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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**Climate Change (National Framework for Adaptation and Mitigation) (Consequential
and Transitional Provisions) 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) (Consequential and Transitional Provisions) 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.

The Climate Change (National Framework for Adaptation and Mitigation) Bill 2021 (Substantive Bill) sets out a clear framework for national plans for protection and prosperity 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, and

4. **transparent monitoring, reporting and accountability** for national adaptation planning and emission reduction actions, with an independent Climate Change Commission (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.

To give effect to the Substantive Bill, this Bill makes a number of amendments to Commonwealth laws to reflect and support the operation of the CC Bill. These include:

- Repealing the *Climate Change Authority Act 2011* to enable the establishment of the Climate Change Commission
- Amending the *Australian Securities and Investments Commission Act 2001* to ensure consistent operation of the ASIC Act with the CC Bill
- Amending the *Carbon Credits (Carbon Farming Initiative) Act 2011* to ensure consistent operation of the Carbon Credits Act with the CC Bill
- Amending the *Clean Energy Regulator Act 2011* to ensure consistent operation of the Clean Energy Regulator Act with the CC Bill
- Amending the *Competition and Consumer Act 2010* to ensure consistent operation of the Competition and Consumer Act with the CC Bill
- Amending the *National Greenhouse and Energy Reporting Act 2007* to ensure consistent operation of the NGER Act with the CC Bill
- Amending the *Public Governance Performance and Accountability Act 2013* to insert a provision that the accountable authority of a Commonwealth entity must consider climate change impacts when performing their duties or exercising their powers.

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) (Consequential and Transitional Provisions) Bill 2021*.

Clause 2: Commencement

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

Clause 3: Schedules

3. This clause provides that legislation that is specified in a Schedule to this Act is amended or repealed as set out by the relevant schedule, and that any other item in a Schedule to this Act has the effect in accordance with its terms. This clause is the formal enabling provision for the Schedules to the Bill.

Schedule 1: Repeals and amendments

Part 1 – Repeal of the Climate Change Authority Act 2011

Item 1

1. Item 1 repeals the whole of the Act.

Part 2 – Consequential amendments

Australian Securities and Investment Commission Act 2011

Item 2

2. Paragraph 127 (2A)(f). Item 2 replaces “Climate Change Authority” with “Climate Change Commission”.

Carbon Credits (Carbon Farming Initiative) Act 2011**Item 3**

3. Subsections 306(1) and (3). Item 3 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 4

4. Paragraph 306(3)(b). Item 4 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 5

5. Subsections 306(11). Item 5 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 6

6. Subsection 306(11). Item 6 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 7

7. Paragraph 76A(1)(a). Item 7 replaces “Climate Change Authority” with “Climate Change Commission”.

Clean Energy Regulator Act 2011**Item 8**

8. Paragraph 49(1)(s). Item 8 replaces “Climate Change Authority” with “Climate Change Commission”.

Competition and Consumer Act 2010

Item 9

9. Paragraphs 44AAF(3)(cb) and 155AAA(12)(Ib). Item 9 replaces “Climate Change Authority” with “Climate Change Commission”.

National Greenhouse and Energy Reporting Act 2007**Item 10**

10. Subsections 76A(1) and (3). Item 10 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 11

11. Paragraph 76A(3)(b). Item 11 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 12

12. Subsections 76A(9) and (10). Item 12 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 13

13. Subsection 76A(11). Item 13 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 14

14. Paragraph 76A(1)(a). Item 14 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 15

15. Subsection 76B(1). Item 15 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 16

16. Subsections 76B(2), (3) and (5). Item 16 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 17

17. Paragraph 76B(5)(b). Item 17 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 18

18. Subsections 76B(8) and (9). Item 18 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 19

19. Subsection 76B(10). Item 19 replaces “Climate Change Authority” with “Climate Change Commission”.

Item 20

20. Paragraph 76B(12)(a). Item 20 replaces “Climate Change Authority” with “Climate Change Commission”.

Part 3 – Duties to consider climate change impacts

Public Governance Performance and Accountability Act 2013

Item 21

21. Section 14. Item 26 omits “sections 15 to 19” and substitutes “sections 15 to 19A”.

Item 22

22. After section 19. Item 22 inserts a new subsection 19A that requires the accountable authority of a Commonwealth entity to consider the potential risks of climate change when performing their duties or exercising their powers. The Climate Change Minister may by legislative instrument make guidelines about how the accountable authority of a Commonwealth authority is to consider potential risks. The accountable authority must comply with guidelines in force.

Schedule 2 – Transitional provisions

Item 1

1. Definitions. This clause provides for definitions of various terms used in the Schedule.

Item 2

2. Reviews. This clause applies to reviews with a deadline for completion that occurs after the transition time under the Carbon Credits (Carbon Farming Initiative) Act 2011 and National Greenhouse and Energy Reporting Act 2007 as amended by this Bill.

Item 3

3. Staff. This clause applies to staff, who immediately before the transition time, are engaged as staff under the old Act are, after the transition, to be engaged as staff under the new Act.

Item 4

4. Consultants. This clause applies to consultants, who immediately before the transition time, are engaged as consultants to the Authority under the old Act are, after the transition, to be engaged as staff under the new Act.

Item 5

5. Continuation of appointment of CEO. This clause is a transitional provision that applies to the person, who immediately before the transition time, is the CEO of the Authority. The instrument of appointment continues to have effect after the transition time for the remainder of the period of the person's appointment to that office.

Item 6

6. Final annual report. This clause provides for the preparation and presentation of a final report on the activities of the Authority during the final reporting period.

Item 7

7. Transfer of Authority's records and documents. This clause provides that any records or documents in the possession of the Authority are to be transferred to the Commission.

Item 8

8. Termination of appointments of certain persons. This clause provides for the termination of appointment of members of the Authority or the Land Sector Carbon and Biodiversity Board at the transition time.

Item 9

9. Effects of this Schedule on the operation of section 7 of the *Acts Interpretation Act 1901*. This clause provides that this Schedule does not limit the operation of section 7 of the *Acts Interpretation Act 1901*.

Item 10

10. Rules. This clause authorises the Minister to make rules, by legislative instrument, prescribing matters required to give effect to the legislation. This includes rules of a transitional nature relating to the amendments made by the Bill, or its enactment.

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) (Consequential and Transitional Provisions) 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 Climate Change (National Framework for Adaptation and Mitigation) (Consequential and Transitional Provisions) Bill 2021 (**this Bill**) will make the necessary consequential amendments to other Commonwealth Acts and Regulations and provide for transitional provisions in order to support the commencement of the Climate Change (National Framework for Adaptation and Mitigation) Bill 2021 (**Substantive Bill**).

In particular, the Bill:

- Repeals the *Climate Change Authority Act 2011* to enable the establishment of the Climate Change Commission.
- Amends *Australian Securities and Investments Commission Act 2001* to ensure consistent operation of the ASIC Act with the Substantive Bill.
- Amends the *Carbon Credits (Carbon Farming Initiative) Act 2011* to ensure consistent operation of the Carbon Credits Act with the Substantive Bill.
- Amends the *Clean Energy Regulator Act 2011* to ensure consistent operation of the Clean Energy Regulator Act with the Substantive Bill.
- Amends the *Competition and Consumer Act 2010* to ensure consistent operation of the Competition and Consumer Act with the Substantive Bill.
- Amends the *National Greenhouse and Energy Reporting Act 2007* to ensure consistent operation of the NGER Act with the Substantive Bill.

- Amends the *Public Governance Performance and Accountability Act 2013* to insert a provision that the accountable authority of a Commonwealth entity must consider climate change impacts when performing their duties or exercising their powers.

Human rights implications

The consequential amendments and transitional provisions in this Bill are administrative or machinery in nature. None of these amendments directly advance or limit a relevant human right or freedom.

To the extent these amendments support the commencement of the Substantive Bill, these amendments may indirectly engage the human rights or freedoms engaged by the Substantive Bill. The Substantive Bill is compatible with human rights.

Conclusion

This Bill is compatible with human rights.

Ms Zali Steggall OAM MP