



OFFICE OF THE COMMISSIONER  
FOR SUSTAINABILITY AND  
THE ENVIRONMENT

To whom it may concern,

### **Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023**

The ACT Commissioner for Sustainability and the Environment is an independent statutory position established by the *Commissioner for Sustainability and the Environment Act 1993*. My Office embraces transformative change for an environmentally sustainable future and encourages sound environmental practices to be adopted at the Territory and Federal level.

The Office strongly supports the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (the Bill) and commends Senator Pocock for his commitment to young Australians and their right to a safe future. We also note the important work of Anjali Sharma in the Bill's development and commend her continued resolve to fight for intergenerational climate justice.

#### ***Elevating youth voices on environmental issues***

We know that young people around the country care deeply about the environment, including the impacts of climate change. In a national 2022 Youth Survey,<sup>1</sup> 'environment' was ranked as the number one concern for young people. Moreover, more than a quarter of survey participants reported feeling extremely or very concerned about climate change.

These concerns hold true in the ACT. This year, my Office undertook a project engaging young people across the ACT about their hopes for the environment.<sup>2</sup> 'Stopping Climate Change' was the fifth most common theme in their responses, and banning fossil fuels was recognised as a major step towards achieving this. As articulated by young people:

- > "I want to have a future." (Tamsin, age 14)
- > "I'm scared for the future of this earth." (Esther, age 11)
- > "Worried about climate change." (Paavani, age 12)
- > "No more fossil fuels." (Violet, age 11)
- > "Less coal mining, more solar power. More ACTION!!" (Tara and Jazara, ages 12 & 13)

Research also shows that young people do not feel that their concerns are taken into account in decision making. The 2020 Our World Our Say Survey found that only 13% of young Australians feel that their views are listened to by leaders in government.<sup>3</sup>

Enshrining a duty of care in legislation would provide our young people with substantive legal recourse to demand more from governments to better protect their futures against the impacts of climate change.

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<sup>1</sup> Leung, S, Brennan, N, Freeburn, T, Waugh, W, & R Christie, 2022. *Youth Survey Report 2022*. Sydney, NSW: Mission Australia. <http://www.missionaustralia.com.au/publications/youth-survey/2618-youth-survey-2022-report/file>

<sup>2</sup> Office of the Commissioner for Sustainability and the Environment, 2023. "I Want to Have a Future": A report on Young People's Hopes for the Environment. <https://envcomm.act.gov.au/wp-content/uploads/2023/08/i-want-to-have-a-future-report.pdf>

<sup>3</sup> Matters, A, Wild A, Myers, C, Caffery C et al, 2020. *Our World Our Say: National survey of children and young people on climate change and disaster risk*. [https://www.worldvision.com.au/docs/default-source/advocacy/youth-survey-report\\_2020-08-12\\_v1-2.pdf](https://www.worldvision.com.au/docs/default-source/advocacy/youth-survey-report_2020-08-12_v1-2.pdf)

### ***Intergenerational climate equity***

We live in an era where the harms of greenhouse gases are well known and understood. It is manifestly inadequate that decision makers are aware of these harms but not legally required to consider them and the impacts they will have on current and future generations. As Environment Council president Christine Carlisle said following the recent ruling that Minister Plibersek is not obligated to assess the climate harm of coal and gas projects:

*“I’m alarmed that under our law as it currently stands, it is somehow not the job of the environment minister to protect the environment from the biggest threat of all, which is climate change from coal and gas.”<sup>4</sup>*

To reiterate a point made in the Bill’s explanatory statement, the concept of intergenerational equity is not new. Australian governments have recognised the principle of intergenerational equity as a foundation for sustainable development for over 30 years.

It is time we enshrined intergenerational climate equity into our legal frameworks so that the health and wellbeing of young people and future generations are valued and respected in decision making.

### ***Definition of ‘health and wellbeing’***

The Bill proposes inserting the following definition into Section 5 of the *Climate Change Act 2022*:

*health and wellbeing* includes the following:

- (a) emotional health and wellbeing;
- (b) cultural health and wellbeing;
- (c) spiritual health and wellbeing.

In the interest of clarity, I would suggest adding ‘physical health and wellbeing’ to this definition to unambiguously ensure the duty of care captures the physical harms of climate change in its scope.

**Recommendation 1:** Add ‘physical health and wellbeing’ to the definition of ‘health and wellbeing’ to be inserted into Section 5 of the *Climate Change Act 2022*.

### ***Looking ahead***

Enshrining a legislated duty of care against climate harm is just the first step. Ultimately, we should be striving for *all* decision making to be underpinned by a duty of care to those who come after us.

We can look to the leadership of other jurisdictions making progress in this space. For example, Wales has introduced the *Well-being of Future Generations Act*<sup>5</sup> and established a Future Generations Commissioner, whose role is to ensure policy makers and public bodies consider the long-term impacts of their decisions.<sup>6</sup>

The wellbeing of future generations rests on the choices made now, by our current politicians, on issues extending beyond climate change.

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<sup>4</sup> Perkins, M & M Foley. “Tanya Plibersek doesn’t have to consider climate change when approving coal mines.” *The Sydney Morning Herald*, 11 October, 2023. <https://www.smh.com.au/environment/conservation/tanya-plibersek-doesn-t-have-to-consider-climate-change-when-approving-coal-mines-20231010-p5eb0t.html>

<sup>5</sup> *Well-being of Future Generations (Wales) Act 2015*. <https://www.futuregenerations.wales/wp-content/uploads/2017/01/WFGAct-English.pdf>

<sup>6</sup> Future Generations Commissioner for Wales, “About Us.” 2023. <https://www.futuregenerations.wales/about-us/future-generations-commissioner/>

I call on the Federal Parliament to pass this Bill, and once again commend Senator Pocock and Anjali Sharma for their critically important work in this space.

Thank you for your consideration and please do not hesitate to contact me if you have any queries.

Yours sincerely,

Dr Sophie Lewis  
ACT Commissioner for Sustainability and the Environment

3 November 2023