Melbourne Climate Futures

Submission on the Climate Change Bill 2022

Wednesday, 10 August 2022

Melbourne Climate Futures Submission

Melbourne Climate Futures (MCF) at the University of Melbourne welcomes the opportunity to contribute this public submission to the Environment and Communications Legislation Committee's inquiry on the Climate Change Bill 2022 and the Climate Change (Consequential Amendments) Bill 2022.

MCF brings together academics from across all disciplines to develop practical outcomes for the challenges ahead. Below are comments drawn from multidisciplinary research expertise on climate at the University of Melbourne to help inform the Committee's inquiry. Our ability to respond to the Inquiry has been somewhat limited by the short-time frame for public consultation. However, we would be happy to provide further input over time as required.

Legislative objects

We note that section 3 of the Bill on 'Objects' does not explicitly refer to Australia's obligations under the Paris Agreement although this is implied by reference to the contribution to 'global goals'.

To aid clarity of interpretation of the legislation it may be preferable to reference expressly the Paris Agreement as the source of these 'global goals'.

A stronger alternative would involve a statement that the legislation is framed by, and is intended to ensure, Australia complies with, its international obligations under the Paris Agreement. This would align future target setting with the process for a five-yearly update of Australia's Nationally Determined Contribution (NDC) in line with the Paris Agreement.

Australia's greenhouse gas emissions reduction targets

- *Consider provision for interim target setting*

We welcome the move to legislate Australia's 2030 emissions reduction target and the long-term emissions reduction target in cl 10(1)(a) and (b) of the *Climate Change Bill 2022* (Cth). To strengthen Australia's implementation of its commitments under the Paris Agreement, we suggest establishing a 5-year system of interim emissions' reduction target setting in cl 10(1). This would follow the experience in other jurisdictions such as s 4 of the *Climate Change Act 2008* (UK), s 2 of the *Climate Change (Scotland) Act 2009*, and s 10 of the *Climate Change Act 2017* (Vic) (see Annex I for further details of Australian state emissions reduction targets). Such interim targets were recommended by the Climate Change Authority in its Targets and Progress Review Final Report in 2014.

- *Consider inclusion of a legal duty to meet targets*

In legislating the 2030 interim target and the target to reach net zero by 2050, the Australian Government has demonstrated that it intends to ensure progressive climate action by future governments. As stated in the

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Explanatory Memorandum, "Formalising the targets in legislation will deliver certainty to the Australian community about what these commitments are, and underscore their importance to the future of this country".

To strengthen this commitment, and to provide certainty and greater accountability, the Australian Government might consider enshrining a legislative duty to meet the 2030 (and also any interim) emissions' reduction targets and the long-term (2050) emissions reduction target. For example, in Victoria, s 8 of the *Climate Change Act* provides that "The Premier and the Minister must ensure that the State achieves the long-term emissions reduction target".

Comparable wording in the Federal legislation could include that the "Prime Minister and relevant ministers must ensure that Australia meets its interim emissions' reduction targets and long-term emission reduction target".

As set out in one study of the impact of climate legislation, introducing legally binding language to impose enforceable duties on government, by using language such as "shall" and "must", might also be accompanied by "provisions that provide for relevantly concerned members of the public to enforce the laws provisions through both merits and judicial (administrative) review".

- *Strengthen wording and ensure that each successive target represents a progression on the actual emissions reductions achieved.*

It is encouraging to see the Australian government's acceptance of the member for Goldstein's amendment to cl 10 providing, "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 greenhouse gas emissions beyond 43% below 2005 levels by 2030". This language might be further strengthened by making it clear that even if the target is overachieved, the next target must still reflect progression beyond the actual emissions reductions achieved. This would clearly demonstrate that 'banking and borrowing' is not permissible.

In addition, the Bill's language with regard to the updating of Australia's Nationally Determined Contributions (NDCs) under the Paris Agreement lacks some precision, suggesting that preparation and communication of updated NDCs is optional ("If the Commonwealth …") rather than mandatory according to the requirements of the Paris Agreement.

- *Establish a set of 'target-setting criteria'.*

The Australian Government might consider adopting a set of 'target-setting criteria' to guide the target-setting approach. These criteria could reference well-established principles of sustainable development such as the need for both intra-generational equity across countries and within countries, and inter-generational equity to ensure that the emissions reduction burden does not fall on future generations. For example, s 2B of the *Climate Change (Scotland) Act 2009* includes such criteria. These criteria might be included as a non-exhaustive list (unlike the provision in Scotland).

More generally, it is noted that the Australian emission reduction targets specified in cl 10 are not consistent with the earlier recommendations from the Climate Change Authority in its *2014 Targets and Progress Review*. Recommendation 9 of that Review recommended emission reductions of at least 40% relative to 2000 levels by 2030, which is significantly stronger than 43% reductions relative to 2005 levels.

Annual Climate Change Statement

It is encouraging to see that the Bill signals an intention to enhance public accounting of progress towards meeting Australia's mitigation targets through an Annual Climate Change Statement.

Further specification of the content of the statement in the Bill might be considered, including the ways that it would add to the other forms of emissions data reporting already required and provided by public agencies. Greater

clarity on the statement of account to be made by the Minister could help ensure that such statements are aligned to meeting the core objects of the legislation.

The value and impact of the annual Climate Change Statement could also be further strengthened through inclusion of an annual assessment of climate risks. For example, s 5ZQ of the *Climate Change Response Act 2002* (NZ) requires the Commission to prepare a national climate change risk assessment taking into account:

> "(a) economic, social, health, environmental, ecological, and cultural effects of climate change;
>
> (b) the distribution of the effects of climate change across society, taking particular account of vulnerable groups or sectors;
>
> (c) New Zealand's relevant obligations under international agreements;
>
> (d) how the assessment aligns or links with any other relevant national risk assessments produced by central government entities;
>
> (e) current effects and likely future effects of climate change;
>
> (f) any information received as a result of requests made under section 5ZW;
>
> (g) scientific and technical advice".

The New Zealand Commission may also consider "(a) opportunities arising for New Zealand's economy, society, and environment as a result of the effects of climate change; and (b) any other factor that it thinks is relevant or appropriate".

On 'other factors', in Australia, this could include assessment and analysis of transition risks. Key drivers of transition risk, as noted in the 2021 Basel Committee on Banking Supervision Report on Climate Risk Drivers include changes in public sector policies; innovation and changes in the affordability of existing technologies; and changes in investor and consumer sentiment towards the acceleration of GHG emission reductions.

The Statement could also include an assessment of opportunities for maximising the social and economic co-benefits and opportunities from a well-managed and equitable transition to a zero-carbon economy. This assessment could include identification of priority actions for:

i) maximising the health co-benefits of emissions reduction and climate adaptation policies (informed by the outcomes of the climate and health strategy currently being developed by the Commonwealth Government);

ii) maximising economic and employment opportunities arising from the Commonwealth government's commitment to accelerate the transition to a low carbon economy; and

iii) strengthening the social, economic and environmental resilience and sustainability of regions and communities, including action to address issues identified in the 2021 State of the Environment Report.

Other matters for consideration for inclusion in the Bill

We suggest that as a national framework law on climate change the Bill might be strengthened by inclusion or further consideration of the following elements. This objective could also be achieved by complementary legislation, given that the *Climate Change Bill* is currently mainly framed as legislation dealing with mitigation:

(a) A national approach to adaptation.

As currently formulated, the Bill does not incorporate a national approach to adaptation into its provisions. Adaptation might be included as part of Australia's 'Annual climate change statement' under cl 12 of the Bill, or as a separate assessment. Adaptation might also involve the preparation of 5-yearly adaptation action plan(s), learning from the experience of jurisdictions like Victoria or New Zealand. In addition, the 'Annual climate change statement'

is an opportunity to explicitly include details of Australia's annual contribution to climate finance pursuant to Article 9 of the Paris Agreement.

(b) A whole of government approach.

Mitigating and adapting to climate change will require transformations across every aspect of society. A'whole-of-government' approach to climate change would help to avoid 'siloing' and also mainstream climate decision making across government departments.

For example, this Bill could mirror the approach in Victoria, where decision-makers are required to have regard to climate change considerations (Pt 3) and take account of climate relevant policy objectives and guiding principles (Pt 4).

A further extension of this approach would be to adopt a more explicit climate charter for government action. The idea of such a charter was recommended by the most recent review of Victoria's climate legislation, and it accords with the recommendations around standard setting for federal environmental laws. A whole of government commitment captured by a charter would provide a complementary provision alongside a government emissions reduction target.

(c) Indigenous peoples

Climate change poses specific risks to Indigenous Peoples in Australia. Equally, the leadership of Indigenous Peoples working on Country will likely be crucial to Australia's climate change response, including new initiatives such as the Cultural Fire Carbon Credits investment program. Taking a narrow approach to carbon emission reduction and renewable energy production can further entrench Indigenous Peoples exclusion from land and water. The Bill provides an opportunity to embed an approach that strengthens and supports partnerships with Traditional Owners. For example, cl 12 of the Bill, 'Annual climate change statement' might include reporting on both climate change initiatives of Australian Indigenous Peoples, as well as climate change impacts on these communities. This reporting is especially important in the context of the upcoming referendum on the Voice to Parliament.

(d) Precision and enforceability

We generally note that climate legislation ought to be precise and enforceable, but not overly complex. The adoption of targets, standards, a charter, or directions such as those proposed for the Climate Change Authority must be framed in clear language. Further, given that this is a Bill for with environmental protection goals, there is scope for an interpretation that furthers such goals in the event of any ambiguity.

There is potential to review this Bill with these aspects in mind. Clause 10(2), for instance, could make explicit that the interpretation across the legislation and international commitments should lead to an interpretation that achieves the greatest reduction in greenhouse gas emissions. Clause 12 could make explicit that the annual reporting be directed towards further reducing emissions or increasing adaptation preparedness rather than the statements being designed to detail a state of affairs. Clause 15(3) could make explicit the forms and duration of public consultation, noting that the absence of such provisions in federal environmental law has led judges to conclude that federal environmental decisions can lawfully be made 'in studied haste'.

Annex I

Australian States & Territories climate legislation and targets

	Vic	NSW	Qld	WA	SA	NT	ACT	Tas	Federal (Coalition)	Federal (Labor)
Framework climate change legislation	Yes	No	No	No	Yes	No	Yes	Yes	No	Yes
2030 targets/goals	Legislated target of 28-33% below 2005 levels by 2025 & 45-50% by 2030	Policy-based interim target of 50% below 2005 levels by 2030	Policy-based interim target of at least 30% below 2005 levels by 2030	No (but forthcoming)	Policy-based interim goal of 50% below 2005 levels by 2030	No	Legislated target of 50-60% less than 1990 emissions by 30 June 2025, 65-75% less than 1990 emissions by 30 June 2030, 90-95% less than 1990 emissions by 30 June 2040	Already reached net zero emissions	NDC interim target of 26 to 28% below 2005 levels by 2030	Reduce emissions by 43% below 2005 levels by 2030
Long term targets/goal	Legislated target net zero emissions by 2050	Policy of net zero emissions by 2050	Policy of net zero emissions by 2050	Policy of net zero emissions by 2050	Legislated target of at least 60% to an amount that is equal to or less than 40% of 1990 levels by 2050 Policy net zero emissions by 2050	Policy of net zero emissions by 2050	Legislated target net zero emissions by 2050	Legislated target at least 60% below 1990 levels by 2050 Already reached net zero emissions	Net zero emissions by 2050	Net zero emissions by 2050
Gross State Product (GSP) / GDP 2020-2021	$468.26 bn	$633.64 bn	$368.98 bn	$320.65 bn	$114.92 bn	$26.18 bn	$43.37 bn	$34.08 bn	$2.01 tn	
National, state & territory population 2021	6643.1 k	8186.8 k	5240.5 k	2685.2 k	1772.8 k	245.9 k	430.5 k	540.8 k	25750.2 k	
Median population age 2021	37.72	38.36	38.21	37.97	40.66	33.9	36.43	42.67	38.24	
GHG emissions 2019	91.329 $MtCO_2e$	136.579 $MtCO_2e$	164.538 $MtCO_2e$	91.852 $MtCO_2e$	23.919 $MtCO_2e$	20.647 $MtCO_2e$	1.279 $MtCO_2e$	1.683 $MtCO_2e$	529.298 $MtCO_2e$	
% emissions change from 2005 to 2019	-25%	-17%	-14%	21%	-33%	46%	-8%	-109%	-15%	