



New South Wales

# Environmental Planning and Assessment Amendment (Climate Change Response) Bill 2022

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Environmental Planning and Assessment Act 1979* to require the exercise of functions under the Act to be consistent with the object of mitigating and adapting to climate change, and for related purposes.

## Outline of provisions

**Clause 1** sets out the name, also called the short title, of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## Schedule 1      **Amendment of Environmental Planning and Assessment Act 1979 No 203**

**Schedule 1[1]** amends the objects of the Act to include addressing the problem of climate change by ensuring that the development of land is consistent with certain premises relating to climate change.

**Schedule 1[2]** amends the definitions section to insert certain definitions relevant to mitigating and adapting to climate change.

**Schedule 1[3]** sets out the climate change response principles.

**Schedule 1[4]** specifies that a *minor impact*, for the purposes of section 1.6(2), which provides that exempt development is development declared to be exempt development because of its minor impact, does not include a material increase in greenhouse gas emissions.

**Schedule 1[5]** inserts proposed sections 1.8–1.9. Proposed section 1.8 requires that an exercise of a function under the Act must be consistent with the climate change response principles and sets out circumstances in which an exercise will be inconsistent with the principles. Proposed section 1.9 requires the Minister to publish planning proposal assessment guidelines and standard conditions of consent for the purposes of guiding consent authorities in exercising functions consistently with section 1.8. Proposed section 1.10 constitutes the Independent Planning and Climate Change Advisory Group, which has functions including publishing climate change adaptation guidelines and advising the Minister and planning authorities on climate change risks.

**Schedule 1[6]** requires a consent authority, in determining a development application, to consider whether the granting of consent would be consistent with the climate change response principles.

**Schedule 1[7]** allows a consent authority to modify a consent for the purposes of imposing a standard climate change condition. The provision also specifies that *minimal environmental impact*, for the purposes of section 4.55(1A)(a), which allows a consent authority to modify a consent if satisfied that the proposed modification is of minimal environmental impact, does not include an increase in greenhouse gas emissions.

**Schedule 1[8]** specifies that a determining authority's duty to consider the environmental impact of an activity includes a duty to consider the effect of the activity on climate change, in particular whether the activity is consistent with the climate change response principles.

**Schedule 1[9]** removes a limitation on appeals against decisions of the Independent Planning Commission as consent authority after a public hearing by the Commission.

**Schedule 1[10]–[14]** provide for appeals against determinations of applications for development consent by *climate advocates*, who are persons who have made submissions during the public exhibition of an application for development consent objecting to the grant of consent on the basis that it would be inconsistent with the climate change response principles.

**Schedule 1[15]** specifies that the Governor may make regulations for or with respect to standardised assessment processes for determining whether granting consent to proposed development would be consistent with the climate change response principles. For proposed high impact development, the Governor may also make regulations requiring the submission of a *climate impact statement*.

**Schedule 1[16]** requires the Minister to recommend the Governor make the regulations described in Schedule 1[15] on the recommendations of the Independent Planning and Climate Change Advisory Group and make a regulation requiring that environmental impact assessments are prepared by registered environmental assessment practitioners. This provision also requires the Minister to review certain environmental planning legislation for consistency with the climate change response principles.