

Submission to Senate Standing Committee on Environment and Communications

Climate Change Bill 2022 and the Climate Change (Consequential Amendments) Bill 2022

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The introduction of the *Climate Change Bill 2022*, along with consequential amendments to other relevant legislation, is an important step in strengthening Australia's response to climate change and the federal government's implementation of its obligations under the international Paris Agreement.

Framework climate legislation is now used in many jurisdictions around the world as a mechanism to facilitate government action on climate change in line with the goals of the Paris Agreement.¹ By legislating targets and requiring government action towards these targets, these laws help to hold governments accountable for delivering timely and sufficient emissions reductions.

However, the *Climate Change Bill 2022* is best described as light-touch climate legislation. There are significant opportunities to strengthen its target-setting and accountability provisions.

In this submission, we draw on our ongoing research into climate legislation and the experiences in implementing these laws around the world, including our recent empirical study of the impact and effectiveness of the Victorian *Climate Change Act 2017*,² an example of comprehensive climate legislation at the subnational scale. We draw on this research to highlight 5 key areas where the *Climate Change Bill 2022* could be improved in line with emerging best practice around the world.

We also attach a copy of an article published recently in the *Melbourne University Law Review* that describes our research in more detail. We would also be happy to provide further information or discuss any matters in this submission or the attached article with the Committee.

1. Long-term emissions reduction targets – more ambition and stronger alignment to science

Long-term targets are an important element of framework climate laws: they serve to guide a range of government activities (e.g. interim target setting and climate policy development) and provide a strong signal to the private sector and other stakeholders regarding future policy and regulatory settings.

Many climate laws adopt a long-term target of 'net zero emissions by 2050.' This is clear and simple and aligns reasonably well with the recommendations of the Intergovernmental Panel on Climate Change (IPCC) for limiting global warming in line with the goals of the Paris Agreement.³ However, recent scientific developments increasingly suggest that the world needs to reach net zero emissions earlier than 2050 to maximise chances of limiting global

¹ ClientEarth, *Navigating Net-Zero: Global Lessons in Climate Law-Making* (August 2021).

² Anita Foerster, Alice Bleby, Anne Kallies, Jonathan Church, 'Paris at the subnational scale?: An exploration of the role and potential of framework climate change laws' 45(3) (2022) *Melbourne University Law Review*, advance copy available at: https://law.unimelb.edu.au/__data/assets/pdf_file/0013/4230004/Foerster-et-al-453-Advance.pdf

³ Intergovernmental Panel on Climate Change (IPCC), *Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-Industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (2018).

warming to no more than 1.5°C above pre-industrial temperatures,⁴ and that the impacts of global warming will be considerably more severe beyond 1.5°C.⁵ Further, the Paris Agreement specifically provides that developed nations should take the lead in reducing emissions across the economy.⁶

Best practice examples of framework climate laws around the world now avoid a blanket long-term goal of 'net zero by 2050' and instead provide for greater ambition in long term targets and explicitly accommodate evolving scientific understanding. For example:

- The *Climate Act* (Denmark) aims to achieve 'a climate-neutral society by 2050 *at the latest*, taking into account the *Paris Agreement* target of limiting the global temperature rise to 1.5 degrees Celsius.'⁷
- The *Climate Change Act 2008* (UK), provides carefully constrained scope to amend long-term targets in response to developments in scientific knowledge about climate change, or European or international law or policy, with specific provision for non-regression.⁸
- The *Climate Change (Scotland) Act 2009* (Scot) specifically includes a requirement to consider what a fair contribution to stabilising the global climate system would be.⁹

The *Climate Change Bill 2022* codifies Australia's long term emissions reduction target of 'net zero emissions by 2050' (s 10(1)(b)) and provides that this target should be interpreted in a manner consistent with the Paris Agreement. The statutory objectives include: to set targets 'which contribute to the global goals' of the Paris Agreement (s3(a)), and following amendments proposed by MP Kate Chaney, 'to advance an effective response to climate change drawing on best available scientific knowledge'.¹⁰

These provisions, as amended, are reasonably strong, but could be improved by explicit reference to the more ambitious Paris Agreement goal (1.5°C), the need to respond to evolving scientific understanding of what is needed to meet Paris Agreement goals, and the importance of Australia contributing fairly to meeting global climate goals. Small amendments are suggested (proposed changes to the text of the bill are underlined):

- s10(1)(b) - 'reducing Australia's net GHG emissions to zero by 2050 or earlier, as informed by best available science and the global goals of the Paris Agreement, in particular the objective to limit global warming to 1.5°C above pre-industrial temperatures'
- s 10(2) – '... in a manner consistent with: (a)..., (b)..., and (c) best available scientific knowledge.'
- S 3 (a) – 'The objects of this Act are (a) to set out Australia's GHG emissions reduction targets which contribute fairly to the global goals of...'

⁴ Will Steffen et al, *Aim High, Go Fast: Why Emissions Need to Plummet This Decade* (Report, 2021).

⁵ IPCC above n 3.

⁶ *Paris Agreement under the United Nations Framework Convention on Climate Change*, opened for signature 22 April 2016, [2016] ATS 24 (entered into force 4 November 2016), Art. 4(4).

⁷ *Climate Act* (Denmark) No 2020:965, ch 1 s 1 para 1 [tr Danish Ministry of Climate, Energy and Utilities, 'Climate Act (Act No 965 of 26 June 2020)', *Danish Ministry of Climate, Energy and Utilities* (Web Document, 26 June 2020) <https://en.kefm.dk/Media/1/B/Climate%20Act_Denmark%20-%20WEBTILG%C3%86NGELIG-A.pdf>, archived at <<https://perma.cc/7Z22-AJ5D>>; Grantham Research Institute on Climate Change and the Environment, 'The Climate Act (Denmark)', *Climate Change Laws of the World* (Web Page) <<https://climate-laws.org/geographies/denmark/laws/the-climate-act>>, archived at <<https://perma.cc/M9A8-RLB7>>.

⁸ *Climate Change Act 2008* (UK), s 2.

⁹ *Climate Change (Scotland) Act 2009* (Scot) ss 2B(1)(a), (2).

¹⁰ At the time of writing this submission, a consolidated version of the Bill as amended was not available. Amendments to the Climate Change Bill 2022 that passed the House of Representatives on 4 August were reported here: Maeve Bannister, 'Amendments to Climate Change Bills' *The West Australian* (4 August 2022), <https://thewest.com.au/politics/amendments-to-climate-change-bills-c-7756089>

2. Interim Targets – tighter constraints and a clearer role for the Climate Change Authority needed

The Glasgow Climate Pact, agreed at the 26th Conference of the Parties of the United Nations Framework Convention on Climate Change in Glasgow in November 2021, emphasised that to achieve the goals of the Paris Agreement (particularly the more ambitious goal of limiting global warming to 1.5°C above pre-industrial temperatures), substantial emissions reductions are required globally in the short to medium term - before 2030.¹¹

The *Climate Change Bill 2022* sets out Australia's 2030 target (s10(a)) and a general process for updating this target (s 10(4) & (5)), with provision for independent expert advice on target-setting by the Climate Change Authority (s15). Consistent with the Paris Agreement, the Bill provides explicitly for non-regression: each new target proposed must represent a progression beyond previous targets (s10(5)). MP Zali Steggall secured amendments explicitly requiring five yearly targets for 2035, 2040 and 2045 and requiring the government to seek the advice of the Climate Change Authority before proposing a new target.¹²

Framework climate laws typically set out a process for governments to set interim emissions reduction targets at regular intervals on the pathway to net zero. The *Climate Change Bill 2022* takes a very light-touch approach to this process. Our research suggests that a lack of clear statutory constraints to guide interim target-setting increases the risk that governments will defer emissions reductions to later dates.¹³ For example, the first round of interim targets set for Victoria under the *Climate Change Act* (for 2025 and 2030) have been criticised for not aligning to the 1.5°C Paris goal, and for deferring necessary emissions reductions.¹⁴

The *Climate Change Bill 2022* should include a more detailed and robust statutory framework to support the setting of interim targets. This would enable the government of the day to set more ambitious targets for emissions reductions aligned with best available climate science and reduce the risk that substantial emissions reductions are deferred. Deferring emissions reductions with less ambitious near-term targets will necessitate much more dramatic reductions towards 2050, increasing the burden on future generations and making it difficult to achieve an emissions budget consistent with the 1.5°C goal. Pushing forward the required emissions reductions with more ambitious near-term targets will deliver more certainty around climate outcomes and involve less dramatic reductions towards 2050. Statutory constraints on interim target setting should be used to align domestic climate action with Paris goals and ensure timely emissions reductions to maximise changes of achieving these goals in an efficient and equitable fashion.

While the *Climate Change Bill 2022* – as amended – provides some important safeguards (e.g. non-regression), there is scope to strengthen the constraints on interim target. For example, the Bill should clearly state that:

- The Minister has a legal duty to set interim targets for five yearly periods from 2030 (with a timeframe set out in the legislation); and
- In setting interim targets, the Minister must consider best available scientific information and the global goals of the Paris Agreement, in particular the objective to limit global warming to 1.5°C above pre-industrial temperatures; and must ensure that interim targets contribute to achieving the long-term target in an efficient, effective, and equitable manner; and

¹¹ UNFCCC, 'Glasgow Climate Pact, Decision -/CP. 26, advance unedited version' available at <https://unfccc.int/documents/310475> [1/CP. 26]

¹² Above n 10.

¹³ Foerster et al above n 2, at 202-6, 36-38.

¹⁴ See e.g. Michael McGowan, 'Victorian Government pledges to slash state's carbon emissions by 50% by 2030' *The Guardian* (2 May 2021), <https://www.theguardian.com/australia-news/2021/may/02/victorian-government-pledges-to-slash-states-carbon-emissions-by-50-by-2030>

- In setting interim targets, the Minister must also have regard to the advice of the Climate Change Authority; and
 - In providing advice to the Minister on interim targets, the Climate Change Authority must consider best available scientific information and the global goals of the Paris Agreement in particular the objective to limit global warming to 1.5°C above pre-industrial temperatures.
- 3. Accountability Measures – introduce robust and enforceable obligations on government to set interim targets, develop policy measures to achieve these targets, and report regularly on progress**

One of the most important contributions of framework climate legislation around the world is to help hold governments accountable for delivering timely and sufficient emissions reductions. Generally, these laws do this by establishing procedural obligations for government to develop climate change policies and programs aligned with emissions reduction targets and requiring the government to regularly account for its progress on delivering these policies and achieving the targets. This approach sets in motion a continuous cycle of policy development, delivery and accountability designed to keep the government on track over decades, towards the achievement of a long-term (e.g. 2050) target. Specific emissions reduction initiatives are generally enacted in separate legislation; a framework law provides an overarching policy architecture that builds and sustains momentum and fosters coherence across a suite of climate change policy initiatives.

Best practice examples of framework climate laws set out clearly defined legal duties on government to set and achieve interim targets and to develop robust and credible policies and actions which will deliver on targets.¹⁵ Governments are also required to report publicly on progress towards targets and on the effectiveness of policy measures in reducing emissions.¹⁶ Core legal obligations are typically allocated to a central minister with overarching responsibility for the implementation of the Act. However, some framework laws also set out statutory responsibilities for ‘sectoral’ ministers (e.g. transport, agriculture, energy) to develop policy measures to achieve emissions reduction in different sectors of the economy and to report on progress.¹⁷ For example, under the Victorian *Climate Change Act 2017*, the lead Minister may require various ‘sectoral’ ministers to prepare emissions reduction pledges for different sectors of the economy.¹⁸ This helps to spread responsibility for emissions reduction across government and acknowledges that meeting targets requires deep engagement and policy development across all policy areas.

While the *Climate Change Bill 2022* incorporates some of these ‘framework’ measures, they are not well developed. As originally drafted, the Bill would require government to prepare an annual climate change statement to report progress on targets and report on the effectiveness of the government’s climate change policies in contributing to the achievement of targets (s12(1)). Further, the independent Climate Change Authority would be required to advise the government on this statement (s14). Amendments proposed by MP Allegra Spender will now also require the statement to consider the effectiveness of the government’s policies in general, rather than specific climate policies

¹⁵ See e.g. *Climate Change Act 2008* (UK) ss 13 & 14, which establish a clear duty for the Secretary of State to prepare proposals and policies ‘that the State considers will enable the carbon budgets’ (or *interim targets*) set under the Act to be achieved, and to set out these proposals and policies in detail.

¹⁶ See e.g. *Climate Change Act 2017* (Vic), ss 54 & 55, which require the Minister to report at the end of each interim target period on whether the target was achieved and assess ‘the implementation and effectiveness, including the cost effectiveness, of the emission reduction pledges included in any climate change strategy that was in force during the interim target period’ (s 55(f)).

¹⁷ For example, in Germany, the framework climate law sets sectoral emissions budgets and clearly assigns responsibility for achieving these to the respective ministries, requiring relevant ministries to report annually on progress and holding them responsible for addressing any deviation from the carbon budget. See: Ecologic Institute, *Climate Laws in Europe: Good Practices in Net-Zero Management* (February 2020) 29-30.

¹⁸ *Climate Change Act 2017* (Vic) s 45.

only, so as to also consider the impact of government policies which could be negatively impacting emissions reductions, such as fossil fuel subsidies.¹⁹

The Bill could be further strengthened by:

- Providing a clear duty for the Minister to set out policy measures capable of achieving the interim targets at five yearly intervals in the form of a climate change strategy or similar; and
- Setting out associated duties for different ‘sectoral’ ministers to develop sectoral policies to reduce emissions in different sectors, also set out in the climate change strategy or otherwise publicly disclosed; and
- Incorporating progress reporting obligations for sectoral ministers to report on the delivery of sector-based policies described above; and
- Establishing an overarching duty for the Minister to take all reasonable steps to achieve the interim and long-term targets.

4. Transparency – a greater role for the Climate Change Authority

Independent expert bodies play an important role under climate legislation around the world, advising governments on climate policy and monitoring progress towards targets and thereby promoting transparency and helping to hold governments accountable for delivering on their targets and commitments. For example, the UK *Climate Change Act 2008* establishes a permanent independent climate commission, with an ongoing role advising government on target setting, climate policy, monitoring process and facilitating stakeholder engagement.

Part 4 of the *Climate Change Bill 2022* provides for advisory functions for the Climate Change Authority, which build on the functions already set out in the *Climate Change Authority Act 2011* (Cth). This includes advising the government on the preparation of the annual climate change statement (s 14) and on new targets (s 15). The provisions require any advice to be publicly available, and further require the Minister to respond to the advice, including explaining reasons for not accepting material aspects of the advice. These are reasonably strong provisions which match best practice examples in place around the world.

However, the Bill provides little detail on the role that the Authority should play in advising on policy measures and monitoring progress. Experience implementing the *Climate Change Act 2017* in Victoria suggests that it would be beneficial to set out these functions explicitly in the legislation. In Victoria, an independent expert panel was established to advise on interim targets only, with no ongoing role in advising on policy measures to meet targets or monitoring government progress. This has reduced transparency regarding the development of emissions reduction pledges and likely contributed to poorly-developed mitigation policies in some sectors.²⁰

To consolidate the crucial role of independent advice in the development and delivery of Australia’s climate change policies, we suggest the *Climate Change Bill 2022* should explicitly include:

- A requirement for Ministers developing the climate change strategy and sectoral policies included in the strategy to seek advice on policy approaches from the Climate Change Authority, and a requirement that this advice be made publicly available; and

¹⁹ Above n 10.

²⁰ Foerster et al above n 2, at 30-33, 44-45.

- A provision empowering the Climate Change Authority, on its own initiative, to investigate and report on issues relevant to Australia's progress towards achieving its emission reduction targets and climate adaptation objectives;²¹ and
- A provision empowering the Climate Change Authority to consult with stakeholders and members of the public to inform any of its activities, including the provision of advice to the government on targets and climate change policy development.²²

It is also vitally important that the Climate Change Authority is sufficiently well resourced to deliver on its functions, and that its independence is respected, allowing it to develop and deliver its advice to government 'at arm's length'.

5. Climate Mainstreaming – consequential amendments

The *Climate Change (Consequential Amendments) Act 2022*, which embeds Australian emissions reduction targets into the objects and functions of a range of Commonwealth entities and schemes, is an important complement to the *Climate Change Bill 2022*. The aim is to ensure those entities and schemes contribute to (and do not detract from) the achievement of targets.²³

Most of the amendments proposed involve small changes to statutory objects clauses (e.g. to add an objective to contribute to the achievement of targets) or the insertion of Australia's specific long term and 2030 targets in legislation where there is already a reference to Australia's targets. The explanatory memorandum provides that further amendments may be made over time.

While these types of amendments can encourage the consideration of climate change and particularly Australia's targets in some policy and decision-making contexts, there is a risk that the proposed amendments to statutory objects clauses are not specific enough to require explicit consideration of relevant factors in key decisions or actions undertaken by Commonwealth entities or as part of Commonwealth schemes. Further, there is a risk that a whole range of relevant decisions and actions (beyond the current entities and schemes referenced in the Bill) are not included in the program of statutory amendments, meaning that decision-makers in other policy contexts are not required to consider climate change, and may therefore make decisions or undertaken actions which undermine the achievement of the targets.

The climate mainstreaming provisions of the Victorian *Climate Change Act 2017* provide a model for addressing these risks and requiring that climate change considerations (including emissions targets) are explicitly factored into government decisions and actions where relevant:

- S 17 provides that a person making a decision or taking an action which is scheduled under the Act (Schedule 1) must have regard to (inter alia) the potential impacts of climate change relevant to the decision or action; and the potential contribution to the State's greenhouse gas emissions of the decision or action
- S 20 provides that the Government of Victoria will endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant by having regard to the policy objectives and the guiding principles.

²¹ While such activities are already potentially possible under the *Climate Change Authority Act 2011* (Cth) s 11 which provides broadly for the functions of the Authority, explicit provision in the *Climate Change Bill 2022* would provide a clearer mandate and role for independent expert input and tie this with related activities of the Minister/s under the *Climate Change Bill 2022*.

²² Ibid.

²³ *Climate Change (Consequential Amendments) Act 2022* - Explanatory Memorandum.

The Victorian Act also provides for the development of Ministerial Guidelines to support decision-makers in considering climate change in line with these statutory duties (ss 18 and 21).

It is recommended that the *Climate Change Bill 2022* be amended to include similar duties, with relevant decisions and actions included in a schedule to the legislation. The Bill should also include provision for the development of Ministerial Guidelines to support policy and decision makers in their consideration of climate change and emissions reduction targets, and for regular review of the Schedule to ensure additional relevant decisions can be incorporated over time.