

**2022**

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION AMENDMENT BILL  
2022**

**EXPLANATORY STATEMENT  
and  
HUMAN RIGHTS COMPATIBILITY STATEMENT  
(*Human Rights Act 2004, s 37*)**

**Presented by  
Shane Rattenbury MLA  
Minister for Water, Energy and Emissions Reduction**

# CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION AMENDMENT BILL 2022

This explanatory statement relates to the *Climate Change and Greenhouse Gas Reduction Amendment Bill 2022* (the **Bill**) as presented to the ACT Legislative Assembly.

The statement is to be read in conjunction with the Bill. It is not a complete description but provides information about the intent of the provisions in the Bill.

It has been prepared to assist the reader. It does not form part of the Bill, has not been endorsed by the Assembly and is not to be taken as providing a definitive interpretation of the meaning of a provision.

The *Climate Change and Greenhouse Gas Reduction Amendment Bill 2022* is not a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

## BACKGROUND

The *Climate Change and Greenhouse Gas Reduction Act 2010* (the **Act**) facilitates successful policy and program development to allow the ACT to meet its emission reduction targets. The overseeing Minister is required to review the operation of the Act and present a report of the review to the Legislative Assembly as soon as practicable after every 10 years of the Act's operation.

In 2021, the ACT Government engaged the firm Aither to conduct a review of the Act. In its review report, Aither facilitated analysis of the 4 key parts of the Act:

- the greenhouse gas emissions and renewable energy targets;
- the functions of the Minister;
- the Climate Change Council; and
- sector agreements.

Specifically, the review assessed how effective the Act has been in the past in achieving its objects, as well as how appropriate it is for the ACT in meeting its future targets and interim targets. Aither made 12 recommendations. The Government committed to implement 9 of the 12 recommendations.

## OVERVIEW OF THE BILL

The Bill makes a range of amendments to the Act, including limiting offsetting activities to within Australia. This reflects concerns over the reliability and environmental impacts of international offsets schemes.

The Government acknowledges the value of the Climate Change Council (the **council**) and, through this Bill, includes an adaptation specialist as a member and an Aboriginal or Torres Strait Islander person as members of the council. This is to

reflect that the council is a body comprised of specific expertise in a range of areas related to climate change and that it is important to include the perspective of an Aboriginal or Torres Strait Islander person for climate change related decision-making.

The Bill includes a requirement that the Minister consult the council in determining offsetting activities to meet future targets and in setting or changing any interim targets. This ensures that decisions related to targets are better informed by leading and independent analysis.

The Minister will have 3 main functions:

1. to promote action to meet the ACT target and the other targets mentioned in part 2 of the Act;
2. to develop, adopt or promote policies and programs relating to climate change and adaptation; and
3. to consider and recommend amending a territory law (including the Act) or a government policy or practice if the Minister reasonably believes an amendment is necessary to achieve the objects of the Act.

The Minister continues to have other functions, as lower priorities.

The objective of the Bill is to give effect to the Government's intention to strengthen and focus the commitment to meeting appropriate emissions reductions targets over the long term and to highlight the importance of adaptation and report on adaptation measures.

The Bill inserts new provisions into the Act that create legislative bases to improve the targets, the functions of the Minister, the council, and sector agreements.

## **CONSULTATION ON THE PROPOSED APPROACH**

In developing the Bill, the Government consulted with relevant stakeholders including current and past members of the council; the Office for Climate Action; traditional custodians and the South Australian Government.

## **CONSISTENCY WITH HUMAN RIGHTS**

### **Rights engaged**

The Bill engages the following rights under the *Human Rights Act 2004*:

- the right to recognition and equality before the law (section 8); and
- the right to participation in public life (section 17);
- cultural and other rights of Aboriginal and Torres Strait Islander people (section 27).

### ***Rights promoted***

This Bill promotes the right to recognition and equality before the law. This Bill has a positive impact on the rights of Aboriginal and Torres Strait Islander peoples. Amending the council membership to include an Aboriginal or Torres Strait Islander

person increases the opportunity for Aboriginal and Torres Strait Islander participation and the promotion of the interests of the Aboriginal and Torres Strait Islander community in decision-making processes related to climate change policy. This will have a positive impact for diversity and representation on the council.

### ***Rights limited***

#### **1. *Nature of the right and the limitation (sections 28 (2) (a) and (c) of the Human Rights Act 2004)***

The Bill limits the right to participation in public life. The limitation occurs as membership of the council is limited to certain people with relevant expertise. The right to participate in public life in section 17 of the *Human Rights Act 2004* gives citizens a right to, and the right to have the opportunity to, have access to appointment to public office on general terms of equality. 'Public office' refers to all positions within the executive, judiciary or legislature, as well as statutory office holders, who are 'public employees' as defined in the *Legislation Act 2001*. Membership of the council therefore constitutes 'public office'.

The right to access public office may be limited by new section 20 (2) (c), which provides that appointment of members of the council must, to the greatest extent practicable, include people with extensive knowledge and expertise in specific areas related to climate change.

#### **2. *Legitimate purpose (section 28 (2) (b) of the Human Rights Act 2004)***

New section 20 (2) (c) provides that members of the council include people with extensive knowledge and expertise in specific areas related to climate change. This is a legitimate limitation necessary to ensure the advisory role of the council can be delivered effectively by members with appropriate and relevant skills.

The council's functions include advising the Minister on matters relating to reducing greenhouse gas emissions, addressing and adapting to climate change, strategies to achieve energy efficiencies and increase renewable energy use, and consulting relevant stakeholders on related issues. Given the nature of the council's role in advising on matters related to climate change, the limitation in new section 20 (2) (c) is essential to ensure the Minister is given sound expert advice on these matters.

#### **3. *Rational connection between the limitation and the purpose (section 28 (2) (d) of the Human Rights Act 2004)***

The approach in new section 20 (2) (c) ensures people with relevant expertise are appointed to the council. Without this restriction, there is the risk that membership of the council may consist of people without the required knowledge and skills to advise the Minister appropriately and effectively on matters related to climate change, as required by the council's functions under the Act. There is, therefore, a rational connection between the limitation and the purpose.

#### **4. *Proportionality (section 28 (2) (e) of the Human Rights Act 2004)***

The approach in new section 20 (2) (c) provides for an effective and proportionate way to ensure required expertise is reflected in the composition of members of the council and its advice. For appointed members, the appointment process will also ensure members are appointed equitably, objectively and without discrimination to support individuals to participate in public life.

## Climate Change and Greenhouse Gas Reduction Amendment Bill 2022

### *Human Rights Act 2004 - Compatibility Statement*

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Climate Change and Greenhouse Gas Reduction Amendment Bill 2022**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly **is** consistent with the *Human Rights Act 2004*.

.....

Shane Rattenbury MLA  
Attorney-General

## CLAUSE NOTES

### **Clause 1 Name of Act**

This clause provides that the name of the Act is the *Climate Change and Greenhouse Gas Reduction Amendment Act 2022*.

### **Clause 2 Commencement**

This clause provides for the commencement of the Act on the day after the Act's notification day.

### **Clause 3 Legislation amended**

This clause provides that the Act amends the *Climate Change and Greenhouse Gas Reduction Act 2010*.

### **Clause 4 ACT greenhouse gas emissions target Section 6 (2)**

This clause adds the words 'but within Australia' to section 6 (2) (b) to provide that any emission offsets that are applied to balance greenhouse gas emissions in the ACT must be offsets that are outside the ACT but within Australia. It also provides that the Minister may make a determination by notifiable instrument of the emissions offsets that may be used. In making that determination, the Minister must consult the council and have regard to its advice and must, as far as practicable, ensure consistency with the best national and international practices in relation to using emissions offsets to balance greenhouse gas remissions.

### **Clause 5 Interim greenhouse gas emissions targets New section 7 (3A)**

This clause provides that the Minister must consult the council in determining any additional interim targets and have regard to its advice. The Minister must also, as far as practicable, ensure consistency with the best national and international practices in relation to determining interim greenhouse gas emissions targets.

### **Clause 6 Functions of Minister Section 14 (1) and note**

This clause prioritises three functions of the Minister under the Act as the Minister's main functions. New section 14 (1A) provides the additional functions of the Minister under the Act.

### **Clause 7 Annual report by Minister Section 15 (1) (a)**

This clause adds an explicit requirement that the Minister's annual report on the implementation of the Act includes reporting on climate change mitigation and adaptation actions.

**Clause 8    New section 15A**

This clause requires the Minister, at least once every 5 years, to ask an independent entity to assess and report to the Minister about government policies, programs and practices to address (which includes mitigation and adaptation) climate change in the ACT. This provision is a mechanism to track the progress of climate change policies and programs across the ACT Government.

**Clause 9    Membership  
Section 20 (2) (b)**

This clause refocuses the membership of the council to consist of people, as far as is practicable, with expertise in specific identified areas related to climate change. It also provides that the council includes an Aboriginal or Torres Strait Islander person. The clause allows for one person to have expertise in more than one of the listed areas of expertise.

This clause also removes the previous requirement for a public employee to be a member of the council. Removing the requirement for a public employee on the council removes a source of potential conflict of interest in advising the Minister of their functions under the Act.

**Clause 10    New section 20 (5)**

This clause inserts a definition of *Aboriginal or Torres Strait Islander person* as a consequence of the amendment made by clause 9.

**Clause 11    Chair**

This clause is a consequential amendment to removing the requirement for a public employee to be a member of the council, made by clause 9.

**Clause 12    Sector agreements  
Section 23 (1)**

This clause removes the requirement for sector agreements to be entered into on a voluntary basis. This allows more flexibility for possible actions with regards to sector agreements in the future.

**Clause 13    Section 23 (1) (c)**

This clause adds adaptation as an acceptable strategy under sector agreements. This ensures sector agreements can deal with adaptation activities in addition to avoidance and mitigation activities.

**Clause 14    Dictionary, note 2**

This clause is a consequential amendment to removing the requirement for a public employee to be a member of the council, as made by clause 9.



**Clause 15 Dictionary, new definition of *ACT target***

This clause adds a signpost definition of the term ***ACT target*** to the dictionary.