

## Supplementary Submission

### Inquiry into *Climate Change Bill 2022* and *Climate Change (Consequential Amendments) Bill 2022*

**To: The Senate Environment and Communications Legislation Committee (the Committee)**  
**From: Penny D Sackett**  
**23 August 2022**

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In addition to my submission of 10 August 2022 to the Committee, and my remarks and tabled statement at the Committee public hearing on 18 August 2022, I use the opportunity to provide this supplemental submission to indicate specific ways in which in my view these Bills could be strengthened before passing the legislation in the Senate. Whilst all the view presented here are my own, I would like to acknowledge the valuable contribution in this submission of Marcus Hassall, barrister, who has reviewed the document for consistency, clarity, and settled the wording of some of the specific amendments proposed here.

#### **Part 1 (s 3): Objects of Climate Change Bill 2022 (and flow on to Consequential Amendments Bill):**

The very first (aa) Object in proposed s 3 is "to advance an effective and progressive response to the urgent threat of climate change drawing on the best available scientific knowledge."

That such a response is urgent for Australia, and that the best available scientific knowledge is key to crafting this response, is made starkly clear in most recent report (AR6 WGII) of the Intergovernmental Panel on Climate Change that deals specifically with climate change impacts for Australia, which states:<sup>1</sup>

*"The region faces an extremely challenging future.*

*"Climate trends and extreme events have combined with exposure and vulnerabilities to cause major impacts for many natural systems, with some experiencing or at risk of irreversible change in Australia."*

Specifically, ARG WII notes:<sup>2</sup>

*"The Murray-Darling Basin (MDB) is Australia's largest, most economically important and politically complex river system. The MDB supports agriculture worth A\$24 billion/year, 2.6 million people in diverse rural communities, and important*

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<sup>1</sup> IPCC (2022) Chapter 11, Australasia, in Climate Change 2022: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, accessed at: <https://www.ipcc.ch/report/ar6/wg2/>

<sup>2</sup> Only references to literature, figures and the like have been omitted from these direct quotes.

*environmental assets including 16 Ramsar listed wetlands. Climate change is projected to substantially reduce water resources in the MDB (high confidence), with the median projection indicating a 20% decline in average annual runoff under 2.2°C average global warming. This reduction, plus increased demand for water in hot and dry conditions, would increase the already intense competition for water.”*

*“Increasing climate risks are projected to exacerbate existing vulnerabilities and social inequalities (high confidence.) These include inequalities between Indigenous and non-Indigenous Peoples, between generations, rural and urban areas, incomes and health status, increasing the climate risks and adaptation challenges faced by some groups and places. Resultant climate change impacts include the displacement of some people and businesses, and threaten social cohesion and community wellbeing.”*

*“Delay in implementing adaptation and emission reductions will impede climate resilient development, resulting in more costly climate impacts and greater scale of adjustments (very high confidence).”*

*“Reducing the risks would require significant and rapid emission reductions to keep global warming to 1.5 – 2.0°C, as well as robust and timely adaptation. The projected warming under current global emissions reduction policies would leave many of the region's human and natural systems at very high risk and beyond adaptation limits.”*

### *Recommendation 1*

Given the central role of science in understanding the increasing risks of climate change, as well as mechanisms to mitigate and adapt to its effects, the Bills would be considerably strengthened by making Object (aa) explicit for every Act covered in the Consequential Amendments Bill.

It is recommended that consistent with the *Climate Change Bill 2022*, every institution covered by the Acts in the Consequential Amendments Bill be specifically directed in that Bill to undertake their duties in a manner consistent with “advancing an effective and progressive response to the urgent threat of climate change drawing on the best available scientific knowledge.”

### *Recommendation 2*

In order to give further effect to Object (aa), particularly with regard to the urgent and robust need for climate adaptation as well as mitigation, it is recommended that the *Climate Change Bill 2022* be amended to establish an appropriately-resourced independent body tasked with creating a comprehensive National Climate Risk Assessment (NCRA).

The NCRA should be a public report, continuously updated to reflect new and altered risks. The report would form a necessary component informing a subsequent National Adaptation Plan and assist evidence-based decisions in local communities that are ill-equipped and ill-resourced to generate local risk assessments. The body tasked with formulating the NCRA should be resourced commensurate with its legislated responsibilities.

## Part 2 (s 10): Australia's Greenhouse Gas (GHG) Emissions Reduction Targets

Section 10(2) indicates that s 10(1), laying out Australia's GHG emissions reduction targets, is to be interpreted in a matter consistent with:

- (a) the Paris Agreement; and
- (b) Australia's nationally determined contribution.

I support this approach indicating that the Paris Agreement as a whole provides a context for interpreting Australia's emission reduction targets.

The note to s 10(1) states: "The achievement of a target involves reducing Australia's net greenhouse gas emissions to a level that is at or below the target. Accordingly, nothing in subsection (1) limits Australia's ability to reduce its net greenhouse gas emissions beyond 43% below 2005 levels by 2030."

There is an ambiguity with respect to the meaning of "below the target" due to the wording of this note. For example, would a 23% reduction target be considered below a 43% reduction target, since 23 is less than 43?

### *Recommendation 3*

For clarity, it is recommended that the note associated with 10(1) might be reworded along the following lines:

*"The achievement of a target is taken to mean reducing Australia's net greenhouse gas emissions by an amount that is equal to or larger than that required by the target. Accordingly, nothing in subsection (1) limits Australia's ability to reduce its net greenhouse gas emissions by more than 43% below 2005 levels by 2030."*

## Part 4: Advisory Functions of Climate Change Authority (CCA)

In my original 10 August 2022 submission, I noted that:

"I strongly support amendments to this Bill which would result in a strengthened, independent, statutory Climate Change Authority with funding and access to Government data, modelling and officials commensurate with increased duties and responsibilities. In addition, for increased effectiveness, provisions should allow the Authority regular access to Parliamentary committees related to climate change.

I support the Authority's legislated ability to provide unsolicited, unconstrained advice to the Government. More specifically, I support the Authority being tasked with advising the Government on the adequacy of current GHG emission targets and progress toward those achieving those targets annually, through a public report. Additionally, the Authority should make evidence-based recommendations for future increased targets, and opportunities, mechanisms and barriers to meeting them. In

light of changing circumstances and information, these recommendations should be reviewed periodically (every two years, say), and made public.”

Underscoring those remarks, I note in this supplementary submission that the German Federal Climate Change Act of 2019, as amended in August 2021<sup>3</sup>, contains the following provision under section 12(5):

“All public bodies of the Federation within the meaning of section 2 subsection (1) of the Federal Data Protection Act (*Bundesdatenschutzgesetz*) shall enable the Council of Experts on Climate Change to peruse the data required for the performance of its tasks and shall make such data available. The Federal Government shall ensure that the protection of third parties’ industrial and commercial secrets and of personal data is guaranteed. The Council of Experts on Climate Change may hear and question public authorities as well as experts, particularly representatives of business organisations and environmental associations, on matters relating to climate action.”

#### *Recommendation 4*

It is recommended that the Bill be amended to stipulate that the Climate Change Authority shall be able to view and analyse data required for the performance of its prescribed duties, and that such data be made available for that purpose. In addition, it is recommended that the Bill stipulate that the Authority may hear and question public authorities, experts, and business and community representatives in course of their prescribed duties.

#### *Recommendation 5*

Further, in order to give further effect to Object (aa), it is recommended in this submission that the Climate Change Bill be amended to authorise and compel the Authority to formulate proposed emission reduction pathways for Australia on a wider scope and over longer timescales than those strictly necessitated by Paris Agreement deadlines. These pathways, extending to the date of achieving net zero, should be predicated on scientifically sound methods to permanently reduce atmospheric greenhouse gas emissions and informed by wide consultations with sectors of the Australian economy and society.

Awareness of such pathways throughout the public, private and community sectors will be crucial to an orderly transition to net zero emissions. Consequently, it is further recommended that the Authority’s reports on such pathways be public, and continuously updated to reflect new and altered risks.

#### *Recommendation 6*

It is recommended that the Bill state explicitly that the Authority be resourced adequately to undertake all legislated duties.

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<sup>3</sup> Accessed at: [http://www.gesetze-im-internet.de/englisch\\_ksg/englisch\\_ksg.html#p0100](http://www.gesetze-im-internet.de/englisch_ksg/englisch_ksg.html#p0100)

#### Part 4: Provision of Advice by the Authority to 'the Minister'

Public trust is crucial to an effective democracy.

In order to give greater effect to Object (b) "to promote accountability and ambition" and to increase the transparency and accessibility of the work of the Climate Change Authority, the Bills would be substantially strengthened by introducing amendments ensuring that the Authority must report at least every five years, regardless of Ministerial arrangements or requests, and that timely publication of the reports of the Authority, including any provided under Recommendation 5, above are not constrained by Parliamentary sitting dates.

Specific language that would achieve these ends is given in Recommendation 7 below.

#### *Recommendation 7*

It is recommended that the Bill be amended as follows:

- Subsection 15(2) is deleted:
- Subsection 15(1) is amended to read as follows:

The Climate Change Authority must:

- a. at least once every 5 years commencing from the date of commencement of this section; and
- b. otherwise, as often as requested by the Minister;

advise the Minister on such of the following as the Climate Change Authority considers applicable:

- c. the greenhouse gas emissions reduction targets that the Climate Change Authority considers should be included in a new nationally determined contribution to be communicated by Australia in accordance with Article 4 of the Paris Agreement; and
- d. the greenhouse gas emissions reduction targets that the Climate Change Authority considers should be included in Australia's nationally determined contribution as the result of an adjustment to be made in accordance with paragraph 11 of Article 4 of the Paris Agreement."

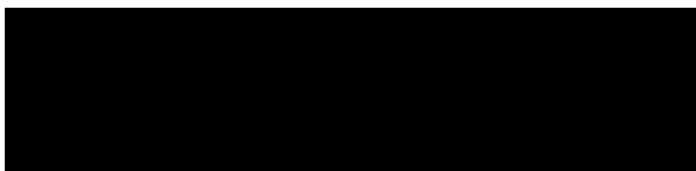
- Subsection 12(3) is deleted and replaced with the following:

(3) The Minister must cause a copy of an annual climate change statement:

- (i) to be published on the Minister's website within 7 days after the completion of the preparation of the statement; and
- (ii) to be tabled in each House of the Parliament within 5 sitting days of that House after the completion of the preparation of the statement.

- Subsection 14(6)(a) to be clarified as follows: “by publishing a copy of that advice on its website within 7 days after giving the advice to the Minister.”
- Subsection 14(7)(c) and(d) to be deleted and replaced with the following:
  - (c) the Minister must, within 14 days of the Minister’s receipt of the annual climate change statement, prepare a written statement of reasons for the decision not to accept those aspects of that advice; and
  - (d) the Minister must cause a copy of the statement of reasons:
    - i. to be published on the Minister’s website within 7 days after the completion of the preparation of the statement; and
    - ii. to be tabled in each House of the Parliament within 5 sitting days of that House after the completion of the preparation of the statement.
- Subsection 15(6)(a) to be clarified as follows: “by publishing a copy of that advice on its website within 7 days after giving the advice to the Minister.”
- Subsection 15(7)(b) to be deleted and replaced with the following:
  - (b) the Minister must cause a copy of the statement:
    - i. to be published on the Minister’s website within 7 days after the completion of the preparation of the statement; and
    - ii. to be tabled in each House of the Parliament within 5 sitting days of that House after the completion of the preparation of the statement.

I thank you for the opportunity to provide this supplementary submission to the Committee, and would be happy to discuss these matters further, should that be deemed valuable.



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