

26 November 2020

Our ref: LP-MC

Committee Secretary
House Standing Committee on the Environment and Energy

By email: [REDACTED]

Dear Committee Secretary

Climate Change (National Framework for Adaptation and Mitigation) Bills 2020

Thank you for the opportunity to provide comments on the Climate Change (National Framework for Adaptation and Mitigation) Bill 2020 (**CCB**) and Climate Change (National Framework for Adaptation and Mitigation) (Consequential and Transitional Provisions) Bill 2020 (**consequential Bill**), collectively **the Bills**. The Queensland Law Society (**QLS**) appreciates being consulted on this important legislation.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

Support for the Bills

QLS supports the commitment in the CCB to Australia reaching net zero emissions by 2050 (**the target**) in accordance with the best available scientific evidence regarding what is required to meet the goals of the Paris Agreement. QLS supports all evidence-based legislative frameworks and accordingly welcomes the introduction of the Bills.

QLS considers that the CCB would provide a positive framework for Australia to pursue ongoing climate change mitigation and adaptation strategies in accordance with the target. These strategies will have positive impacts for human wellbeing, including economic wellbeing, given the additional impetus the CCB provides for Australia to take advantage of renewable energy technologies. The requirement to develop emission budgets and associated emission reduction plans on a five yearly basis, informed by the expert commission, and to report at the end of the budget period, will improve coordination of Australia's climate mitigation efforts and improve certainty for all sectors of the community and economy. Likewise, the five yearly national climate risk assessment, which will inform the national adaptation plan, and the annual progress report in respect of the plan's implementation, will

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assist the development of cohesive government policy across the multitude of areas impacted by changing climate.

The requirement for the Minister to table responses to emissions budget advices, reports in respect of emissions budget period performance and adaptation progress reports enhances transparency and accountability. Parliamentary, public and international scrutiny of these reports and responses will encourage compliance with the CCB and assist achieving the target. Similarly, the requirement to publish a report on Australia's fossil fuel export emissions is a useful inclusion given that those emissions are not included in the target or emissions budgets but are relevant to Australia's contribution to climate change.

Also crucial to the achievement of the goals of the Bills is the proposed duty to consider climate change impacts, which is to be inserted into the *Public Governance Performance and Accountability Act 2013* by the consequential Bill. The proposed duty imposed across the Commonwealth government is necessarily broad, in consideration of the wide array of activities that contribute to climate change (through energy use or otherwise) and the range of activities affected by the impacts of climate change.

Commission to include at least one Indigenous Australian

QLS also supports the proposal that the Commission must include at least one Indigenous Australian (section 37 of the CCB).

Aboriginal and Torres Strait Islander Peoples have been caring for country for 65,000 years, and their practices have continued to develop over that time. The collective traditional ecological knowledge held by Aboriginal and Torres Strait Islander Peoples is unique, specific to geographic locality, and if properly and collaboratively utilised, can enhance the ways in which Australia approaches the protection and conservation of our biodiversity and environment.

Any engagement and consultation must however be with the appropriate Aboriginal and Torres Strait Islander Peoples, that is, those with authority and knowledge of country. The appropriate Peoples have not only an intimate knowledge of traditional ecological practices, but also knowledge of the cultural and spiritual obligation to the land and waters that Aboriginal and Torres Strait Islander Peoples are connected to. This complete knowledge is a critical component of effective land management, environmental protection and other aspects of climate change mitigation. Understanding the impacts of climate change on Indigenous Australians is essential in developing climate change adaptation strategies.

Mandating that at least one member of the Commission must be an Indigenous Australian recognises the importance of this knowledge. It will also assist in ensuring that Indigenous knowledge, contributions and perspectives are given appropriate consideration in the Commission's work, while also providing additional protection against exploitation of Traditional Knowledge.

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In relation to the specific content of the Bills we make the following comments.

Part 1, Division 2 (Guiding principles)

QLS considers that a suite of guiding principles is appropriate for the CCB and that the principles as enunciated are relevant and suitable. We suggest, however, that consideration of the following amendments would enhance the clarity of the Bill..

Section 9 of the CCB be re-drafted to reflect the obligation suggested in the heading of the section – that is, that decision makers must have regard to the guiding principles. Section 9 presently refers to “This Division applies in relation to the performance of functions or duties, or exercise of powers, under this Act”. The guiding principles in sections 10-15 refer to “A decision, policy, program or process relating to performing functions or duties, or exercising powers, to which this Division applies”. The guiding principle reference is broader than section 9 and we suggest consideration be given to amending section 9 so it is consistent with the subsequent sections.

Sections 10-15 adopt a drafting convention that ensures the decisions are susceptible to judicial review. The wording “must have regard to” is well-understood in the judicial review context and ensures that decision makers take the identified principles into account when making decisions.

Sections 10-15 require decision makers to have regard to all of the principles in the sections. We query whether all principles will be relevant to every decision, policy, program or process contemplated under this Act. We suggest consideration be given to permitting a decision maker to identify when a particular principle is not relevant to their decision. The decision makers, then in statements of reasons or the reports/responses/plans that arise out of their decision making, identify which principles were considered not to be relevant to the decision. This would ensure that decision makers are under a positive obligation to consider each principle and demonstrate why a principle has not been applied.

Outside of decisions made under the CCB and subject to the guiding principles, it may be necessary for accountable authorities of government entities subject to the proposed section 19A of the *Public Governance Performance and Accountability Act 2013* to be provided with training or education sessions on how they can comply with the duty to consider climate change impacts. There may be a scope to provide the commission with this education function through amendment to the CCB.

Section 73

In addition to the matters addressed in your memorandum, we are concerned about the lack of limits on the power to request information from constitutional corporations under section 73 and the exposure to committing an offence.

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While publication of the information is appropriately limited under subsections (5) to (7), there is no limit on the primary power to request information. If there is to be such a power, QLS submits that it should be limited by reference to the information being required for specific purposes, such as for the Commission to prepare the national climate risk assessment.

QLS also submits that there must be an element of reasonableness applied when making such requests. Otherwise, these information requests could amount to a significant financial burden on the recipient of the request and could also involve a requirement to disclose commercially sensitive information. Corporations should be permitted to refuse to disclose information which is commercially sensitive or subject to legal professional privilege.

The powers under section 73 seem extraordinary particularly in light of the offence provision in section 73(2) and the potential that under section 75, the rules could further widen the scope of information to be required.

QLS recommends that this section be omitted. In the alternative, the potential scope of the section should be limited as outlined above.

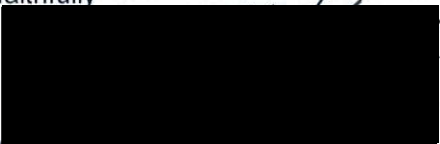
Further enhancements

In order to further embed climate considerations in future legislation consideration can be given to the CCB including a requirement that bills introduced to parliament be accompanied by a climate compatibility statement, as alluded to above.

Please note that we also intend to make a direct submission to the House of Representatives Standing Committee on the Environment and Energy addressing much of the above.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via policy@qls.com.au or by phone on (07) 3842 5930.

Yours faithfully


Luke Murphy
President