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AUSTRALIA**

5 November 2023

Ben & Jerrys Submission in Regards to the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023

Please submit to:

The Hon Madeleine King
Minister for Resources and Minister for Northern Australia
By email: GHGacreage@industry.gov.au

Introduction

Ben & Jerrys are an international ice cream company with Global Headquarters in Burlington, Vermont. As a dairy ice cream company, we have an obligation to ensure we do everything we can to reduce our own climate emissions. We are working towards our independently set Science Based Targets which include regenerative farming practices, pilot programmes with on-farm bio-digesters, asparagopsis feed (reducing biomethane emissions by up to 98%), as well as intensive monitoring and reduction of our scope 1,2 and 3 carbon emissions through a process of internal carbon insetting. We believe we are continuing to forge ahead with world leading carbon reduction practices and will continue to push for progressive carbon reduction across all scope 1,2 and 3 lifecycle emissions.

Ben & Jerrys have an Australian office in Sydney, employing 10 Australian employees. As part of our business model, we hire activism managers who are able to use their local expertise to work with grassroots partners on the ground to help drive real change. In Australia, we have a local activism manager with a background in law and policy who works closely with relevant local NGO's, climate scientists and allies in the climate justice space to ensure the work we do creates impact and drives action. In executing this work, Ben & Jerrys are in the unique position of understanding the science and complexities behind climate change as well as the real impact climate change will have on communities and ecosystems as the crisis deepens.

Ben & Jerry's have long been known for our climate activism. In the past 8 years, we have fought for the reef when it was threatened by dredging, we have joined NGOs to stop the proposed Adani coal mine, have worked to encourage young voters to pledge to vote climate, have encouraged the public to divest from fossil fuels and have worked with 350.org Australia and Surfrider Foundation Australia on several Stop Funding Fossil Fuel campaigns. We have also fought alongside frontline First Nations communities in the Torres Strait to fight for the right to have Torres Strait Islands protected from the compounding impacts of the climate crisis. Our focus in the past 4 years have been on 6 public campaigns to urgently stop the funding and permits that allow for further oil & gas exploration and extraction, in particular exploration that relates to offshore oil & gas.

Climate action is urgently needed - which means stopping all fossil fuel expansion in Australia. But climate action isn't enough - if we are going to fight for a better future for all Australians, that means fighting for justice for those that will be directly impacted by fossil fuel projects going ahead. Most significantly in this is the consideration of the duty of care we owe to future generations who will live with the impact of the climate decisions made in Australia and globally today.

To see the changes we need for Australia, all sectors of society – and that includes businesses – need to be advocating for the kind of world they want to see and the future we want today's children to inherit.

Summary of submission

This submission sets out Ben & Jerry's position on the release of the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 ('The Bill').

Ben & Jerry's is of the strong conviction that the health and wellbeing of current and future Australian children must be considered paramount in decisions surrounding new fossil fuel exploration and extraction in Australia. Failure to consider the health and wellbeing of current and future children in fossil fuel projects is a failure of the duty of care by the decision makers of today and in breach of the UN charter on the Rights of a Child in regards to both health and wellbeing. Ben & Jerry's is of the strong belief that the Bill addresses this crucial duty of care for current and future Australian children and must be adopted into Australian legislative law with urgency.

Ben & Jerry's set out in this submission issues to consider including -

- 1) The correlation between the Bill and Australia's duty under the UN Convention on the Rights of a Child
- 2) The risks associated with failing to meet the duty of care for current and future children of Australia under both the UN Convention on the Right of a Child and our moral obligation more broadly

This submission has been prepared with expert information from climate scientists at the Climate Council Australia and Surfrider Foundation.

1. Australia's duty to meet the UN Convention on the Rights of Child

As acknowledged internationally, children have the right to special protection because of their vulnerability. The international human rights treaty on children's rights is the Convention on the Rights of the Child (CRC). The CRC is the most ratified treaty in the world, and was ratified in Australia in December 1990, establishing Australia's duty to ensure that all children in Australia enjoy the rights set out in the treaty.

The Human Rights Council recently submitted an Analytical study on the relationship between climate change and the rights of the child and the full enjoyment of the rights of the child under the CRC. Under this study, the Human Rights Council found that children are disproportionately impacted by climate change due to their unique metabolism, physiology and developmental needs. The report stated that children are exceptionally vulnerable to the negative impacts of climate change, outlining that the youngest and socially and economically disadvantaged children are at most at risk.

Further, the report concluded that the negative impacts of climate change, including the increasing frequency and intensity of natural disasters, changing precipitation patterns, food and water shortages, and the increased transmission of communicable diseases, threaten the enjoyment by children of their rights to health, life, food, water and sanitation, education, housing, culture, and development, among others.

The report also found this is more so for children living in existing social and economic inequalities, stating that climate change 'intensifies poverty and reverses progress towards improvement in children's well-being'.¹ This is already an issue for Indigenous and Torres Strait Island communities. Indigenous people in Australia make up just 3.8% of the population. Still, they account for nearly 30% of those living in poverty and up to 50% in remote communities. Some Indigenous people live in poor and/or overcrowded housing. These properties are often not prepared for natural disasters or the effects of climate change such as persistently hotter temperatures. In addition, there is limited nearby infrastructure or resources to prepare for and respond to emergencies.

This was exemplified in the Lismore floods of 2022, where Indigenous children were not only at heightened risk from floodwaters and disease in the aftermath of climate fuelled extreme flooding, but continued to disproportionately suffer in the weeks and months of displacement following the floods - impacting access to clean water, healthy food and education. Six months after the disaster, there were still 1,296 people homeless in the northern NSW region, 500 of whom were Indigenous people. First Nations people have been disproportionately affected by this disaster, with many still struggling to find permanent housing.²

¹ Climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13)

² The Conversation, accessed 2 November 2023, Link accessed:

<https://theconversation.com/effects-of-climate-change-such-as-flooding-makes-existing-disadvantages-for-indigenous-communities-so-much-worse-192090>

In addition to the physical needs of the child, the CRC explicitly sets out a child's right to safety. Under the UN study, researchers found that climate change and the impacts of traumatic stress connected to climate change, such a risk to safety or seeing others at safety at risk or injured in relation to extreme weather disasters, increase the susceptibility of children to PTSD, anxiety, suicidal ideation and depression. Children may also suffer from anxiety related to fear of separation from their families and are more at risk of abuse and exploitation as a result of their family losing its livelihood due to climate related events.³

In the 2019-2020 Australian Bushfires (referred to as Black Summer bushfires) research found that more than one in eight children and teenagers exposed to the bushfires were at risk of developing mental health problems as a result. This not only affected those immediately impacted but also extended to young people who experienced smoke pollution or saw media reports of death and destruction.⁴

Further, research has highlighted that again, Indigenous and Torres Strait Islander children and youth suffered disproportionately from health impacts as a result of climate change. Studies conducted with Aboriginal and Torres Strait Islander peoples from Australia highlight the environmental impacts of climate change on emotional wellbeing, including increased community distress from deteriorating the connection to country. Extreme heat also appeared to be associated with suicide incidence in Australia's Indigenous populations.⁵

It is clear then, to fulfil children's rights to a safe and healthy future ratified under the Australian Government, the Australian Government owes a duty of care under the CRC to stop new fossil fuel development and achieve sustainability appropriate development that meets the needs of present and future generations - in particular, investing in renewable energy sources and divesting in any new fossil fuels. Immediate action should be taken to address the impacts of climate change on the full and effective enjoyment of the rights of the child - ensuring that the source of the climate crisis (greenhouse gas emissions or GHG) are immediately reduced and rapidly permanently ceased.

It is also clear that the first and most important step in reducing and ceasing GHG is stopping further fossil fuel exploration and extraction, putting an end to new fossil fuels that are ultimately responsible for driving the climate crisis that is driving the extreme weather events and climate impacts that has an impact both on the health and well being of the children of Australia.

Australia must achieve deep and rapid cuts to greenhouse gas emissions to keep temperature rise to well below 2 degrees above pre-industrial levels. To do this, Australia needs to accelerate the transition to clean, affordable and reliable renewable energy and storage technologies, and ramp up other climate solutions in transport, industry, agriculture, land use and other sectors. In

³ Climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13)

⁴ The Sydney Morning Herald, accessed 2 November 2023, Link accessed: <https://www.smh.com.au/lifestyle/health-and-wellness/bushfires-could-trigger-mental-health-issues-for-thousands-of-children-20200201-p53wtg.html>

⁵ Climate Change and Mental Health: A Scoping Review, Int. J. Environ. Res. Public Health 2021, 18(9), 4486; <https://doi.org/10.3390/ijerph18094486>
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order to ensure this, each new fossil fuel project must be considered in light of the duty of care we owe to current and future generations and the impact the GHG of each project will have in driving the climate crisis, and in turn, driving extreme weather events that impact the safety and wellbeing of children.

2. The risks associated failing to meet the duty of care for current and future children of Australia under both the UN Convention on the Right of a Child and our moral obligation more broadly

Government decisions regarding GHG emissions must be considered from both a moral and a science-based position - being that fossil fuel activities are to be phased out, and no new fossil fuel projects should be developed in order to ensure we do not overreach our Paris Agreement targets.

The continuation of new fossil fuel exploration and extraction (especially when relating to natural gas, of which Australia is the largest exporter in the world) will continue to sustain the fossil fuel industry. The science is clear - the burning of fossil fuels must be ceased. Any further fossil fuel exploration permits or projects risk further contributing to GHG emissions in Australia and are inconsistent with the Paris Agreement.

The IPCC has recently made clear that emissions from existing fossil fuel infrastructure will push the world beyond 1.5°C of warming, and that “global warming is more likely than not to reach 1.5°C between 2021 and 2040 even under the very low GHG emission scenarios.”⁶ It goes on to say “Pathways consistent with 1.5°C and 2°C carbon budgets imply rapid, deep, and in most cases immediate GHG emission reductions in all sectors (high confidence).”⁷

The United Nations Secretary-General has warned that “investing in new fossil fuel infrastructure is moral and economic madness.”⁸

The International Energy Agency has concluded that the scientifically credible pathway to limiting warming to 1.5°C – the goal of the Paris Agreement – requires that no new gas and oilfields be approved for development after 2021. Australia is a signatory to the Paris Agreement, which entered into force on 4 November 2016. The Paris Agreement aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty. This is by “holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit

⁶Hoesung Lee et al., ‘Synthesis Report of the IPCC Sixth Assessment Report (AR6)’ (2023) IPCC, Figure 3.5, 56, Available at: https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf.

⁷ Hoesung Lee et al., ‘Synthesis Report of the IPCC Sixth Assessment Report (AR6)’ (2023) IPCC, Figure 3.5, 56, Available at: https://report.ipcc.ch/ar6syr/pdf/IPCC_AR6_SYR_LongerReport.pdf.

⁸ UN Secretary-General Antonio Guterres, ‘Secretary-General Warns of Climate Emergency, Calling Intergovernmental Panel’s Report ‘a File of Shame’, While Saying Leaders ‘Are Lying’, Fuelling Flames’ (Media Release SG/SM/21228, 4 April 2022) (2022) UN, available at: <https://press.un.org/en/2022/sgsm21228.doc.htm>. ‘International Energy Agency, ‘Net Zero by 2050: A Roadmap for the Global Energy Sector – Summary for Policymakers’ (May 2021), 11, Available at: https://iea.blob.core.windows.net/assets/7ebafc81-74ed-412b-9c60-5cc32c8396e4/NetZeroBy2050-ARoadmapfortheGlobalEnergySectorSummaryforPolicyMakers_CORR.pdf.

⁹Paris Agreement 2015, article 2.

the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change”.⁹

In the past 4 years, Australia has suffered from some of the worst droughts, bushfires, floods and extreme weather events in known history. Australia is uniquely vulnerable to climate change and the most severe impacts of a changing climate. The latest major assessment by the Intergovernmental Panel on Climate Change (IPCC) found global warming caused by humans was causing dangerous and widespread disruption, with many effects expected to be more severe than predicted.¹⁰

In Australia, the IPCC report stated extreme events exacerbated by emissions – heatwaves, droughts, floods, storms and fires – were causing death, injury and financial and emotional stress. Their impacts were “cascading and compounding” across nature, society and the economy.¹¹

It’s clear from the science that we have much to risk if we continue to pursue projects that emit GHG, and we are legally obligated to ensure we meet the scientifically established Paris Agreement targets we signed on to. Many risks for human health and wellbeing could be reduced, and some potentially avoided, if we reduce our GHG emissions.

Beyond science is also the undeniable social and moral obligation of ensuring we are not robbing future generations of access to the same privileges and basic human rights that generations of Australians have taken for granted - from the most basic rights of clean air, access to clean water, feeling safe, and the ability to plan for the future, to the experiences that represent what it means to have a childhood in Australia - to enjoy nature in its biodiverse and wild glory and the ability to swim in our oceans, rivers and lakes. To rob these experiences and rights from voiceless children in the name of fossil fuels comes with it a serious moral dilemma - one that is not worth risking in the name of multinational fossil fuel corporations gaining wealth from Australia’s natural resources.

In Summary:

Australia has a clear legal duty under the UN Convention on the Rights of Child to protect current and future children of Australia from the impacts of climate change as children are disproportionately vulnerable. Failing to do so is not only in breach of the Government’s duty of care for children, but also of the broader moral obligation to avoid burdening future generations by the climate decisions made today. Current and future generations of children cannot afford to bear the brunt of the impacts caused by multinational corporations risking the long term health and safety for short term wealth that will drive the climate crisis and increase the incidence and intensification of droughts, floods, fires and extreme weather events.

⁹ Hoesung Lee et al., ‘Synthesis Report of the IPCC Sixth Assessment Report (AR6)’ (2023) IPCC, Figure 3.5, 56, Available at: https://report.ipcc.ch/ar6syrr/pdf/IPCC_AR6_SYR_LongerReport.pdf.

¹⁰ IPCC Report, accessed 2 November: Link: <https://www.ipcc.ch/report/ar6/wg2/>

¹¹ Ibid

Ben & Jerry's is strongly in support of the amendments set out in the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 and submits we earnestly support this Bill passing in Parliament. Decision makers in Australia are obliged to act on behalf of those who they represent - including current and future children of Australia. Given the severe impacts of the climate crisis already experienced in Australia and the potential for future intensification of climate fueled extreme weather events, decision makers are both legally (through the CRC) and morally obligated to consider the impact of GHG emissions on the health and wellbeing of current and future Australian children and the paramount consideration on decisions regarding new fossil fuel projects. Failure to do so is nothing less of a breach of Australia's obligation to the UN Rights of a Child Charter under the CRC.

Ben & Jerry's believes that the Bill addresses this crucial duty of care for current and future Australian children and must be adopted into Australian legislative law with urgency. If the measure of a civilised society is how we treat our children - then we must put the health and safety of our most vulnerable members of society first before considering the wealth aspirations of multinational fossil fuel corporations. This Bill will go far towards ensuring this.

Ben & Jerrys
5 November 2023