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The Hon Chris Bowen MP
Minister for Climate Change and Energy
Parliament House
Canberra ACT 2600

Dear Minister Bowen

I am writing on behalf of The Australia Institute in relation to the handling by the Climate Change Authority (CCA) of potential conflicts of interests, particularly relating to its Chair, Grant King.

We understand that, in addition to his role as Chair of the CCA, Mr King has also assumed a number of other roles prior to and since his appointment on 9 April 2021. The relevant appointments are:

- (a) as the Chair of GreenCollar, the largest carbon credits aggregator in Australia;¹
- (b) as the Chair of HSBC Bank Australia, a financial services company that participates in transactions involving the acquisition of carbon offsets;² and
- (c) as the Chair of CWP Renewables, a company that develops, operates and owns renewable energy resources;³ and
- (d) as Principal/Owner of GK Advisory Pty Ltd., where Mr King provides advice to clients on the energy market, climate change and environmental issues.⁴

This letter explores the CCA's governing framework and Mr King's outside employment. It invites you to carefully consider the status of Mr King's appointment in light of relevant procedural and legal issues.

¹ Greencollar (Website), *Meet the Team* at <https://greencollar.com.au/about-us/our-team/>.

² "Grant King Appointed Chairman of HSBC Bank Australia", *News and Media*, 30 October 2020, HSBC Australia (Website) at <https://www.about.hsbc.com.au/news-and-media/grant-king-appointed-chairman-of-hsbc-bank-australia>.

³ "Grant King to Chair CWP Renewables Board", *News*, 5 March 2021, CWP Renewables (Website) at <https://cwprenewables.com/news/grant-king-to-chair-cwp-renewables-board>.

⁴ Climate Change Authority, *2022 Review of International Offsets Conflict of Interest Management Plan*, May 2022 at <https://www.climatechangeauthority.gov.au/sites/default/files/2022-08/Review%20of%20International%20Offsets%20-%20Probity%20material%20-%20August%202022.pdf>.

The Climate Change Authority has become central to the integrity of Australia’s climate policies. It is tasked under legislation to provide advice to the Australian government across a range of climate policy areas. We note that the *Carbon Credits (Carbon Farming Initiative) Act 2011* and *National Greenhouse and Energy Reporting (NGER) Act 2007* require the CCA to review the Emissions Reduction Fund (ERF) and NGER scheme in 2023 according to the Authority’s website.

In addition, policy developments throughout 2022 and 2023, such as the introduction of the *Climate Change Act*, the Safeguard Mechanism reforms and the Independent Review of Carbon Credits, now require the CCA to provide advice on the progress towards Australia’s climate targets, whether safeguard Mechanism emissions are declining consistently, the efficacy of Australia’s carbon credit scheme, and methane measurement.

It is critical that the Australian public can trust the independence and rigour of the advice provided by the CCA. According to polling by The Australia Institute, three in four Australians (75%) agree that members of the CCA’s board should not also be employed by companies or organisations that could be affected by the CCA’s recommendations and advice.⁵

The Climate Change Authority

1. The CCA is established under the *Climate Change Authority Act 2011 (Cth)* (“the CCA Act”). The CCA’s functions include:
 - (a) Conducting reviews of the operation of the *Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)* and the *National Greenhouse and Energy Report Act 2007 (Cth)*;
 - (b) Special reviews under the CCA Act where requested by the Minister or Parliament;
 - (c) Giving advice in relation to the annual climate change statement under the *Climate Change Act 2022*; and
 - (d) Conducting research about matters relating to climate change.⁶
2. The CCA may regulate proceedings at its meetings as it considers appropriate.⁷ In doing so, the CCA is bound by the following requirements:⁸

⁵ Hemming and Campbell (2022) *Integrity and the Climate Change Authority*, <https://australiainstitute.org.au/report/integrity-and-the-climate-change-authority/>

⁶ *Climate Change Authority Act 2011 (Cth)*, s 11.

⁷ *Ibid.*, s 38.

⁸ *Ibid.*, Pt 2, Div 4.

- (a) The CCA is to hold such meetings as are necessary for the performance of its functions;⁹
- (b) The Chair presides at all meetings at which he or she is present.¹⁰ If the Chair is not present at a meeting, then the Authority members present must appoint one of themselves to preside; and¹¹
- (c) At a meeting of the Authority, a question is decided by a majority of votes of those present and voting.¹² The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.¹³

Conflict of Interest

- 3. The CCA Act contains a number of provisions relating to conflicts of interest. A part-time Authority member must not engage in paid employment that conflicts, or may conflict, with the proper performance of his or her duties.¹⁴
- 4. The CCA Act also obliges full-time members not to engage in paid employment outside their duties without ministerial approval.¹⁵ This would apply to Mr King if he were a full-time member.
- 5. Under the *Public Governance, Performance and Accountability Act 2013 (Cth)* (“the PGPA Act”), an official of a Commonwealth entity (which includes a member of the CCA) who has a material personal interest that relates to the affairs of the entity must disclose details of the interest.¹⁶ The CCA Act specifies that such a disclosure must be made to you, the responsible Minister.¹⁷
- 6. In general terms, whether there is a conflict of interest (or whether there is a conflict with the proper performance of duties as a member of the CCA) raises similar considerations as to whether there is a reasonable apprehension of bias.¹⁸ Broadly speaking, that requires identification of the relevant interest, and an assessment of whether that interest might lead a decision-maker to decide a matter other than on its

⁹ Ibid., s 33(1).

¹⁰ Ibid., s 34(1).

¹¹ Ibid., s 34(2).

¹² Ibid., s 37(1).

¹³ Ibid., s 37(2).

¹⁴ Ibid., s 28(2).

¹⁵ Ibid., s 28 (1).

¹⁶ *Public Governance, Performance and Accountability Act 2013 (Cth)*, s 29(1).

¹⁷ *Climate Change Authority Act 2011 (Cth)*, s 26.

¹⁸ See *Aurizon Network Pty Ltd v Queensland Competition Authority* [2018] QSC 246, [126]-[142]

merits.¹⁹ The conflict must be more than hypothetical, and must not be too remote or insubstantial.²⁰

7. The interests that Mr King may have by reason of his other roles might potentially be relevant to the subject matter of reviews or research carried out by the CCA. However, whether or not there is, or may be, a conflict of interest between interests arising from Mr King's other roles and his role as Chair of the CCA will depend on an assessment, on a case-by-case basis, of how these interests may affect the particular function or duty of the CCA that is being undertaken.

Implications of Conflict or Disclosure of Conflict

8. The PGPA Act provides for the making of rules that prescribe how and when an interest by a Commonwealth entity official must be disclosed, and the consequences of disclosing an interest.²¹ As an official of a Commonwealth entity, Mr King is subject to the interest disclosure, absence from deliberation, and abstention from voting requirements outlined in the *Public Governance, Performance and Accountability Rules 2014* (Cth) ("the PGPA Rules").²² Mr King is also required under the CCA Act not to engage in any paid employment that conflicts or may conflict with the proper performance of his duties.²³
9. The most recent review undertaken by the CCA was its Review of International Offsets, which was completed in August 2022. As part of the review, the CCA has published online its "probity materials" relating to the review, including a conflict of interest management plan.²⁴ The probity materials record declarations made by Mr King of material personal interests for which he receives remuneration. The CCA's decisions arising from the interests were stated as follows:
 - (a) "In light of the Chair's role at GreenCollar, an environmental markets investor and project developer, the Chair and Members have agreed that another Member will perform the Chair's duties in presiding over the Authority's discussions and deliberations for the offsets review";²⁵ and

¹⁹ See *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337.

²⁰ *Aurizon Network Pty Ltd v Queensland Competition Authority* [2018] QSC 246, [139].

²¹ *Public Governance, Performance and Accountability Act 2013* (Cth), s 29(2).

²² *Public Governance, Performance and Accountability Rules 2014* (Cth), rr 16-16B.

²³ *Climate Change Authority Act 2011* (Cth), s 28.

²⁴ Climate Change Authority, *2022 Review of International Offsets Conflict of Interest Management Plan*, May 2022 at <https://www.climatechangeauthority.gov.au/sites/default/files/2022-08/Review%20of%20International%20Offsets%20-%20Probity%20material%20-%20August%202022.pdf>.

²⁵ *Ibid.*, p 5.

(b) “Given Mr King’s interests in GreenCollar, HSBC Australia and CWP Renewables, Members agreed that Mr King would not participate in decisions related to i) vintage of units eligible under Climate Active; and ii) issues that might directly impact supply and demand of offsets in Australia. Mr King is able to participate in all discussions and all other decisions relating to the review”.²⁶

10. The PGPA Rules exclude a Commonwealth official from making any determination in relation to their disclosed interests. We understand that this precludes Mr King from participating in decision-making about alternative Chairing arrangements due to his declared conflicts.²⁷
11. The probity materials suggest that Mr King was present at meetings and allowed to participate in all discussions, but that he did not preside at the meetings set out in 9(a) and 9(b).
12. There is a question whether these mechanisms are consistent with the provisions of the CCA Act that relate to the presiding and voting requirements of the CCA and, in particular, the role of the Chair: as noted, the CCA can only regulate its proceedings subject to the express requirements of Division 2 of the CCA Act (relating to Membership of the Authority) as set out above. It is questionable whether these mechanisms are consistent with the management of conflict of interest under the CCA Act. We explore these questions below.

Presiding Requirements

13. The CCA Act provides expressly for the Chair to preside at all meetings at which he or she is present.²⁸ We interpret this provision as disallowing the Chair and other members of the Authority to agree that another member will preside instead of the Chair, where the Chair is present at the meeting in question.
14. Our interpretation is also supported by the presence of other provisions in the CCA Act that specify the circumstances in which another member may act as the Chair. The Minister may appoint an acting Chair where the Chair is absent from Australia or is, for any reason, unable to perform the duties of the office.²⁹ Further, if the Chair of the Authority is not present at a meeting, the Authority members present must appoint one of themselves to preside.³⁰ Those provisions suggest, by implication, that the Act does not allow the members to simply agree that another member will act as Chair in other circumstances, including where the Chair is in fact present at a meeting.

²⁶ Ibid., p 19.

²⁷ *Public Governance, Performance and Accountability Rules 2014* (Cth), r 16B.

²⁸ *Climate Change Authority Act 2011* (Cth), s 34(1).

²⁹ Ibid., s 20(1)(b).

³⁰ Ibid., s 34(2).

Voting

15. The CCA Act provides for the person presiding at a meeting to have a deliberative vote (and the casting vote in case of a tie).³¹ The Act provides that where the Chair is present, the Chair will preside at the meeting.³² It follows that the Act contemplates that, if the Chair is present at the meeting, the Chair will have a deliberative vote and a casting vote in the event of a tie.
16. It is therefore likely to be inconsistent with the Act for the Chair not to participate in voting if the Chair is present at the meeting.

Our Requests

To address the concerns identified in the paragraphs above, it appears that Mr King should not participate in any part of a meeting at which there is a discussion of matters for which he has an actual or perceived conflict of interest. Upcoming reviews and advice to be provided by the CCA are expected to deal with the eligibility and supply/demand of carbon offsets in Australia. These are the issues that were deemed to be in conflict with Mr King's other positions in the Review of International Offsets.

Mr King should not attend those meetings in respect of which his interests are such that:

- (a) Another member should preside at meetings, including in circumstances where Mr King has an actual or perceived conflict; or
- (b) Mr King should not have a vote in relation to particular matters.
- (c) Mr King's absence would be recorded in the minutes of these meetings.³³

Holding and presiding meetings are duties of the Chair.³⁴ Under the CCA Act you, the Minister, have authority to appoint a person to act as Chair during any period in which the Chair is unable to perform the duties of office.³⁵

Under the CCA Act, you also have authority to terminate the appointment of Mr King if he is absent (except on leave of absence) from three consecutive meetings.³⁶

The CCA Act also obliges Mr King not to engage in paid employment outside his duties as Chair without your approval (if he is full-time); and not to engage in any paid employment that conflicts or may conflict with the proper performance of his duties (if he is part-time).³⁷

³¹ Ibid., s 37(2).

³² Ibid., s 34(1).

³³ Ibid., ss 39, 70.

³⁴ Ibid., ss 33-34.

³⁵ Ibid., s 20(1)(b)(ii).

³⁶ Ibid., s 31(2)(e).

³⁷ Ibid., s 28.

As such, we consider that you have a duty to review for conflicts or perceived conflicts the nature of each of the projects of GK Advisory Pty Ltd—of which Mr King is Principal/Owner—and decide whether or not to approve them.

We consider that the way in which the CCA has previously sought to address Mr King's potential conflicts of interest is inconsistent with the provisions of the CCA Act and the PGPA Act.

The Australia Institute urges you to correct the way in which the CCA has sought to address Mr King's potential conflicts of interest in line with your responsibilities under the CCA Act. We also urge you to review the other appointments to the CCA board and potential conflicts of interest that may exist.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Polly Hemming', with a small dot at the end of the signature.

Polly Hemming

Director, Climate and Energy Program
The Australia Institute