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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**Climate Change (National Framework for Adaptation and Mitigation) Bill 2021**

**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 2021**

### **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.

But there is cause for optimism, by transitioning to a net zero emissions economy, Australia can mitigate climate risk 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;
- aim to reduce net accounting emissions by 60% on 2005 levels by 2030;
- provide for a system of emissions budgeting;
- assess and prepare for climate change impacts;
- assist Australia to adapt to climate change;;
- establish an independent body to ensure accountable and transparent plans to manage the climate challenge; and
- provides policy certainty to assist the private sector in decision making; and

- assist and guide 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.
- ensure rural and regional Australia secures an equitable share of the economic benefits from the transition to a net zero emissions economy.

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 and halfway to net zero emissions targets: 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.

\* \* \*

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 2021*.

##### **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 and fair 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; aiming to reduce net accounting emissions by 60% on 2005 levels by 2030; 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 Australia to climate change, provides policy certainty for the private sector in decision making and assists Australia in meeting obligations under various international agreements. The final object of this bill is ensuring rural and regional Australia secures an equitable share of the economic benefits from the transition to a net zero emissions economy.

##### **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: Exception to requirements of this Division**

10. Division 2 does not require a decision, policy, program or process relating to performing functions or duties, or exercising powers, to have regard to a principle or other thing to the extent that the principle or other thing is not relevant to performing the functions or duties or exercising the powers. Subsections (3) to (5) apply to a decision, policy, program, or process relating to performing functions or duties, or exercising powers, under certain subsections. The person making a decision, setting policy etc must prepare a written statement of why the principle or other thing is not relevant. That statement must be tabled in each House of Parliament. If the person is not the Minister, the statement must be given to the Minister as soon as practicable.

#### **Clause 10: Principle of effective, efficient, equitable and early action**

11. This clause provides that a decision, policy, program, or process relating to performing functions or duties, or exercising powers 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, be equitable in terms of the impact on all parts of the current and future Australian community and early in regard to prioritising urgent and deep emissions reductions.

#### **Clause 11: Principle of informed decision making**

12. This clause provides that a decision, policy, program, or process relating to performing functions or duties, or exercising powers must have regard to the best available academic peer reviewed research, public reports, any Technology Investment Roadmap, the most recent low emissions technology statement.

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

13. This clause provides that a decision, policy, program, or process relating to performing functions or duties, or exercising powers must have regard to assessing and addressing the full risks relating to climate change, apply the precautionary principle and coordinate and align adaptation actions to the greatest extent possible.

#### **Clause 13: Principle of fiscal responsibility**



14. This clause provides that a decision, policy, program, or process relating to performing functions or duties, or exercising powers 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 a decision, policy, program, or process relating to performing functions or duties, or exercising powers 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 a decision, policy, program, or process relating to performing functions or duties, or exercising powers must have regard to providing adequate public participation, appropriate information to those affected, seeking from those communities free, prior and informed consent and undertaking any other type of consultation that is considered necessary.

**Clause 16: Principle of national and international cooperation**

17. This clause provides that a decision, policy, program, or process relating to performing functions or duties, or exercising powers 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 by legislative instrument determine a national adaptation plan. This must be completed within one year of the assessment being made public. The Minister must take all reasonable steps to ensure a national adaptation plan is in force at all times one year after the first climate change risk assessment. 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. The explanatory statement for the legislative instrument must also include copies of the advice and reports from the Commission and if the Minister did not follow any of that advice – a statement of the Minister's reasons for not following that advice.

### **Clause 20: Publication of plans**

23. This clause provides that a legislative instrument made under clause 19 must be published on the Commission website as soon as practicable after it is tabled.

### **Clause 21: Implementing national adaptation plan**

24. This clause requires the Minister to take all reasonable steps to ensure that Australia's objectives set out in the current national adaptation plan are achieved.

### **Clause 22: Progress reports**

25. 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 Commission's website and the Minister's statement must be tabled in both Houses of Parliament

#### **Part 4 – Emissions reduction target**

26. 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 23: The Target**

27. 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 24: Reviews of the Target**

28. This clause provides for reviews of the Target by the Commission when the Minister sets 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 25: Recommendations to amend the Target**

29. 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. If the Minister does not accept the recommendation, the statement provided by the Minister must set out the reasons for accepting the recommendation. The Minister's statement in response to those recommendations and the tabling of the Minister's statement in both Houses of Parliament.

#### **Clause 26: Achieving the Target**

30. This clause provides that the Minister must take all reasonable steps to ensure the Target is achieved.

#### **Clause 27: Fossil fuel export emissions**

31. 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.**

32. 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 28: Minister to set emissions budgets**

33. 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 2023 and sets a schedule for establishment of future emissions budgets. The Minister must ensure that net accounting emissions for an emissions budget period do not exceed the emissions budget for that period. This clause also requires the Minister to obtain and consider the advice of the Commission. The Commission's advice must be made public. The Minister within 3 months after receiving the advice prepare a statement in response and cause it to be tabled in both Houses of Parliament. If the Minister decides not to follow the advice a statement must include reasons for not doing so. In setting an emissions budget the Minister must not take into account units or credits held or earned during previous emissions budget periods or under international agreements.

### **Clause 29: Commission to advise Minister**

34. 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 within 6 months after the commencement of the section.

### **Clause 30: Matters relevant to emissions budgets**

35. 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 31: Meeting the emissions budget**

36. Clause 31 requires the Minister to take all reasonable steps to ensure that each emissions budget that is in place is met.

### **Clause 32: Commission to report at end of emissions budget period**

37. 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. The report must include an evaluation of how well the emissions reduction plan contributed towards that progress. This clause provides that the Minister, within 3 months of receiving the report, 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 33: Requirement for emissions reduction plan**

38. This clause provides that the Minister must by legislative determine an emissions reduction plan for meeting each emissions budget prior to the commencement of the emissions budget period. It provides the Minister must ensure that an emissions reduction plan in relation to an emissions budget is in pace at all times during the relevant budget. The clause specifies a range of components that the plan must include. The Minister must obtain and consider the advice of the relevant State and Territory ministers and the Commission before making a plan. This clause requires the emissions reduction plan legislative instrument be published on the Commissions website as soon as practicable after the instrument is made.

### **Clause 34: Commission to advise on emissions reduction plans**

39. 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. It also provides that the advice must be published on the commissions website. If the Minister decides not to follow the advice given by the Commission, a statement explaining why the Minister has not followed the advice must be tabled in each House of the Parliament.

## **Part 6 – Climate Change Commission**

40. 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 35: Climate Change Commission**

41. This clause establishes the Climate Change Commission

#### **Clause 36: Functions of the Commission**

42. 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 37: Powers**

43. This clause establishes the powers of the Commission.

**Clause 38: Commission not subject to direction**

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

**Division 2 – Membership of the Commission etc****Clause 39: Commission members**

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

**Clause 40: Appointment of members of the Commission**

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

**Clause 41: Approval of proposed appointment by Parliamentary Joint Committee on Climate Adaptation and Action**

47. 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 42: Period of appointment for members of the Commission**

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

**Clause 43: Acting members of the Commission**

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

**Division 3 – Terms and conditions for members of the Commission****Clause 44: Remuneration**

50. 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 45: Disclosure of interests**

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

**Clause 46: Paid work**

52. 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 47: Leave of absence**

53. 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 48: Resignation**

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

**Clause 49: Termination of appointment**

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

**Clause 50: Other terms and conditions**

56. 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 51: Parliamentary Joint Committee on Climate Adaptation and Action**

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

**Clause 52: Powers and proceedings of the Joint Committee**

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

**Clause 53: Functions of the Joint Committee**

59. This clause specifies the functions of the Joint Committee.

**Division 5 – Decision making of the Commission**

**Clause 54: Convening meetings**

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

**Clause 55: Presiding at meetings**

61. 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 56: Quorum**

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

**Clause 57: Voting at meetings**

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

**Clause 58: Conduct of meetings**

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

**Clause 59: Minutes**

65. 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 60: Establishment**

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

**Clause 61: Role**

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

**Clause 62: Appointment**

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

**Clause 63: Acting appointments**

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

**Clause 64: Paid work**

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

**Clause 65: Remuneration**

71. 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 66: Leave**

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

**Clause 67: Resignation**

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

**Clause 68: Termination of appointment**

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

**Clause 69: Other terms and conditions**

75. 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 70: Staff**

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

**Clause 71: Persons assisting the Commission**

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

**Clause 72: Consultants**

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

**Division 8 – Committees**

**Subdivision A - Committees**

**Clause 73: Committees**

79. This clause provides that the Commission may establish committees of persons to advise the Commission in the performance of its functions, duties and powers. The intent of this clause is to allow the Commission to establish committees to provide support in policy areas including fair employment transitions, climate change adaptation etc. much like how the United Kingdom Climate Change Committee has done. This clause gives the Commission flexibility to determine how the committees operate.

**Subdivision B – Terms and conditions for members of committees**

#### **Clause 74: Remuneration**

80. This clause provides for the remuneration of committee members.

#### **Clause 75: Paid work**

81. This clause prohibits committee members, if appointed full time, from engaging in paid work without the Commission's approval. If the committee member is appointed on a part-time basis, the member must not engage in paid work that would conflict with proper performance of the member's duties.

#### **Clause 76: Leave of Absence**

82. This clause provides for leave of absence entitlements.

#### **Clause 77: Resignation**

83. This clause provides for resignation of committee members.

#### **Clause 78: Termination of appointment**

84. This clause provides for the termination of committee members.

#### **Clause 79: Other terms and conditions**

85. This clause provides that a member of a committee holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Commission.

#### **Part 7 – Miscellaneous**

86. 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 80: Annual Report**

87. 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 specified details.

#### **Clause 81: Response to annual report**

88. This clause provides that the Minister must within a specified time period prepare a response to the Commission's annual report. The Minister must give a copy of the statement to the Commission and cause the statement to be tabled in each House of the Parliament. The Commission must publish the response on the Commission's website.

**Clause 82: Minister or Commission may request information**

89. 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 83: Concurrent operation of State and Territory Laws**

90. 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 84: Review of operation of this Act**

91. This clause provides for the review of the operation of the Act. The first review must start 10 years after commencement and subsequent reviews every 10 years thereafter. The Minister must cause a written report about each review to be prepared and laid before each House of the Parliament.

**Clause 85: Legislative instruments made under this Act are disallowable**

92. This clause provides that Section 44 of the *Legislation Act 2003* does not apply to legislative instruments made under this Act

**Clause 86: Rules**

93. 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 (National Framework for Adaptation and Mitigation) Bill 2021**

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 9 of the proposed Bill provides that decision makers must have regard to 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 current and future households, businesses, workers, communities and regions taking into account their social, cultural 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 and Indigenous communities, must allow for community participation and free, prior and informed consent.

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(4) 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(3) 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

**Ms Zali Steggall OAM MP**