



## **NSWCCL SUBMISSION**

### **SUBMISSION TO THE SENATE STANDING COMMITTEES ENVIRONMENT AND COMMUNICATIONS**

### **CLIMATE CHANGE BILL 2022 AND THE CLIMATE CHANGE (CONSEQUENTIAL AMENDMENTS) BILL**

**10 August 2022**

## **Acknowledgement of Country**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

## **Contact NSW Council for Civil Liberties**

<http://www.nswccl.org.au>  
[office@nswccl.org.au](mailto:office@nswccl.org.au)

Correspondence to: PO Box A1386, Sydney South, NSW 1235

The NSW Council for Civil Liberties (**NSWCCL**) is grateful for the opportunity to make a submission to the Committee's Inquiry into the Climate Change Bill 2022 and Climate Change (Consequential) Amendments Bill 2022.

1. After a decade of inaction on climate change, the Climate Change Bill 2022 (**Bill**) represents welcome progress. While we support the Bill as an improvement on business as usual, it is our view that:
  - (1) the target it enshrines in law is woefully inadequate; and
  - (2) beyond setting a target, the Bill fails to do any work towards achieving that target.
2. This said, through a few amendments the Bill has potential to provide a proper bedrock for Australia's ability to respond to the climate emergency and contribute towards the goals of the *Paris Agreement*.

## Objects

3. Clause 3(a) sets out one object of the Bill as contributing to the global goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.
4. While it is noted that this object mirror's the language of article 2(1)(a) of the *Paris Agreement*, holding global temperatures to 2°C of warming still poses dire risks to the Earth system and all human economies that depend on it. In 2018 the Intergovernmental Panel on Climate Change warned of these risks and the need to limit global warming to 1.5°C.<sup>1</sup> Since this time there has been a growing movement towards 1.5°C as the necessary target for global climate mitigation.
5. Recently Australia was party to the Fifty First Pacific Islands Forum, the Communiqué of which provided:

Leaders reconfirmed that climate change remains the single greatest existential threat facing the Blue Pacific, underscoring the urgency to limit global warming to 1.5 degrees through rapid, deep and sustained reductions in greenhouse gas emissions.<sup>2</sup>
6. While not a binding agreement, enshrining the object of the Bill as 2°C is a clear repudiation of Australia's commitments to its Pacific Island neighbours. In light of the scientific evidence that 2°C of warming poses untenable risks, the Bill should remove clause 3(a)(i) enshrining 2°C of warming as a target.

## Target

7. Clause 10(1)(a) of the Bill sets a target of a 43% reduction in net greenhouse gasses below 2005 levels by 2030 (the **Target**). The Target is inconsistent with the Bill's objectives of contributing to the global goal of holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.
8. The Australian government has not provided information explaining how it arrived at the Target. The Australian government's own advice was that Australia needed a 2030 climate target of 45-65% below 2005 levels to be consistent with climate science.<sup>3</sup> Since this advice was given in 2016, the signing of the Paris Agreement, the falling costs of abatement coupled with the rising political will to tackle climate change since the Black Summer bushfires warrants a target at the higher end of this range.
9. Climate Tracker's analysis of the Target is that it is not a sufficient fair share of Australia's international effort to decarbonise. Rather, modelling by Climate Tracker shows that Australia's fair share of the global action required to keep temperature rise to 1.5°C is a reduction of at least 60% by 2030.<sup>4</sup>
10. The Climate Council advises that to keep global temperatures below 1.5°C Australia must reduce emissions to 75 percent below 2005 levels by 2030.<sup>5</sup>

<sup>1</sup> IPCC, 'Global warming of 1.5°C Summary for Policymakers' (2018).

<sup>2</sup> Fifty First Pacific Islands Forum, Suva, Fiji 11 – 14 July 2022, Forum Communiqué

<https://www.forumsec.org/2022/07/17/report-communication-of-the-51st-pacific-islands-forum-leaders-meeting/>

<sup>3</sup> Climate Change Authority, Final Report on Australia's Future Emissions Reduction Targets (Report, 2015). Note: The final report was expressed in terms of 40 to 60 per cent below 2000 levels, this equates to 45-65% below 2005 levels.

<sup>4</sup> Climate Action Tracker, 'Australia' (2 August 2022) <<https://climateactiontracker.org/countries/australia/targets/>>

<sup>5</sup> Climate Council, Australia-Pacific UN Climate Summit on the Cards, Now Time For Action (15 July 2022) <<https://www.climatecouncil.org.au/resources/australia-pacific-un-climate-summit-on-the-cards-now-time-for-action/>>.

11. The disconnect between the Target and the objectives of the Bill should also be read in light of the fact that the objects of the Bill mirror the aims of the *Paris Agreement* as set out in article 2(1)(a). As such, the Bill also fails to assist in Australia contributing to the aims of the *Paris Agreement*.
12. For these reasons the Bill requires a target of at least 60% by 2030 to make it consistent with its own objectives, and consistent with Australia's international responsibilities.

### **Achieving the Target**

#### *Duty to prepare policies to meet the target*

13. The Target as it stands in the Bill is largely symbolic. The Bill does not contain any mechanisms to implement the target or ways to hold the government to account for failure to deliver on the target.
14. The Bill should require the Australian government to prepare policies that have a reasonable chance of meeting the target. Without such policies to translate the Target into action, the Target is merely symbolic. Further, it runs the risk that without a duty to prepare such policies, a future government could simply fail to recognise the Target when formulating climate policy.
15. Section 13 of the Climate Change Act 2008 (UK) provides an example of a duty placed on a minister to deliver policies to meet the UK's target:

#### **13 Duty to prepare proposals and policies for meeting carbon budgets**

- (1) The Secretary of State must prepare such proposals and policies as the Secretary of State considers will enable the carbon budgets that have been set under this Act to be met.
  - (2) The proposals and policies must be prepared with a view to meeting—
    - (a) the target in section 1 (the target for 2050), and
    - (b) any target set under section 5(1)(c) (power to set targets for later years).
  - (3) The proposals and policies, taken as a whole, must be such as to contribute to sustainable development.
  - (4) In preparing the proposals and policies, the Secretary of State may take into account the proposals and policies the Secretary of State considers may be prepared by other national authorities.
16. The Bill should include a similarly worded provision.

#### *Duty to meet the target*

17. A further way to ensure the target is met is by placing a duty on the Australian government to meet the target.
18. Section 8 of the *Climate Change Act 2017* (Vic) is an example of such a duty being placed on a government. It provides:

#### **8 Achieving the long-term emissions reduction target**

The Premier and the Minister must ensure that the State achieves the long-term emissions reduction target.

19. The Bill should adopt a similarly worded provision.

#### *Duty to make decisions consistent with the Target*

20. In order to ensure this meeting the achieved, and that government decisions do not undermine the target, government decisions with the potential to impact upon Australia's emissions should be required to be consistent with achieving the target.
21. For example, the emissions from planned fossil fuel projects have the capacity to negate the reductions achieved by current climate policies and make achieving the climate Target impossible.<sup>6</sup> Given many of these

<sup>6</sup> The Australia Institute, 'Undermining Climate Action the Australian Way' (Discussion Paper, November 2021)  
<<https://australiainstitute.org.au/wp-content/uploads/2021/11/P1163-Undermining-climate-action-the-Australian-way-WEB.pdf>>

will require Commonwealth approval under the *Environment Protection and Biodiversity Conservation Act 1999*, such decisions (and decisions across government) should be consistent with achieving the Target.

22. Section 58(1) of *Human Rights Act 2019* (Qld) provides an example of a duty to make decisions consistent with human rights that extends across whole of government. It provides:

**58 Conduct of public entities**

(1) It is unlawful for a public entity—

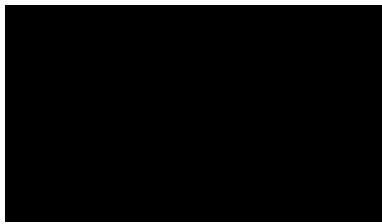
- (a) to act or make a decision in a way that is not compatible with human rights; or
- (b) in making a decision, to fail to give proper consideration to a human right relevant to the decision.

23. A similar provision aimed at ensuring decisions of the Australian government are consistent with achieving the target should be included in the Bill.
24. The sum of these provisions will ensure the Target is achievable and provide the ability to hold the government to account by providing avenues of judicial review.

We trust that this submission assists the Committee in its work and would be pleased to offer further assistance if it would be of use.

This submission was prepared by Jay Gillieatt on behalf of the New South Wales Council for Civil Liberties.

Yours sincerely,



**Josh Pallas**  
**President**  
**NSW Council for Civil Liberties**

Contact in relation to this submission: Josh Pallas

Email: [REDACTED] Mobile: [REDACTED]