

NEW SOUTH WALES

DRAFT NON-GOVERNMENT BILL

To be introduced by: Ms Cate Faehrmann, MLC

Climate Change Bill 2018

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to set targets to reduce greenhouse gas emissions,
- (b) to facilitate the Government's development of strategies, policies and programs to meet those targets and to adapt to the effects of climate change,
- (c) to promote transparency and accountability by facilitating the provision of accessible information about the effects of climate change on people, communities and ecosystems across the State,
- (d) to encourage the local government sector, the private business sector and the wider community to take action to address climate change.

Outline of provisions

Part 1 Preliminary

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 3 months after the date of assent to the proposed Act, unless commenced sooner by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Objects and principles

Clause 4 specifies the objects of the proposed Act.

Clause 5 sets out the guiding principles relating to climate change for the purposes of the proposed Act.

Clause 6 provides that State legislation is to be interpreted in accordance with the guiding principles under the proposed Act.

Part 3 Targets

Clause 7 sets out the greenhouse gas emissions target for the State (the *NSW target*).

Clause 8 sets out the interim greenhouse gas emissions targets for the State (the *interim targets*).

Part 4 Functions of Minister

Clause 9 specifies the functions of the Minister under the proposed Act, which include developing strategies, policies and programs to ensure that the State meets the NSW target and the interim targets.

Clause 10 requires the Minister to prepare a Greenhouse Gas Emissions Plan every 4 years, which is to include a carbon budget that sets the maximum annual amount of net greenhouse gas emissions for the State during the relevant period.

Clause 11 requires the Minister to prepare a Climate Change Adaptation Plan every 4 years, which is to include a summary of the Government's policies and programs to manage the effects of climate change in the State.

Clause 12 enables the Minister to issue guidelines to public authorities.

Clause 13 requires the Minister to ensure that no more than 20% of the reduction in greenhouse gas emissions required to meet any annual carbon budget is achieved through tradeable greenhouse gas emissions schemes.

Clause 14 provides for the method for the measurement and reporting of greenhouse gas emissions.

Clause 15 requires the Minister to prepare an annual Climate Change Progress Report.

Part 5 Functions of public authorities

Clause 16 requires a public authority to prepare a Climate Change Action Plan every 4 years, which is to include an analysis of the public authority's strategies to contribute to the implementation of the Greenhouse Gas Emissions Plan and the Climate Change Adaptation Plan.

Clause 17 requires the public authority to report annually to the Minister on the implementation of its Climate Change Action Plan.

Clause 18 imposes a duty on the public authority to ensure that in exercising its functions it does not decrease the State's ability to meet its targets in reducing greenhouse gas emissions or to adapt to the impacts of climate change.

Part 6 NSW Climate Change Commission

Clause 19 establishes the NSW Climate Change Commission.

Clause 20 provides for the membership of the Commission.

Clause 21 specifies the functions of the Commission under the proposed Act, which include advising the Minister on matters relating to climate change and making recommendations regarding the State's progress in addressing climate change.

Clause 22 enables the Commission to periodically prepare a report relating to climate change.

Clause 23 requires the Commission to prepare an annual report, which is to include any advice given or recommendations made to the Minister.

Part 7 Miscellaneous

Clause 24 provides that the proposed Act binds the Crown.

Clause 25 provides protection from personal liability for the Minister, a member of the Commission and certain others in relation to any matter or thing done or omitted in good faith for the purposes of executing the proposed Act.

Clause 26 provides for remedies or restraints of breaches of the proposed Act.

Clause 27 enables the Governor to make regulations for the purposes of the proposed Act, including regulations of a savings and transitional nature.

Clause 28 provides for the review of the proposed Act in 6 years and at 8-year intervals for subsequent reviews.

Schedule 1 Provisions relating to membership and procedure of NSW Climate Change Commission

Schedule 1 contains provisions relating to the membership and procedure of the NSW Climate Change Commission, including the appointment of a Chair and Deputy Chair, terms of office, remuneration, vacancy of office and procedural matters.

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To be introduced by: Ms Cate Faehrmann, MLC

Climate Change Bill 2018

No , 2018

A Bill for

An Act to provide a framework for action on climate change mitigation and adaptation in the State; to set targets for the reduction of greenhouse gas emissions; and to provide for monitoring and reporting of the impacts of climate change on people, communities and ecosystems in the State.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Climate Change Act 2018*.

2 Commencement

This Act commences 3 months after the date of assent to this Act, unless commenced sooner by proclamation.

3 Definitions

In this Act:

annual carbon budget—see section 10 (2) (a).

climate change means a change of climate over an extended period, typically decades or longer, which is caused by human activity or natural climate variability.

Climate Change Action Plan—see section 16.

Climate Change Adaptation Plan—see section 11.

Commission means the NSW Climate Change Commission established by this Act.

function includes a power, authority or duty, and **exercise** a function includes perform a duty.

greenhouse gas emissions means emissions of carbon dioxide, methane, nitrous oxide, sulphur hexafluoride, a hydrofluorocarbon gas, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.

Greenhouse Gas Emissions Plan—see section 10.

guiding principles—see section 5.

interim targets—see section 8 (1).

net greenhouse gas emissions means any amount of greenhouse gas emissions reduced by:

- (a) any greenhouse gas emissions removed from the atmosphere by carbon sequestration activities, or
- (b) any tradeable greenhouse gas emissions scheme.

NSW target—see section 7 (1).

public authority means any of the following:

- (a) a NSW government agency,
- (b) a Public Service agency,
- (c) a local council,
- (d) a person or body that is declared by the Minister, on application by the person or body, to be a public authority for the purposes of this Act,
- (e) any other person or body prescribed by the regulations to be a public authority for the purposes of this Act.

Part 2 Objects and principles

4 Objects of this Act

The objects of this Act are as follows:

- (a) to set targets to reduce greenhouse gas emissions,
- (b) to facilitate the Government's development of strategies, policies and programs to meet those targets and to adapt to the effects of climate change,
- (c) to promote transparency and accountability by facilitating the provision of accessible information about the effects of climate change on people, communities and ecosystems across the State,
- (d) to encourage the local government sector, the private business sector and the wider community to take action to address climate change.

5 Guiding principles

- (1) For the purposes of this Act, the *guiding principles* relating to climate change are the principles set out in this section.
- (2) Climate change is a serious threat to the social, economic and environmental well-being of the State.
- (3) There is strong scientific evidence indicating that:
 - (a) climate change caused by human activity and greenhouse gas emissions has a significant effect on people, communities and ecosystems, and
 - (b) continued greenhouse gas emissions will increase climate change and the threat of serious or irreversible damage on people, communities and ecosystems, and
 - (c) reduction of greenhouse gas emissions and adaptation to the effects of climate change are complementary strategies in addressing climate change.
- (4) There is a global objective, reflected in treaties and other international agreements, to reduce greenhouse gas emissions in order to reduce the increase in average global temperatures and the risk of serious or irreversible damage on people, communities and ecosystems.
- (5) Climate change is a global concern that requires a response from all levels of government, the private business sector and the wider community.
- (6) The Government of the day must take urgent action and develop strategies, policies and programs to address climate change.
- (7) In developing strategies, policies and programs under this Act to address climate change, a person or body must have regard to the need to maintain ecologically sustainable development (as defined in section 6 (2) of the *Protection of the Environment Administration Act 1991*), including the precautionary principle and the principle of inter-generational equity.

6 Interpretation of State legislation

- (1) State legislation is to be interpreted in accordance with the guiding principles.
- (2) A person who is a party to proceedings before a court or tribunal may apply to the court or tribunal to have the proceedings transferred to the Supreme Court to determine any question of law arising under this section.
- (3) The court or tribunal may transfer the proceedings to the Supreme Court if the court or tribunal considers it appropriate to do so.

- (4) The Supreme Court has jurisdiction to hear and determine any question of law in proceedings transferred to it under this section.

Part 3 Targets

7 NSW greenhouse gas emissions target

- (1) The *NSW target* is to reduce greenhouse gas emissions to achieve zero net greenhouse gas emissions by 30 June 2040.
- (2) The Premier is to ensure that the NSW target is met.

8 Interim greenhouse gas emissions targets

- (1) The *interim targets* are to reduce greenhouse gas emissions to:
 - (a) 25% less than 2000 emissions by 30 June 2023, and
 - (b) between 40% and 50% less than 2000 emissions by 30 June 2028, and
 - (c) between 60% and 80% less than 2000 emissions by 30 June 2033.
- (2) The Premier is to ensure that the interim targets are met.
- (3) In this section, *2000 emissions* means the amount of net greenhouse gas emissions for the financial year ending on 30 June 2000.

Part 4 Functions of Minister

9 General functions of Minister

- (1) The Minister has the following functions under this Act:
 - (a) to develop strategies, policies and programs to ensure that the State meets the NSW target and the interim targets,
 - (b) to regularly review issues relating to climate change and develop strategies, policies and programs to address those issues,
 - (c) to consider and recommend amendments to any State laws or Government policies and programs that the Minister reasonably believes are necessary to achieve the objects of this Act,
 - (d) to consult the local government sector, the private business sector and the wider community about issues relating to climate change, and to promote action by those sectors to reduce their greenhouse gas emissions and adapt to the effects of climate change,
 - (e) to promote the State's involvement in regional, national and international approaches to addressing climate change,
 - (f) to promote research and development that aims to help the State reduce greenhouse gas emissions and adapt to the effects of climate change,
 - (g) to provide information to the public about issues relating to climate change, including (but not limited to) its effects and how to reduce greenhouse gas emissions and adapt to the effects of climate change,
 - (h) any other function conferred on the Minister by this Act.
- (2) In exercising the Minister's functions, the Minister is to have regard to:
 - (a) the guiding principles, and
 - (b) any advice provided to the Minister by the Commission.

10 Greenhouse Gas Emissions Plan

- (1) The Minister is to prepare a Greenhouse Gas Emissions Plan by 30 June 2019 and prepare a new plan by 30 June in every fourth year after that date.
- (2) The Greenhouse Gas Emissions Plan is to be prepared for the purpose of the State meeting the NSW target and the interim targets, and is to include the following:
 - (a) a carbon budget that sets the maximum annual amount of net greenhouse gas emissions for the State (the **annual carbon budget**) during the 4-year period commencing on 1 July of the year after the year in which the plan is made,
 - (b) an analysis of the Government's strategies to meet the annual carbon budget,
 - (c) a summary of the Government's policies and programs to enable the annual carbon budget to be met.
- (3) In preparing the Greenhouse Gas Emissions Plan, the Minister is:
 - (a) to consult with the local government sector, the private business sector and the wider community, and
 - (b) to obtain and have regard to the advice of the Commission.
- (4) The Minister is to cause each Greenhouse Gas Emissions Plan to be tabled in each House of Parliament.
- (5) The Minister is to make the Greenhouse Gas Emissions Plan publicly available in such other manner as the Minister considers appropriate.

11 Climate Change Adaptation Plan

- (1) The Minister is to prepare a Climate Change Adaptation Plan by 30 June 2020 and prepare a new plan by 30 June in every fourth year after that date.
- (2) The Climate Change Adaptation Plan is to include the following:
 - (a) an assessment of the evidence regarding the effects of climate change in the State, including issues relating to specific areas of vulnerability,
 - (b) an analysis of the Government's strategies to manage the effects of climate change in the State,
 - (c) a summary of the Government's policies and programs to manage the effects of climate change in the State and to prepare the community for emergencies related to climate change.
- (3) In preparing the Climate Change Adaptation Plan, the Minister is to have regard to available evidence relating to:
 - (a) environmental indicators of the effects of climate change, including but not limited to the following:
 - (i) temperature trends and extremes,
 - (ii) precipitation trends and extremes,
 - (iii) the frequency and intensity of droughts, floods and extreme weather events,
 - (iv) sea level changes,
 - (v) ocean acidification,
 - (vi) carbon dioxide fertilisation, and
 - (b) social, economic and environmental effects of climate change across the State and related considerations that may be affected by climate change, including but not limited to effects on the following:
 - (i) freshwater ecosystems and resources,
 - (ii) terrestrial ecosystems,
 - (iii) coastal systems and low-lying areas,
 - (iv) oceans and marine ecosystems,
 - (v) food security and food production systems,
 - (vi) urban infrastructure and services, including but not limited to residential, commercial and industrial buildings, and transport, energy, telecommunications, water supply and storm and waste water systems,
 - (vii) rural livelihoods, land use and connectivity between regional areas,
 - (viii) key economic sectors and services, including but not limited to energy, water, transport, agriculture, forestry, mining, manufacturing, construction, tourism, insurance, financial and health services,
 - (ix) the health, safety and well-being of persons in the wider community.
- (4) In preparing the Climate Change Adaptation Plan, the Minister is:
 - (a) to consult with the local government sector, the private business sector and the wider community, and
 - (b) to obtain and have regard to the advice of the Commission.
- (5) The Minister is to cause each Climate Change Adaptation Plan to be tabled in each House of Parliament.
- (6) The Minister is to make the Climate Change Adaptation Plan publicly available in such other manner as the Minister considers appropriate.

12 Guidelines issued by Minister

- (1) The Minister may from time to time issue guidelines to public authorities for the purposes of section 18.
- (2) Before issuing guidelines under this section, the Minister is to obtain and have regard to the advice of the Commission.
- (3) The Minister must publish the guidelines in the Government Gazette and must ensure that the guidelines are made available on a public website.
- (4) The regulations may make provision for or with respect to the guidelines under this section.

13 Greenhouse gas emissions offsets

- (1) The Minister is to ensure that:
 - (a) no more than 20% of the reduction in greenhouse gas emissions required to meet any annual carbon budget is achieved through tradeable greenhouse gas emissions schemes, and
 - (b) wherever possible, any reduction in greenhouse gas emissions through tradeable greenhouse gas emissions schemes is achieved within Australia.
- (2) The regulations may make provision for or with respect to certification and types of emissions offsets that may be included in the measurement of net greenhouse gas emissions.

14 Measurement and reporting of greenhouse gas emissions

- (1) The regulations may make provision for or with respect to the method for the measurement and reporting of greenhouse gas emissions.
- (2) The Minister is to ensure, as far as practicable, that the method prescribed for the measurement and reporting of greenhouse gas emissions is consistent with best national and international practices and obligations under any treaties or other international agreements.

15 Annual report by Minister

- (1) The Minister is to prepare, within the period of 6 months after 30 June in each year, a Climate Change Progress Report for the financial year ending 30 June in that year and cause the report to be tabled in each House of Parliament.
- (2) A report by the Minister under this section is to include the following information:
 - (a) an assessment of the greenhouse gas emissions during the most recent year for which the relevant data relating to greenhouse gas emissions is available, including the following information:
 - (i) the amount of net greenhouse gas emissions for the most recent year for which the relevant data relating to greenhouse gas emissions is available (the *annual emissions amount*) measured in accordance with the method prescribed by the regulations,
 - (ii) a comparison of the annual emissions amount with the annual emissions amounts measured in previous years,
 - (iii) a comparison of the annual emissions amount with the annual carbon budget for the year,
 - (iv) an assessment of the State's progress in meeting the NSW target and the interim targets,
 - (v) a description of the method used to measure the annual emissions amount,

- (vi) if the Minister adjusts the method used in the report from the method used in a previous report, the nature of the adjustment and a comparison of the annual emissions amount with the annual emissions amounts measured with the methods used in previous years,
 - (vii) an analysis of available evidence relating to the main causes of greenhouse gas emissions and the possible reasons for changes in the State's greenhouse gas emissions compared to previous years,
 - (b) an assessment of the progress made by the Government in the implementation of the Greenhouse Gas Emissions Plan during the year,
 - (c) an assessment of the progress made by the Government in the implementation of the Climate Change Adaptation Plan during the year,
 - (d) a summary of the actions the Minister has taken in the exercise of the Minister's functions under this Act during the year,
 - (e) a report on the progress made by public authorities in the implementation of their Climate Change Action Plans during the year.
- (3) If the report indicates that an annual carbon budget has not been met, the Minister is to include a statement in the report that sets out the following:
- (a) the reasons why the annual carbon budget was not met,
 - (b) the action that is to be taken to meet future annual carbon budgets, including how this action differs from any action that was taken for the annual carbon budget that was not met,
 - (c) the action that is to be taken in subsequent years to compensate for the greenhouse gas emissions that have exceeded the annual carbon budget.

Part 5 Functions of public authorities

16 Climate Change Action Plan

- (1) A public authority is to prepare a Climate Change Action Plan by 31 December 2020 and prepare a new plan by 31 December in every fourth year after that date.
- (2) The Climate Change Action Plan is to include the following:
 - (a) an analysis of the public authority's strategies to contribute to the implementation of the Greenhouse Gas Emissions Plan and the Climate Change Adaptation Plan,
 - (b) a summary of the public authority's policies and programs to reduce greenhouse gas emissions and adapt to the effects of climate change,
 - (c) such other matters as may be prescribed by the regulations.
- (3) The public authority is to provide a copy of each of its Climate Change Action Plans to the Minister.
- (4) The public authority is to make each of its Climate Change Action Plans publicly available.

17 Report on implementation of plans

A public authority is to, as soon as practicable after the end of each financial year, give the Minister a report relating to the authority's implementation of its Climate Change Action Plan during the financial year.

18 General requirements

- (1) In exercising its functions, a public authority is to ensure that it does not decrease the State's ability:
 - (a) to meet the NSW target and the interim targets, and
 - (b) to adapt to the effects of climate change on people, communities and ecosystems in the State.
- (2) In assessing whether or not the exercise of its functions would have any such effect, the public authority is to have regard to the following:
 - (a) any relevant Greenhouse Gas Emissions Plan,
 - (b) any relevant Climate Change Adaptation Plan,
 - (c) any relevant Climate Change Action Plan of the public authority,
 - (d) any relevant guidelines issued by the Minister under section 12.

Part 6 NSW Climate Change Commission

19 NSW Climate Change Commission

The NSW Climate Change Commission (the *Commission*) is established by this Act.

20 Membership of Commission

- (1) The Commission is to consist of not fewer than 5 and not more than 9 members appointed by the Minister.
- (2) The Minister is to ensure, as far as practicable, that the Commission includes persons who have a broad range of knowledge and experience in the following matters:
 - (a) climate change science,
 - (b) reducing greenhouse gas emissions,
 - (c) adapting to the effects of climate change,
 - (d) the social, economic and environmental effects of climate change, including the effects of climate change on public health and safety,
 - (e) any other area of expertise that the Minister considers necessary for the Commission to carry out its functions.
- (3) The Minister may only appoint a person to the Commission if satisfied that the person:
 - (a) is committed to addressing climate change, and
 - (b) has knowledge and experience in respect of an area that is relevant to the operation of this Act.
- (4) Schedule 1 contains provisions relating to the membership and procedure of the Commission.

21 Functions of Commission

- (1) The Commission has the following functions under this Act:
 - (a) to advise the Minister on matters relating to climate change, including strategies for mitigating and adapting to the effects of climate change,
 - (b) to analyse data to identify patterns and trends relating to climate change,
 - (c) to make recommendations regarding the State's progress in addressing climate change,
 - (d) any other functions relating to climate change as may be prescribed by the regulations.
- (2) In exercising its functions, the Commission is to:
 - (a) have regard to the guiding principles, and
 - (b) consult with the local government sector, the private business sector and the wider community, and
 - (c) provide information to the local government sector, the private business sector and the wider community to promote action in addressing climate change.

22 Climate change report by Commission

- (1) The Commission may periodically prepare a report regarding matters relating to climate change.
- (2) A report by the Commission under this section may include the following:
 - (a) a report on the exercise of the Minister's functions under this Act,

- (b) a report on the exercise of the functions of a public authority in accordance with the requirements imposed on the public authority under this Act.
- (3) The Minister is to furnish the Commission's report to the Presiding Officer of each House of Parliament within 28 days after receipt of the report.

23 Annual report by Commission

- (1) The Commission is to prepare, within the period of 4 months after 30 June in each year, a report of its activities during the year that ended on that 30 June.
- (2) A report by the Commission under this section is to include any advice given or recommendations made to the Minister.
- (3) The Minister is to furnish the Commission's annual report to the Presiding Officer of each House of Parliament within 28 days after receipt of the report.

Part 7 Miscellaneous

24 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

25 Protection from liability

A matter or thing done or omitted to be done by the Minister, a member of the Commission or any person acting under the direction of the Minister or a member of the Commission does not, if the matter or thing was done or omitted in good faith for the purposes of executing this Act, subject the Minister, member or person so acting personally to any action, liability, claim or demand.

26 Remedy or restraint of breaches of this Act

- (1) Any person may bring proceedings in the Supreme Court for an order to remedy or restrain a breach of this Act.
- (2) Any such proceedings may be brought whether or not any right of the person has been or may be infringed by or as a consequence of the breach.
- (3) Any such proceedings may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or of a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (4) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (5) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (6) In this section:
breach includes a failure to comply with a requirement imposed under this Act.

27 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (3) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

28 Reviews of Act

- (1) The Minister is to undertake reviews of this Act to determine whether the policy objectives of this Act remain valid and whether the terms of this Act remain appropriate for securing those objectives.
- (2) The reviews are to be undertaken:
 - (a) for the first review—as soon as possible after the period of 6 years from the date of assent to this Act, and
 - (b) for subsequent reviews—at intervals of 8 years.
- (3) In carrying out a review under this section, the Minister is:
 - (a) to consult with the local government sector, the private business sector and the wider community, and
 - (b) to obtain and have regard to the advice of the Commission.
- (4) A report on the outcome of each review is to be tabled in each House of Parliament within 12 months after the end of the review.

Schedule 1 Provisions relating to membership and procedure of NSW Climate Change Commission

(Section 20 (4))

1 Definition

In this Schedule, *member* means a member of the NSW Climate Change Commission.

2 Chair and Deputy Chair of Commission

- (1) Of the members of the Commission, 2 are (in and by their respective instruments of appointment or in and by other instruments executed by the Minister) to be appointed as Chair and Deputy Chair of the Commission respectively.
- (2) The Minister may remove a member from the office of Chair or Deputy Chair of the Commission at any time.
- (3) A person holding office as Chair or Deputy Chair of the Commission vacates that office if the person:
 - (a) is removed from that office by the Minister, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

3 Terms of office of members

Subject to this Schedule, a member holds office for such period (not exceeding 4 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

4 Remuneration

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

5 Vacancy in office of member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) becomes a mentally incapacitated person, or
 - (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member of the Commission from office, but only for incompetence, incapacity or misbehaviour.
- (3) A member of the Commission cannot be removed from office under Part 6 of the *Government Sector Employment Act 2013*.

6 Disclosure of pecuniary interests

- (1) If:
 - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Commission, and
 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.
- (2) A disclosure by a member at a meeting of the Commission that the member:
 - (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Commission.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Commission otherwise determines:
 - (a) be present during any deliberation of the Commission with respect to the matter, or
 - (b) take part in any decision of the Commission with respect to the matter.
- (5) For the purposes of the making of a determination by the Commission under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Commission for the purpose of making the determination, or
 - (b) take part in the making by the Commission of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Commission.

7 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

8 Effect of certain other Acts

- (1) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to a member.
- (2) If, by or under any Act, provision is made:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as such a member.

(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown.

9 General procedure

The procedure for the calling of meetings of the Commission and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Commission.

10 Quorum

The quorum for a meeting of the Commission is a majority of the members for the time being.

11 Presiding member

(1) The Chair of the Commission or, in the absence of the Chair, the Deputy Chair of the Commission or, in the absence of both, another member elected to chair the meeting by the members present is to preside at a meeting of the Commission.

(2) The person presiding at any meeting of the Commission has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of the Commission at which a quorum is present is the decision of the Commission.

13 First meeting

The Minister is to call the first meeting of the Commission in such manner as the Minister thinks fit.