rights that may result from the implementation of adaptation plans and emissions budgets. Given the pressing and substantial threats posed by climate change, these limitations on the rights to self-determination and the right to work are proportionate to the objective to be achieved.

Right to privacy

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. Any limitation on the right to privacy is permissible if such limitation is reasonable, lawful and not arbitrary. To escape classification as 'arbitrary', any interference must be consistent with the objectives of the ICCPR. The United Nations Human Rights Committee has interpreted the requirement of 'reasonableness' as implying that any interference with privacy must be proportionate to a legitimate end and be necessary in the circumstances.

Section 73 of the Bill engages the right to privacy because the proposed provision enables information from constitutional corporations to be collected, used and disclosed by the Minister or the Commission. However, subsection 73(5) and (7) provide adequate safeguards against the unnecessary public disclosure of such information. The nature of the information that the Minister or Commission would have the power to request is strictly limited to information pertaining to a corporation's governance and procedures in respect of climate change risks. Given this, there is a rational connection between the limitation on the right to privacy and the realisation of a net zero emissions economy by 2050. Accordingly, the Bill balances the right to privacy with the rights to an adequate standard of living and the right to health.

To the extent that section 73 limits the right to privacy, this is reasonable, proportionate and necessary to ensure that individuals' rights to an adequate standard of living and health are protected through achieving the legitimate object of a net zero emissions economy by 2050.

Right to a Fair Trial

Article 14(1) of the ICCPR guarantees the right to a fair trial and fair hearing in relation to both criminal and civil proceedings.

Criminal process rights

Section 73 is an offence creating provision. The fair rights, minimum guarantees in the determination of a criminal charge and other criminal process rights contained in Article 14 of the ICCPR are therefore engaged. Subsection 73(1) provides that the Minister or Commission may request information from a constitutional corporation. Subsection 73(2) provides that if a constitutional corporation fails to comply with such a request, it commits an offence, with a penalty of 50 penalty units.

This provision does not limit the corporation's access to a fair trial or other criminal process rights. The usual guarantees and criminal process rights will apply to these offences and

are not abrogated by any provisions in the Bill. Accordingly, section 73 is compatible with criminal process rights

Conclusion

The Bill is compatible with human rights because, to the extent that it engages or limits the rights to work, self-determination and privacy, this limitation is necessary and proportionate to the extent to which it promotes the protection of the rights to life and an adequate standard of living by establishing a national climate change adaptation and action framework

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