

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

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L1 Endeavour House
1 Franklin Street
Manuka ACT 2603

+61 2 6130 0530
mail@australiainstitute.org.au
australiainstitute.org.au

ABN 90 061 969 284
ACN 061 969 284



Dear Minister Bowen

Climate Change Authority and conflicts of interest

1. I am writing again on behalf of The Australia Institute in relation to conflicts of interests and the Climate Change Authority (CCA).
2. We refer to our letter dated 18 May 2023 and your letter in response dated 20 October 2023 about the handling of conflicts of interest by the CCA of its Chair, Grant King.
3. In this letter we conclude that Mr King's ongoing appointment to the position of CCA is untenable due to actual or perceived conflicts of interest, and that you, the Minister, are duty bound to terminate Mr King's position and appoint a different Chair who can perform their duties in accordance with the governing legislation.
4. We also consider you are not entitled to rely upon the department's advice on probity issues because the department is conflicted after it apparently it advised the CCA to implement probity measures that, as described by your letter, were non-compliant with legal requirements.
5. Finally, we point out numerous examples of non-compliance with the statutory framework by the CCA and its members, and we call into question the veracity with which you are overseeing the CCA.

Background

6. Our letter expressed concern about compliance with the CCA's statutory framework for Mr King, CCA Chair, in circumstances where he had conflicts of interest (actual or perceived) in relation to meeting business, in which he had an interest and:
 - a. was the nominated Chair for all or part of the meeting;¹
 - b. did not recuse himself from discussions;²
 - c. did not refrain from voting.³
7. Our letter noted that meeting minutes should record certain deliberations.⁴

¹ *Climate Change Authority Act 2011* (Cth), ss 20(1)(b), 34(1), 34(2).

² *Public Governance, Performance and Accountability Rules 2014* (Cth), rr 16-16B.

³ *Public Governance, Performance and Accountability Rules 2014* (Cth), rr 16-16B.

⁴ *Climate Change Authority Act 2011* (Cth) ss 39, 70.

8. The construction of the *Climate Change Authority Act* (CCA Act), particularly ss 20(1)(b), 34(1) and 34(2), when read together, means that the Act does not allow the members to simply agree that another member will act as Chair, including where the Chair is in fact present at the meeting. Co-Chairs cannot be appointed.
9. The letter also set out your relevant duties, authorities and responsibilities including to:
 - a. appoint an appropriate Chair to ensure they can perform their duties in accordance with the CCA Act;⁵
 - b. terminate the Chair;⁶
 - c. review conflicts of interest (actual or perceived) in relation to Mr King's paid employment.

Mr King's declared interest

10. The CCA's documents reveal Mr King has declared, whilst carrying out his role of Chair of CCA:
 - a. material personal interests relating to the ACCU Scheme Review, and was repeatedly absent from meeting discussions;⁷
 - b. material personal interests relating to the Carbon Farming Initiative (CFI) Review, and was absent from meeting discussions;⁸
 - c. an interest relating to being asked to be the Chair of Sydney Water;⁹
 - d. an interest as Chair of assessment committee for the Clean Hydrogen Industrial Hubs by DISER;¹⁰
 - e. material personal interests arising from his roles as Chair of Green Collar, Chair of HSBC Bank Australia, Chair of CWP Renewables, Principal / owner of GK Advisory for the 2022 Review of International Offsets.¹¹
11. Mr King may declare further interests.
12. In circumstances where Mr King's material personal interests are so expansive in relation to his role as Chair and the functions of the CCA, it is our view that you have not discharged your duty under the CCA Act to appoint an appropriate Chair so as to ensure they can perform their duties in accordance with the act.

Your letter

13. Our letter referred to the 2022 Review of International Offsets Conflict of Interest Management Plan (Review). In your letter you state "I am advised that aspects of the meeting procedures adopted for the Authority's 2022 Review of International Offsets were not in keeping with relevant requirements". You do not say who advised you however, we understand from comments made to the national broadcaster that this was legal advice.¹² The scope of that advice appears to be limited to "potential

⁵ Under sections 33 and 34 of the CCA Act, holding and presiding meetings are duties of the Chair. Ibid. s 20(1)(b)(ii).

⁶ Ibid. s 31(2)(e).

⁷ CCA meeting outcomes: 20 October 2023, 12 September 2023.

⁸ CCA meeting outcomes: 1 August 2023.

⁹ CCA meeting minutes: 15 June 2021

¹⁰ CCA meeting minutes: 29 November 2021

¹¹ 2022 Review of International Offsets - Conflict of Interest Management Plan, May 2022, p19:

<https://www.climatechangeauthority.gov.au/sites/default/files/Review%20of%20International%20Offsets%20-%20Probity%20material%20-%20August%202022.pdf>

¹² <https://www.abc.net.au/news/2023-05-23/climate-change-authority-conflicts-of-interest/102380184>

conflicts of interest” whereas it should encompass actual and perceived conflicts.

14. Actual and perceived conflicts give rise to equal concerns under the CCA Act.¹³ Relevantly, the Public Governance Performance and Accountability Rules (PGPA Rules) apply to a “material personal interest that relates to the affairs of the entity”.¹⁴
15. Mr Brad Archer, chief executive of the Climate Change Authority, told senate estimates that the CCA consulted with the department on probity advice for how the CCA manages conflicts of interest.¹⁵ Accordingly, the department should not advise you on the appropriateness of its own advice to the CCA. To discharge your obligations to make due enquiries independent legal advice should be sought.
16. Your letter states that the conclusion that “the integrity of the review was maintained” was informed by the CCA responding to enquiries from the department. In circumstances where relevant statutory requirements have been breached by the CCA (an admission in your letter), and where the department had previously advised the CCA on conflicts, it is inappropriate for the department to rely on the CCA to determine whether integrity was maintained. In turn, it is wholly inappropriate for you to rely on this conclusion.
17. You also rely on the department’s conclusion that it does not accept the remaining concerns. Again, this is not a proper matter for the department. We are concerned that you are not bringing an independent and enquiring mind to ensure you fulfill your own obligations under the CCA Act.
18. Further, your letter states “The measures the Authority has in place for managing members’ interests are appropriate to facilitate compliance with the relevant requirements”. Again, this view appears to be the department’s view. Given the CCA, with assistance from the department, has historically failed to meet governance thresholds in circumstances where probity was at issue, it is inappropriate for you to rely on the department to make this determination.
19. In our view, to properly discharge your duties under the CCA Act, you should receive independent legal advice on whether requirements were, and are, being met. Whether the CCA’s measures “are appropriate to facilitate compliance” is not the proper enquiry.
20. Together, the above gives rise to ongoing concerns of bias (or apprehended bias) infecting the CCA’s processes and decisions.
21. We remain concerned that the CCA process, and potentially your oversight, is not compliant.
22. In addition to the 2022 probity review, our concerns relate to:
 - a. CCA meetings held from May to October 2022 (including meetings about the review);
 - b. the updated CCA Charter;

¹³ *Climate Change Authority Act 2011* (Cth) s 69.

¹⁴ *Public Governance, Performance and Accountability Rules 2014* (Cth), Ch 2, P 2-2, Div 2.

¹⁵ <https://www.abc.net.au/news/2023-05-23/climate-change-authority-conflicts-of-interest/102380184>

- c. CCA meetings held in 2023;
- d. ongoing CCA compliance with the requirements.

Meeting minutes

23. As you may be aware, we have obtained minutes of CCA meetings that took place between 11 May 2021 and 24 October 2022.
24. For the 3 May 2022 meeting, we believe the CCA Act was breached because Mr King was Chair for the whole meeting, including whilst he was absent for some deliberations. The meeting was co-chaired with another member who took over the chairmanship for the agenda items discussing the Review. There is no record that Mr King recused himself from attending the meeting as a member.
25. In our view, Mr King variously breached the Public Governance, Performance and Accountability Act 2013 (Cth) (“the PGPA Act”) Rules by not recusing himself from discussions about matters for which he had a conflict:
- a. The 11 May 2021 meeting discussed the management of conflicts of interest under the CCA Charter, and Mr King both chaired the meeting and participated in the discussion.¹⁶
 - b. The 15 June 2021 meeting was chaired by Mr King who declared, as an interest, that he was asked by the NSW government to be the Chair of Sydney Water. Mr King decided along with other CCA members to manage conflicts of interest by ‘add[ing] a standing item to the agenda for members to advise of any conflicts of interest with the topics on the meeting agenda at the beginning of that meeting. The conflict would then be managed at the item for which a conflict arose.’ They decided that ‘where there is a potential conflict of interest in relation to a matter being considered by the Authority, the Authority must determine whether a conflict exists and, if so, how to deal with it’.
 - c. The 26 July 2021 meeting was chaired by Mr King, and the meeting discussed the amendment to the National Greenhouse and Emission Reporting regulations.
 - d. At the 19 October 2021 meeting ‘[o]n the carbon sequestration project, Ms Smith noted that the Authority should focus on supply and demand potential, while the Chair noted that it should focus on offsets rather than technical potential’.
 - e. The 29 November 2021 meeting was chaired by Mr King. Mr King ‘in response to a request from the Department of Industry, Science, Energy and Resources (DISER) ... has agreed to chair an assessment committee for the Clean Hydrogen Industrial Hubs program from December through to early February’. In a discussion of carbon sequestration, Mr King said a shift to technologies and method development, including prioritising technologies based on volume, rate, price, readiness, and integrity ‘need not be the focus, but could enhance the current focus’.
 - f. The 8 February 2022, 1 March 2022, 21 March 2022 and 6 June 2022 meetings were chaired by Mr King. He did not declare any interests. All meetings

¹⁶ Then Minister for Energy and Emissions Reduction Angus Taylor attended part of the meeting.

discussed the Review with participation of Mr King in the discussions.

- g. The 3 May 2022 meeting was co-chaired with another member who took over the chairmanship for the agenda items discussing the Review. There is no record that Mr King recused himself from attending the meeting as a member.
- h. The 6 June 2022 meeting was chaired by Mr King. The members discussed the draft recommendations and findings of the Review and:
 - i. Members reaffirmed their commitment to the Review Conflict of Interest Management Plan, including signing the acknowledgement and undertaking.
 - ii. Members discussed the implications of one or more members being excluded from decisions on certain recommendations for the Review, concluding that this would not present barriers to finalising and submitting the Review report as a whole.
 - iii. In light of the Chair's links with companies participating in offsets markets as suppliers and or buyers or potential buyers of offsets, Members agreed they could participate in all Review discussions except Mr King who would not participate in decisions on recommendations related to i) vintage of units eligible under Climate Active ii) issues that might directly impact the supply and demand of offsets in Australia.
- i. The 18 July 2022 meeting was chaired by two individuals, one of whom was Mr King. The meeting discussed the Review. There is no record of Mr King recusing himself for any part of the meeting.
- j. The 6 September 2022 meeting was chaired by Mr King. The members discussed the Review, Chubb Review and Safeguard Mechanism. There is no record of Mr King recusing himself for any part of the meeting, except that he 'had to depart' before the discussion of sequestration (last agenda item before 'other business').

CCA Charter

- 26. The CCA Charter was updated in 2023. The current version is effective from May 2023. We understand it seeks to implement governance frameworks in the CCA Act and PGP Rules.¹⁷
- 27. The Charter contains the following provisions in relation to conflict of interest management:
 - a. The CCA secretariat will circulate meeting papers four working days before the CCA meeting and 'take into account any previously disclosed personal interests and associated conflicts handling determinations when issuing papers to members'.¹⁸
 - b. The Charter establishes a system for disclosure of interests to the Chair and CEO ahead of each CCA meeting to invite a decision on whether the conflict affects the meeting deliberations by the concerned member.¹⁹

¹⁷ Climate Change Authority, *Authority Charter* (Effective from May 2023), p 3. **(CCA Charter)**

¹⁸ CCA Charter, p 4.

¹⁹ CCA Charter, pp 5-7.

- c. If a member discloses a material personal interest, the other members will determine whether the interest involves a conflict, and if so, whether it is appropriate for the disclosing member to participate in ‘discussions and decisions’ in relation to the matter, and any other required action.²⁰
- d. If the disclosing member is the Chair, the Chair will leave the meeting.²¹ The members will appoint a member to preside over the meeting from the members present during any deliberation or decision with respect to that matter.
- e. Should the Authority determine the Chair has a conflict of interest with respect to an agenda item, the presiding member will chair the meeting for the Authority’s consideration of the relevant agenda item.²² Following the Authority’s consideration of the relevant agenda item, the Chair will re-enter the meeting and resume presiding.

28. For reasons that should be obvious, the Charter is not in compliance with the relevant requirements.

CCA meeting outcomes (after CCA Charter update)

29. The CCA has now published meeting outcomes for meetings held from 9 May 2023 to 12 September 2023.²³ The meeting outcomes describe procedures and omit important information that give rise to concerns about compliance with the requirements.

30. In the CCA September meeting, CCA Chair Mr Grant King was absent from the discussions on the ACCU Scheme Review ‘due to having declared material personal interests’.²⁴ The meeting outcomes do not record the chairing or voting arrangements during Mr King’s ‘absence’. The meeting also discussed the National Greenhouse and Energy Reporting Act 2007 (NGER) Review.

31. In the CCA August meeting, Mr King was absent from the discussions on the Carbon Credits (Carbon Farming Initiative) Act 2011 (CFI) Review.²⁵ The meeting outcomes do not record the chairing or voting arrangements during Mr King’s ‘absence’. The meeting also discussed Advice on the 2035 emissions reduction target and NGER Review.

32. In the CCA June meeting, Mr King participated in all the discussions including the 2035 emissions reduction target and NGER Review.²⁶

33. In the CCA May meeting, Mr King participated in all the discussions including Issues Paper on Progress towards emissions reduction targets, Advice on the 2035 Nationally Determined Contribution target, the CFI Review and the NGER Review.²⁷

34. The meeting arrangements give rise to a number of potential breaches. For example, Mr King had an actual or perceived conflict of interest in relation to meeting business but:

²⁰ CCA Charter, p 7.

²¹ CCA Charter, p 8.

²² CCA Charter, p 9.

²³ <https://www.climatechangeauthority.gov.au/about-authority/authority-meetings>

²⁴ Climate Change Authority, *Outcomes: Climate Change Authority Meeting 12 September 2023*.

²⁵ Climate Change Authority, *Outcomes: Climate Change Authority Meeting 1 August 2023*.

²⁶ Climate Change Authority, *Outcomes: Climate Change Authority Meeting 20 June 2023*.

²⁷ Climate Change Authority, *Outcomes: Climate Change Authority Meeting 9 May 2023*.

- a. Mr King was the nominated chair for all or part of the meeting²⁸
- b. Mr King did not recuse himself from discussions²⁹
- c. Mr King did not refrain from voting³⁰
- d. Outcomes of meeting did not record certain deliberations.³¹

Next steps

Once again, 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.

35. We invite you to immediately take positive steps to:

- a. ensure the Chair can perform his duties in accordance with the requirements by replacing the current Chair;
- b. make due enquiries on conflicts of interests and CCA processes, including seeking independent legal advice of an appropriate scope on the issues raised above without relying on the department or the CCA which are both conflicted;
- c. address those issues immediately.

36. We seek your response within 14 days. We reserve our rights.

Yours Sincerely,



Polly Hemming
Climate & Energy Program Director
The Australia Institute

²⁸ *Climate Change Authority Act 2011* (Cth), ss 20(1)(b), 34(1), 34(2).

²⁹ *Public Governance, Performance and Accountability Rules 2014* (Cth), rr 16-16B.

³⁰ *Public Governance, Performance and Accountability Rules 2014* (Cth), rr 16-16B.

³¹ *Climate Change Authority Act 2011* (Cth) ss 39, 70.