
From: Grace Huang <partnerships@nela.org.au>
Sent: Thursday, 2 November 2023 6:54 PM
To: Portfolio Committee 7
Cc: Portfolio Committee 7
Subject: Re: Climate Change (Net Zero Future) Bill 2023 - Post-hearing responses - 27 October 2023

Dear Sarah

With sincere apologies for the delay, please see below NELA's responses to the questions on notice.

Question 1:

The Hon. SCOTT FARLOW: I'm going to pick up on Mr D'Adam's previous question with respect to the Victorian experience in particular in terms of litigation that has arisen out of the ministerial obligation there. Do you have any insight in terms of what litigation has arisen out of the Victorian obligation under the Climate Change Act 2017? (p. 25 Official Uncorrected Transcript)

NELA Response:

To date, we are not aware of any litigation that has arisen out of the duty imposed on the Minister and Premier contained in section 8 *Climate Change Act 2017* (VIC).

Our searches of various caselaw databases confirm that the duty has only been cited once in any litigation at all, that being the case of *Environment Victoria v AGL Loy Yang* [2022] VSC 814. Here, the obligation was referred to but not explained or discussed in any detail. The case was a judicial review proceeding which sought to challenge the review of a licence issued to several coal-fired power stations by the Victorian EPA on the basis that the EPA failed to take into account climate change considerations as a mandatory relevant consideration. Gorton J held that climate change considerations were mandatory considerations, and referred to duty in the context of explaining that the duty contained in section 8 was imposed on the Premier and Minister, as opposed to the EPA (at [59]):

the obligations to 'ensure' that the State achieves the long term emissions reduction target of net zero greenhouse gas emissions by the year 2050 and to determine greenhouse gas emissions reduction targets are placed on the Premier and the Minister, who are of course responsible to Parliament, but not on the [Environment Protection] Authority [citing section 8 *Climate Change Act 2017* (VIC)].

Question 2:

The CHAIR: On that point, where you've put your suggested amendment to (3) (g), are you saying they have been used before? They seem like words that I've probably looked for in the past, and there they are. Are they words derived from another place? (p. 26 Official Uncorrected Transcript)

NELA Response:

The Chair's question concerns Recommendation 5b proposed by NELA, which relates to the appointment of commissioners and the collective skills, qualifications and experience of the Commission. In that Recommendation, NELA proposed the following wording for s 12(3)(g): '*the knowledges, interests, and priorities of Aboriginal communities based on cultural law as determined by nominated Aboriginal knowledge custodians*'.

We have been able to locate one example where similar language is used. The [Dictionary](#) to the *Queensland Biodiscovery Act 2004* (Qld) provides the below definition of 'custodians' and 'traditional knowledge':

custodians, of traditional knowledge, means the Aboriginal people or Torres Strait Islanders to whom the traditional knowledge relates.

traditional knowledge means information based on Aboriginal tradition and Island custom

We were unable to locate further examples in the time available.

Question 3

The CHAIR: Just from a legal perspective, does providing those definitional aids in the legislation actually minimise potential litigation opportunities—where there's more definition, there's less likelihood of litigation? (p. 27 Official Uncorrected Transcript)

We are unsure of the impact this might have on potential litigation opportunities. Where litigation did arise, however, including this definitional aid would assist Courts in interpreting the content of the right to a clean, healthy and sustainable environment, and how the right is implemented.

Corrections to the transcript

We also kindly request the following correction to the transcript on page 27 of the Official Uncorrected Transcript:

GRACE HUANG: That's right, Chair. So in our submission, the language around the right to a healthy environment, which is included under section 8, should be tightened to tie it to the international instruments from which this principle has emerged—those **are the other** two resolutions of the Human Rights Council and also the UN General Assembly. We think that this is an important way to ensure that the implementation of any right to a healthy environment doesn't drift away from what its original intention was supposed to be. That's why we've inserted those amendments.

Kind regards

Grace

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NELA offers our respects to Aboriginal and Torres Strait Islander peoples and their elders past, present and future.