

# LEGISLATING MORE AMBITIOUS EMISSIONS REDUCTION TARGETS: WHAT DOES THE NEW CLIMATE CHANGE BILL DO AND WHAT TO WATCH OUT FOR?

In a historic move heralding the end of climate wars, the Climate Change Bill 2022 (Climate Bill) has passed the Lower House. The Climate Bill enshrines a more ambitious emissions reduction target, commits to producing annual climate change statements about emissions reductions progress and revives the role of the Climate Change Authority as an independent advisory body.

## What does the Climate Change Bill do and what to watch out for:

- The Federal Government signalled to industry and investors, both domestically and abroad, that Australia is ready for actions that will help it reach its emissions reduction targets.
- Decision-making agencies, such as ARENA and the CEFC, will have greater scope to support and facilitate activities that are expected to control, reduce or prevent the emission of greenhouse gases.
- Proponents required to report under the Safeguard Mechanism should be prepared for proposed changes, including the gradual lowering of baselines and introduction of a new tradeable carbon credit called Safeguard Mechanism Credits.
- Annually prepared climate change statement may provide important national and international context for emissions reduction initiatives that the Federal government will support in coming years.

## Overview

The Climate Change Bill has recently passed the Lower House. Additionally, the *Climate Change (Consequential Amendments) Bill 2022 (Consequential Amendments Bill)* seeks to amend 14 pieces of legislation, which empowers agencies, such as the Australian Renewable Energy Agency (ARENA) and the Clean Energy Finance Corporation (CEFC), to facilitate activities that are expected to control, reduce or prevent the emission of greenhouse gases.

A strong market signal is now sent, both domestically and abroad, that investment and innovation in Australia's clean energy technologies, the energy transition and decarbonisation is welcome. It will also give the Federal government a strong basis from which it can pursue its climate policy initiatives, including the proposed amendments to the Safeguard Mechanism. These amendments will require large emitters to gradually but consistently reduce their emissions, whether by decarbonising their processes through clean energy technology or by offsetting their emissions.

## The Climate Bill seeks to achieve three key objectives:

### 1. Legislating emissions reduction targets

Firstly, in Part 2 of the Climate Bill, Australia legislates its emissions reduction targets, namely:

- reducing Australia's net greenhouse gas emissions to 43% <sup>11</sup> below 2005 levels by 2030; and
- reaching net zero greenhouse gas emissions by 2050.

These targets are consistent with Australia's current Nationally Determined Contribution (NDC) under the Paris Agreement. A key aspect of the Climate Bill is that the emissions reduction targets are seen as a floor, not a ceiling. This means that more ambitious targets can be set in the future. This is consistent with the 'ratchet mechanism' under the Paris Agreement, which requires Australia's emissions reduction target communicated through its 5-

yearly NDC, to represent a 'progression' on previous targets. However, the Climate Bill also explicitly states in section 10(3) that its emission reduction targets are not intended to exclude or limit state or territory legislation. This leaves the possibility open for States and Territories to individually progress more ambitious emissions reduction targets.

## **2. Preparation of annual climate change statements to measure progress**

The second objective requires the Feder Minister for Climate Change and Energy to prepare an annual climate change statement. The statement is required to be tabled in Parliament within 6 months of the end of each financial year and must report on:

- Australia's progress during the past year toward achieving its emission reduction targets;
- any international developments during the past year that are relevant to addressing climate change;
- climate change policy; and
- the effectiveness of Federal climate change policies in contributing to Australia's emission reduction targets.

The annually prepared statement may provide important national and international context for emissions reduction initiatives that have been taken and may be required to be taken in the coming years. For businesses, it may also usefully highlight areas in which the Federal government may seek to improve its climate policies or invest in. Depending on Australia's progress against its targets, it may also result in further climate change litigants arguing that the Federal government is not acting rapidly enough to reach the targets.

## **3. Reviving the role of the Climate Change Authority as an independent climate policy advisory group**

The third and final objective is to revive the role of the Climate Change Authority as a scientific based source of climate policy advice. This role will consist of providing the Minister for Energy and Climate Change with advice that relates to the preparation of the annual climate change statement, as well as on the emissions reductions target that should be put forward in a new or adjusted NDC. To improve transparency for State governments, businesses and individuals, the Climate Change Authority is required to publish its advice on its website. Further transparency is added to the process, as the Minister is required to provide clear reasons and table them in Parliament if he or she fails to follow the independent advice of the Climate Change Authority.

## **Overview of the Climate Change (Consequential Amendments) Bill 2022**

The Consequential Amendments Bill was introduced at the same time as the Climate Bill and will make amendments to 14 pieces of existing legislation in order to allow the effective implementation of the Climate Change Bill. Importantly, the Consequential Amendments Bill will enable consideration of the greenhouse gas emission reduction targets when agencies, such as ARENA and the CEFC, are exercising powers or performing functions.

For example, it inserts detailed reference to Australia's greenhouse gas emissions reduction targets in the *Australian Renewable Energy Agency Act 2011* and includes the facilitation of that target as an objective of the Act. It also permits ARENA to perform its functions in a way which gives effect to the Climate Change Convention and the Paris Agreement, including by supporting activities, that are expected to control, reduce or prevent the emission of greenhouse gases. Similar changes will be inserted into 13 other laws to ensure that emissions reductions targets are being included at the heart of the key pieces of legislation required to drive emissions reductions across industry.

## **What happens now?**

Both the Climate Change Bill and Consequential Amendments Bill were referred to the Environment and Communications Legislation Committee (**Committee**) for inquiry and report by 31 August 2022. There is a short submissions period open until 10 August 2022 for the public to make comments on the draft bills. It is possible that further amendments to the bills may arise as a result of this consultation. The bills are then expected to be voted on by the Senate in September 2022.

## **What does this mean for businesses?**

The passing of the Climate Bill is a historic moment. The Prime Minister in his second reading speech commented that "this is the biggest economic transformation that we will see globally in our lifetime, as big and as significant as the Industrial Revolution".<sup>1</sup> Whilst others see the Climate Bill as largely symbolic, because there is no need for Australia's emissions reduction target to be enshrined in law, it does still send a strong signal to the market and will provide a stronger and more stable policy setting than has existed for the 'lost decade'.

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<sup>1</sup> Prime Minister of Australia, *Climate Change Bill 2022* (delivered on 3 August 2022) <https://www.pm.gov.au/media/climate-change-bill-2022-second-reading>

## A signal to investors – both domestic and abroad

Domestic investors and project proponents wanting to play a part in the energy transition, for example through major renewable energy projects and the electrification of our power systems, can act more confidently as a result of the Federal government's actions. It also signals to foreign investors that, as the Prime Minister put it "Australia is out of the naughty corner in international forums and we are once again engaging with the global community who understand the importance of acting on climate change."<sup>2</sup> Australia can once again be seen as a climate progressive nation who is looking to develop opportunities in areas that it will assist Australia in meeting (and possibly beating) its 43% emissions reduction target.

## Impacts of Federal government policies Changes to the Safeguard Mechanism, Powering Australia and Rewiring the Nation

It also paves the way for the Federal government to rapidly deliver on aspects of its key climate pledges that will affect businesses across Australia, namely through proposed changes to the Safeguard Mechanism and the rollout of the Powering Australia Plan and Rewiring the Nation.

### 4. Proposed changes to the Safeguard Mechanism

Emissions reductions will be achieved through the proposed amendments to the Safeguard Mechanism of the Emissions Reduction Fund (**ERF**). This will impact business who currently must report under the Safeguard Mechanism – currently this applies to heavy emitters whose annual Scope 1 emissions are more than 100,000 tonnes of carbon dioxide equivalent (currently 215 facilities).

Under the Safeguard Mechanism these facilities are currently required to keep their emissions under a historical baseline. The proposed changes will require business to gradually but consistently reduce these historical baselines.

Emitters that remain below their baselines will receive tradeable 'Safeguard Mechanism Credits' (**SMCs**). The pricing and rules for ownership or transfer of SMCs will need to be established. We expect that this would be under the *Australian National Registry of Emissions Units Act 2011*, which is the current legislation that applies to the transfer and ownership of Australian Carbon Credit Units (**ACCUs**).

Emitters that exceed their baseline will be required to surrender their surplus SMCs or otherwise buy SMCs or ACCUs for those emissions. The process for surrendering SMCs in order to meet 'above baseline' emissions need to be established, possibly under the *National Greenhouse and Energy Reporting Act 2007*. The interaction between SMCs and ACCUs will also need to be clarified.

It has been foreshadowed but not confirmed that the plan is for more businesses to be brought under the mechanism, for example by applying the mechanism to emitters whose annual Scope 1 emissions are more than 50,000 tonnes (rather than 100,000 tonnes) of CO<sub>2</sub> equivalent.

### 5. Powering Australia and Rewiring the Nation

Emissions reductions will also be driven by the Powering Australia Plan and Rewiring the Nation. Under these policies the Federal government is looking to heavily invest in community solar banks and community batteries, as well as in upgrading the electricity network (in the National Electricity Market only, not in the WA Wholesale Electricity Market (despite being called 'Rewiring the Nation' and consistent with the Federal Govt often forgetting the WA electricity market exists) so that it can receive more renewable power. This demonstrates to renewable energy project proponents that the ongoing development of renewable energy sources is actively encouraged.

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<sup>2</sup> Ibid.

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