

Committee Secretary
Environment and Communications Legislation Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

30 November 2023

Inquiry into the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023

Thank you for the opportunity to make a submission to this Inquiry into the proposed amendment to the Climate Change Act 2022.

We are writing to the committee on behalf of Fair Futures, a for-purpose consultancy that works at the intersection of sustainability and human rights. As co-authors of this submission we draw upon our combined expertise and lived-experience, across two different generations, one born in the last century and one born this century.

We support the Bill and the statutory duties that it would impose. The issues at hand are not new. As stated in the Explanatory Memorandum, Australian governments recognised the importance of preserving the environment for the benefit of future generations in 1992.¹ A legislative mechanism to require consideration of future generations is long overdue.

Furthermore, legislative changes such as the proposed amendment are necessary in order to meet a number of Australia's international commitments and agreements. Australia has clear climate commitments. These sit alongside existing human rights commitments, including regarding the rights of children and the rights of all persons to equality. It is imperative that governments give proper respect and focus to both of these sets of obligations when making decisions on climate policy.

The Australian Government has ratified the *UN Framework Convention on Climate Change* (UNFCCC), which established agreement on the need to stabilise harmful greenhouse gases.² Additionally, as a signatory of the Paris Agreement, Australia has agreed to binding obligations including:³

- Committing to “holding the increase in the global average temperature to well below 2°C above pre-industrial levels” - Article 2(1)(a).
- “Making finance flows consistent with a pathway towards low greenhouse gas emissions” - Article 2(1)(c).
- To “aim to reach global peaking of greenhouse gas emissions as soon as possible...and to undertake rapid reductions thereafter” - Article 4(1).

¹ Page 2 of Explanatory Memorandum.

² Department of Foreign Affairs and Trade, “Australian Treaty Series 1994 No 2: United Nations Framework Convention on Climate Change” (Australian Government, 1995), <http://www.austlii.edu.au/au/other/dfat/treaties/ATS/1994/2.html>.

³ Framework Convention on Climate Change, “Report of the Conference of the Parties on Its Twenty-First Session, Held in Paris from 30 November to 11 December 2015. Addendum. Part Two: Action Taken by the Conference of the Parties at Its Twenty-First Session.” (United Nations, 2015), <https://unfccc.int/resource/docs/2015/cop21/eng/10a01.pdf>.

The preamble to the Paris Agreement refers to the importance of respecting human rights, including intergenerational equality, in the transition process.

Australia's climate commitments exist alongside Australia's human rights obligations. As noted in the Paris Agreement:

"...Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity."⁴

In 2022, the UN General Assembly recognised that access to a clean, healthy, and sustainable environment is a universal human right, based upon other rights including the right to life (as expressed in the *International Covenant on Civil and Political Rights*) and the rights to health and to an adequate standard of living (recognised in the *International Covenant on Economic, Social and Cultural Rights*).⁵ While Australia is yet to formally recognise the right to a healthy environment, it has already been recognised in constitutional or legislative texts in 80 per cent of UN member states.⁶ Furthermore, in August of this year, the UN Committee on the Rights of the Child published guidance on children's rights and climate change, which affirmed children's right to live in a clean, healthy and sustainable environment.⁷ The Committee also called for urgent legislative measures to ensure a healthy environment for future generations.

Australia has set out our Nationally Determined Contributions (NDC) in order to meet our obligations under the Paris Agreement. The amendments in the Bill will support efforts to achieve our commitments to reduce greenhouse gas emissions to 43 per cent below 2005 levels by 2030 and achieve net zero emissions by 2050.⁸ By preserving the focus on intergenerational equality, the Bill will help to ensure that the rights and interests of both current and future generations are carefully balanced, thereby leading to stronger support from all sides of the community. Conversely, failure to take account of rights can lead to

⁴ Framework Convention on Climate Change, "Report of the Conference of the Parties on Its Twenty-First Session, Held in Paris from 30 November to 11 December 2015. Addendum. Part Two: Action Taken by the Conference of the Parties at Its Twenty-First Session." p21.

⁵ "UN General Assembly Declares Access to Clean and Healthy Environment a Universal Human Right," July 28, 2022, <https://news.un.org/en/story/2022/07/1123482>.

⁶ Office of the High Commissioner for Human Rights, "Good Practices on the Right to a Healthy Environment," United Nations, 2020, <https://www.ohchr.org/en/special-procedures/sr-environment/good-practices-right-healthy-environment>.

⁷ Office of the High Commissioner for Human Rights, "Urgent Action by States Needed to Tackle Climate Change, Says UN Committee in Guidance on Children's Rights and Environment," United Nations, August 28, 2023, <https://www.ohchr.org/en/press-releases/2023/08/urgent-action-states-needed-tackle-climate-change-says-un-committee-guidance>.

⁸ Department of Industry, Science, Energy and Resources, "Australia's Nationally Determined Contribution: Communication 2022," Australian Government, 2022, <https://unfccc.int/sites/default/files/NDC/2022-06/Australias%20NDC%20June%202022%20Update%20%283%29.pdf>.

delays and even failure of energy transition projects. This phenomenon is exemplified by justice-motivated community mobilisation against hydroelectricity projects in Guatemala, which has resulted in the failure of one third of proposed capacity.⁹

On that note, we would like to take this opportunity to advocate for the necessity of a just transition towards net zero, consistent with human rights.

Recommendations

We commend the Bill for its efforts to build a focus on intergenerational equality into the decision-making process on the energy transition.

We would recommend expanding the definition of “health and wellbeing” (Section 5) to include both physical and mental health and wellbeing, alongside the existing considerations for emotional, cultural, and spiritual health and wellbeing. This would better align with the general conception of health and wellbeing, as well as with the World Health Organisation’s own definition.¹⁰ We would also suggest considering the inclusion of potential metrics that could be used to assist with quantifying health and wellbeing indicators.

Furthermore, we would like to bring proposed subsection 15C(1) to the Committee’s attention, in which the meaning of a “significant decision” is outlined. Subsection 15C(1)(b) specifies that it applies to decisions relating to facilities that will have a lifetime emission of greenhouse gases that “have a carbon dioxide equivalent of at least 100,000 tonnes (*gross*)” (emphasis added). In the Explanatory Memorandum, it is clarified that “gross emissions” are “absolute emissions, before the application of any offsets”.¹¹ Whilst this aligns with the general understanding of the term, it may be useful to include this definition in the Act itself, for example, in Section 5 - Definitions.

Ultimately, we strongly recommend the passage of the proposed legislation.

Thank you for your consideration of this submission. We look forward to elaborating further, should this be of use to the Committee’s deliberations.

Yours sincerely,

Fiona David and Tahlia McDonald.
Fair Futures.

⁹ Kelsey Alford-Jones, “How Injustice Can Lead to Energy Policy Failure: A Case Study from Guatemala,” *Energy Policy* 164 (May 2022), <https://doi.org/10.1016/j.enpol.2022.112849>.

¹⁰ World Health Organization, “Health Promotion Glossary of Terms 2021” (Geneva, 2021), p3, <https://iris.who.int/bitstream/handle/10665/350161/9789240038349-eng.pdf?sequence=1>.

¹¹ Subsection 18 of Explanatory Memorandum.