

Parliamentary Joint Committee on Human Rights
PO Box 6100,
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Inquiry into Australia's Human Rights Framework

Thank you for the opportunity to make a submission to this important Inquiry, a central focus of which is whether or not existing Australian mechanisms to protect human rights are adequate, and if improvements should be made. In our view, existing mechanisms to protect human rights in Australia are manifestly inadequate. There is a need to give effect to Australia's existing international human rights obligations in national law, clearly regulate the obligations of investors and business with regard to human rights, and ensure that clear guidance is provided to investors on the human rights aspects of investment decisions.

While there are many use-cases that could be drawn upon to illustrate this point, in this submission, we refer to some of the human rights issues embedded in Australia's transition to a 'net zero' economy to illustrate the urgent need for comprehensive, national human rights reform.

Australia's transition to a 'net zero' economy is forecast to require huge changes to the way we produce and use energy. Replacing power generation, manufacturing and transport infrastructure with green technologies requires the creation of new supply chains, and rapid expansion of existing ones. The (positive and negative) impacts of the transition will be experienced by people in many different ways but include the following:

- First, the transition "out" of the old carbon-heavy economy, and "into" the new zero carbon economy, will have impacts on people's rights within Australia's borders. Critical human rights issues will inevitably arise, as conflict arises over issues such as access to land and water, labour rights, and potentially gender discrimination inherent in widescale labour market changes that flow from the transition. These issues will need to be resolved in ways that are fair and predictable, to enable a "just transition".ⁱ Failure to do so will adversely impact the human rights of Australians but also risks undermining support for rapid transformation of the energy sector.ⁱⁱ
- Second, the steps we take in Australia to achieve net zero will impact on people outside of Australia's borders, who are providing labour and services that contribute to Australia's renewable supply chains. This includes people who live and work in countries with dangerously poor records on human rights, whose (child or forced) labour may be used to mine the cobalt or metallurgical silicon that batteries and solar panels rely on, or source the balsa wood used in wind turbines.ⁱⁱⁱ At present, there are very limited options for Australian consumers to be assured that the energy they are purchasing, or the renewable home installations they are making, are not tainted by human rights abuses. While efforts are underway to reform

Australia's *Modern Slavery Act*^{iv} regime, forced labour and slavery are just two examples of the many human rights issues that can arise in relation to supply chains.

- Third, the transition will have impacts on people and communities overseas who are affected by investment decisions that originate from Australia, whether from trade or investment decisions of the Australian government or investors. At present, guidance for Australian investors on what they can and cannot invest in, from a *human rights* perspective, exists mainly in the form of recommendations^v, with hard limits relating to money laundering and financing of terrorism. Just as the investor community has welcomed the publication of the International Sustainability Standards Board (ISSB) standards providing clearer standard setting on the meaning of a “sustainable” investment, there is an urgent need for this to be followed by clear articulation of equivalent standards regarding the human rights or social impacts of investment decisions.

Responding to these challenges requires a far more comprehensive approach to ensuring protection of human rights than we have in place today. Critical next steps need to include:

1. Giving effect to Australia's international human rights obligations in national law through a comprehensive Human Rights Act.
2. Ensuring that investors and business are equipped to play their part in embedding human rights into their efforts to achieve the energy transition. This should take the form of a modern, fit-for-purpose law requiring Australian investors and business to comply with human rights obligations, both in Australia and overseas.
3. Ensuring Australia provides strong support internationally, and at home, to efforts to translate human rights norms into clearer, enforceable standards for investors.

This submission draws, at least in part, on as yet unpublished research undertaken by the authors to better understand the practicalities of the intersections between the energy transition and human rights. We would be delighted to expand further on the points raised in this submission, if required.

Human rights and the net zero transition at home

While several reports have attempted to project future scenarios for a net zero Australia, including impacts of increasing demand here and overseas on the markets for critical minerals and green materials, the focus has largely been on engineering challenges and economic opportunities rather than social dimensions, including human rights and equity.

For example, the recent *Net Zero Australia* report noted that by 2060, the current energy sector workforce of 100,000 would need to expand to 700,000 to 850,000 workers, mostly with technical skills. Regional and remote Australia will likely experience significant

population growth. As the report noted, “This has significant implications for First Nations peoples, national security and immigration.” The Net Zero report provides various recommendations for how these challenges for land use and First Nations peoples could be prioritised, including the need to “Reform planning and land use policy and establish benefit-sharing with sustained community inclusion and government leadership.”^{vi}

While issues related to First Nations peoples and land owners are critical, these are just some of the human rights issues that need to be considered, if the transition is to occur in ways that are fair and equitable, and that maintains support for rapid change at scale, and social cohesion.^{vii} For example, major workforce transformation has clear gender impacts, which directly link to Australia’s obligations under the *Convention on the Elimination of Discrimination against Women*. Addressing a challenge of this complexity requires more than a mere nod to gender in key policy documents, it will require a comprehensive consideration of systems and processes required to achieve respect for rights in reality.^{viii}

While the net zero transition presents many opportunities to create more equity and greater respect for rights, this requires clear ground-rules on which systems and processes can be built. A Human Rights Act, giving legislative effect to Australia’s existing international human rights obligations, would go a long way toward setting these ground-rules. These can then be built upon, for more localised and specific standard setting, to enable for example, “benefit sharing”. A Human Rights Act would create fairness but also certainty, as to what is and is not acceptable, both in relation to individual actions but also the actions of government decision-makers.

In this regard, it is encouraging that the Federal Government has stood up the Net Zero Authority, which “is responsible for promoting orderly and positive economic transformation as the world decarbonises, to ensure Australia, its regions and workers realise and share the benefits of the net zero economy.”^{ix} But in the absence of national laws that give effect to Australia’s human rights obligations in national law, it is unclear what an “orderly and positive” economic transformation actually means.

Human rights and renewable supply chains

The *Net Zero Australia* report, examining different scenarios for Australia’s transition to net zero, provides useful insights on the materials that will be required to enable the transition. Based on forecast requirements for additional renewable energy infrastructure to 2060, Australia’s energy transition will require an additional 355 gigawatts (GW) of solar PV, 135 GW of wind generation and 111 GW of battery storage. Current levels are 35 GW, 9 GW and ~1 GW, respectively, meaning that this will require rapid increases in our demand for critical minerals and components, the majority of which are currently imported into Australia.^x

Similarly, replacing the vehicle fleet with battery electric vehicles (BEVs) will increase annual demand for cobalt, lithium and rare earth metals for BEVs by a factor of 30.^{xi} Taking cobalt

as an example, combining forecasts for fixed battery storage and BEVs yields estimates of 10,000 tonnes of cobalt for fixed energy storage, and ~350,000 tonnes for battery electric vehicles, a 30-fold increase above current demand. If current global supply chain relationships are assumed, 70% of this will come from the Democratic Republic of the Congo via battery manufacturers in China.

Similarly, the forecast increase in installed solar capacity under the Net Zero Australia 'E+' (aggressive expansion of renewables) scenario implies a 15-fold increase in the volume of imported solar modules, with China currently the main global producer. While Australia has some potential to onshore production of both the critical minerals and the products they go into – our total reserves of cobalt, for example, are estimated at 1.5 million tonnes – we currently have limited domestic production of either (our current cobalt production is 5-6,000 tonnes per annum) leaving us dependent on, and vulnerable to, international supply chains.^{xii}

Existing research points to the many human rights challenges that are deeply embedded in supply chains originating from countries including China and the Democratic Republic of the Congo, on which we currently depend for supply of source minerals and component parts.^{xiii}

For example, the Global Slavery Index 2023 notes as follows:

“From 2019 to 2021, the Business and Human Rights Centre tracked almost 200 allegations of human rights abuses related to the mining of cobalt, copper, lithium, manganese, nickel, and zinc — all essential minerals for renewable energy products. Abuses included unpaid wages, underpaid wages, exploitative hiring and firing practices, child labour, and discrimination based on gender, sexuality, race, caste, or religion. Widespread experiences of forced labour also occur in cobalt mining in the Democratic Republic of the Congo (DRC).”^{xiv}

The report also notes:

“Solar panels are within the top five at-risk products for 11 G20 countries: Argentina, Australia, Brazil, France, Germany, India, Japan, Mexico, South Africa, South Korea, and Türkiye. Polysilicon, a silica-product derived from quartz sand, is essential to manufacturing solar panels.”^{xv}

At present, the *Modern Slavery Act* requires Australian businesses to report on the efforts they are taking to respond to modern slavery risk in their supply chains. Encouragingly, a recent Inquiry recommended strengthening Australia's laws on modern slavery, requiring companies to undertake and be held accountable for their due diligence on these issues.^{xvi} While these recommendations are a step in the right direction, there is a need to go much further and consider what a comprehensive business and human rights law would look like in Australia. This would bring Australia into line with developments throughout Europe.^{xvii}

For consistency with our trading partners, and interoperability with other emerging standards, including in the EU, law reform efforts should be aligned with the *UN Guiding Principles on Business and Human Rights*, and the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*.^{xviii}

Human rights and Australia's international business, trade and development activities

Beyond the challenges of producing enough green energy, and the risks for Australian businesses seeking to avoid forced and child labour in their material and energy supply chains, an equitable net zero transition raises broader questions both domestically and on the international stage. According to RMIT, one in four Australians is experiencing some form of energy poverty as prices have risen globally in the past year.^{xix} Access to energy is even more unbalanced globally, and does not seem likely to be addressed by engineering ingenuity and market forces alone. In global analyses by the International Energy Authority (IEA), Bloomberg New Energy Finance (NEF), McKinsey, and others, the focus appears to be on the challenge of replacing energy production and consumption infrastructure with green alternatives, while assuming per-capita levels of energy consumption in the developed and industrialised world remain more than double those in the developing world, even in 2050.^{xx}

Building the foundation for a just transition

Ensuring that the necessary decarbonisation of Australia's economy occurs, while respecting national commitments on human rights, will require careful policy settings. Attention will need to be given to many and varied challenges, including, for example, whether tax reforms might incentivize and level-up the cost of purchasing minerals and components from "safe" supply chains (as is occurring in the US), or government investment required to enable Australia to become a supplier of green and responsible minerals and materials for the transition. Australia's role as a responsible member of its regional community, with particular thought given to the Indian Ocean Rim countries and Pacific Ocean small islands developing states, could also be used to champion efforts to ensure that the 'where?' and not just the 'how?' of the green energy revolution is attended to fairly.

We have a *very* long way to go in this regard. At present, Australia's Nationally Determined Contribution – Communication 2022^{xxi}, which sets Australia's climate targets under the Paris Agreement, refers very broadly to taking account of "fairness considerations, including reflecting on equity". Australia's National Determined Contribution notes that:

"Australia's plan to achieve its 2030 and 2050 emissions reduction targets has the wellbeing and prosperity of all Australians, including regional communities, at its core. It recognises the global transition to a clean energy economy is underway, creating impacts and opportunities for Australia's industries. The Australian Government will support and partner with communities and industry on decarbonisation priorities, the development of new clean energy

industries and skills and training programs to support workforce development. This will ensure that Australia is well-positioned to capitalise on clean economy opportunities to drive growth and support job creation.”^{xxii}

It is arguable that the intention here is for “wellbeing and prosperity” to function as proxies for factors that *include* respect for human rights. However, given the many different ways these concepts could be interpreted, the lack of clarity is regrettable in such an important document. Australia’s critical communication to the world on our net zero targets fails to provide any mention of the relevance of human rights to the transition, or guidance to policy makers, investors and businesses on “how”, and “what” standards or factors they should seek to give effect to, as they take steps to achieve these climate targets.

Similarly, Australia’s Critical Minerals Strategy 2023-2030^{xxiii}, which sets national strategy for responding to supply challenges in relation to minerals critical to the energy transition, including cobalt, makes reference “maintaining social license” to operate, and “promoting Australia as a world leader in ESG leader”. The Strategy makes no mention of how Australia’s leadership in ESG might be achieved in the absence of a solid foundation of human rights law in Australia, let alone a regulatory framework requiring investors and business to respect human rights.

We believe that enshrining Australia’s international human rights obligations in law in a Human Rights Act, is a critical first, foundational step, on a much longer journey towards achieving *a fair and just* net zero transition. A strong foundation of human rights will then enable much greater certainty, as decisions are made by governments on all aspects of policy, including the energy transition.

At a minimum, a Human Rights Act should provide a legal footing for the protection of the full suite of existing human right obligations set out in the ICCPR and ICESCR, but also treaties on the elimination of discrimination against women, race discrimination and disability discrimination. It is encouraging that the AHRC report refers to a broad set of 29 rights, including the right to a healthy environment.^{xxiv} Ideally, consideration should also be given to how emerging concepts such as the need for a fair and just transition to net zero, requiring consideration of issues such as energy poverty, could be reflected in national law.

This first step, a Human Rights Act, needs to be accompanied by efforts to ensure that investors and business, are equally well equipped to play their part, in embedding human rights into their efforts to achieve the energy transition. This should take the form of a modern, fit for purpose law regulating the obligations on investors and business with regard to human rights, both in Australia and overseas. This will bring Australia into line with many of our OECD counterparts, including efforts of the European Union, and existing national laws in France, Germany, Norway and the Netherlands, who have either already enacted such laws or are in the process of so doing.

Finally, Australia must provide strong leadership and support internationally, and at home, for efforts to translate human rights norms into clearer standards for investors. The ISSB standards, which will be integrated into Australian guidance for investors, are an important first step. But to date, these are primarily focused on the readily quantifiable, climate aspects of sustainability. Efforts internationally to build out the content of standards on the social or human rights side are just emerging.^{xxv} It is vital that Australia is an active participant and advocate for such standard setting, both for coherence globally but also so that Australia can integrate emerging international standards into strong, clear guidance on human rights and investment decisions. Together, these three steps will help set Australia on a course for a safer, fairer transition to net zero.

Thank you for your consideration of our submission, and for your work on this incredibly important issue. We look forward to elaborating further, should this be of use to the Committee's deliberations.

Yours sincerely,

Fiona David and Dr David Tickler^{xxvi}

ⁱ The term “just transition” appears in the Paris Agreement on Climate Change, “Taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities” Paris Agreement (2015). See also *Guidelines for a just transition towards environmentally sustainable economies and societies for all*, International Labour Organization (2015): “A just transition for all towards an environmentally sustainable economy ... needs to be well managed and contribute to the goals of decent work for all, social inclusion and the eradication of poverty.”

ⁱⁱ See for example, Kelsey Alford-Jones, “How injustice can lead to energy policy failure: A case study from Guatemala, *Energy Policy* 164 (2022) 112849. The paper illustrates how “distributive, procedural and recognition injustices embedded in policy design can lead renewable energy development down the wrong path, impacting goal attainment in the energy sector”.

ⁱⁱⁱ See further, *Global Slavery Index*, Importing Risk, 2023, discussion of modern slavery risk in renewables: <https://www.walkfree.org/global-slavery-index/findings/importing-risk/>.

^{iv} See further, Professor John McMillan AO, *Report of the Statutory Review of the Modern Slavery Act*, Australian Government, 2023: <https://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth>

^v See further, information about how the Australian Government expect, but do not require, multinational businesses to comply with the OECD Guidelines for Multinational Enterprises, <https://ausncp.gov.au/responsible-business-conduct/oecd-guidelines>.

^{vi} See Chapter 6, How to Make Net Zero Happen, Net Zero Final Report, 2023, available at <https://www.netzeroaustralia.net.au/wp-content/uploads/2023/07/Net-Zero-Australia-Mobilisation-How-to-make-net-zero-happen-12-July-23.pdf> (18 July 2023).

^{vii} See for example, Kelsey Alford-Jones, “How injustice can lead to energy policy failure: A case study from Guatemala, *Energy Policy* 164 (2022) 112849. The paper illustrates how “distributive, procedural and recognition injustices embedded in policy design can lead renewable energy development down the wrong path, impacting goal attainment in the energy sector”.

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- viii Darren McCauley, Raphael Heffron, Just Transition: Integrating Climate, Energy and Environmental Justice, *Energy Policy* 119 (2018) 1-7.
- ix <https://www.pmc.gov.au/netzero>
- x Figures are based on analysis included in currently unpublished research, drawing on data from the following: Davis et al. (2023) 'Modelling Summary Report', Net Zero Australia, <https://www.netzeroaustralia.net.au/wp-content/uploads/2023/04/Net-Zero-Australia-final-results-full-results-pack-19-April-23.pdf>; Bruce et al. (2021) Critical Energy Minerals Roadmap. CSIRO, Australia. <https://www.csiro.au/en/work-with-us/services/consultancy-strategic-advice-services/csiro-futures/energy-and-resources/critical-energy-minerals-roadmap>; Graham (2022) Electric vehicle projections 2022. CSIRO, Australia: https://aemo.com.au/-/media/files/stakeholder_consultation/consultations/nem-consultations/2022/2023-inputs-assumptions-and-scenarios-consultation/supporting-materials-for-2023/csiro-2022-electric-vehicles-projections-report.pdf; Kim et al. (2022) 'The Role of Critical Minerals in Clean Energy Transitions', World Energy Outlook Special Report, International Energy Agency; <https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf>
- xi Figures are based on analysis included in currently unpublished research, noted in Endnote X.
- xii Figures are based on analysis included in currently unpublished research, noted in Endnote X.
- xiii See further, Global Slavery Index, Importing Risk, 2023, discussion of modern slavery risk in renewables: <https://www.walkfree.org/global-slavery-index/findings/importing-risk/>.
- xiv As above.
- xv As above.
- xvi See further, Professor John McMillan AO, *Report of the Statutory Review of the Modern Slavery Act*, Australian Government, 2023: <https://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth>
- xvii See for example: French Duty of Vigilance Law, German Act on Corporate Due Diligence in Supply Chains, Norway's Transparency Act, and the Netherlands Bill on Responsible and Sustainable International Business Conduct.
- xviii <https://ausncp.gov.au/responsible-business-conduct/occd-guidelines>
- xix <https://www.rmit.edu.au/news/acumen/reducing-energy-poverty>
- xx Figures are based on, as yet unpublished analysis of sources by the authors, including of data from: World Energy Outlook Special Report, International Energy Agency; <https://iea.blob.core.windows.net/assets/ffd2a83b-8c30-4e9d-980a-52b6d9a86fdc/TheRoleofCriticalMineralsinCleanEnergyTransitions.pdf>; Hostert et al. (2022) New Energy Outlook 2022, Bloomberg NEF <https://about.bnef.com/new-energy-outlook/>; Tryggestad et al. (2022) Global Energy Perspective 2022, McKinsey, <https://www.mckinsey.com/~media/McKinsey/Industries/Oil%20and%20Gas/Our%20Insights/Globa%20Energy%20Perspective%202022/Global-Energy-Perspective-2022-Executive-Summary.pdf>; Nally and LaRose (2021) International Energy Outlook 2021, U.S. Energy Information Administration, <https://www.eia.gov/outlooks/ieo/index.php>
- xxi Australian Government Department of Industry, S. E. and Resources. (2022). *Australia's Nationally Determined Contribution*; available at <https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf>. Australia's Nationally Determined Contribution (NDC) is a formal document, issued as part of its obligations under the Paris Agreement, to reduce greenhouse gases. NDCs set out actions a country will take to meet the goals of the Paris Agreement.
- xxii Australian Government Department of Industry, S. E. and Resources. (2022). *Australia's Nationally Determined Contribution*, Table 2, page 11, available at <https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf> (23 July 2023).
- xxiii Australian Government Department of Industry, S. and Resources. (2023). *Critical Minerals Strategy 2023–2030*. <https://www.industry.gov.au/sites/default/files/2023-06/critical-minerals-strategy-2023-2030.pdf>
- xxiv Australian Human Rights Commission, *Free and Equal: Human Rights Act Position Paper Summary*, p29, available at: https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_summary_report_rgb_0.pdf (18 July 2023).
- xxv See discussion of the emerging "social" aspects of the sustainable finance taxonomy, here: Australian Sustainable Finance Institute, *Analysis of international taxonomies and considerations for Australia Australian Sustainable Finance Institute Taxonomy Project*, October 2022, at page 20; <https://static1.squarespace.com/static/6182172c8c1fdb1d7425fd0d/t/63984be6994b617c5d7dd79a/1670925360553/Taxonomy+Report+Updated-compressed.pdf>
- xxvi Fiona David, BA LLB (Hons) MAAPD FRSA, is an expert in forced labour and slavery, and CEO and Founder of Fair Futures, providing specialist consulting at the intersection of human rights and climate change. David Tickler, PhD is a specialist in interdisciplinary research, statistics and modelling, and an Adjunct

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