

# Children's Right to a Healthy Environment in Australia:

## Executive Summary





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**This report examines how Australia law does and does not protect children from environmental harm, and how Australian legislation is failing to protect a child’s right to a healthy environment. The report investigates international moves to incorporate this right into law showing where Australia should do more. The research also examines recent legal and political examples of young people pushing for change.**

The report recommends explicit legislative recognition of the right to a healthy environment. It also recommends changes to Australia’s national environment law to ensure climate change is properly considered and the decline in biodiversity halted.

As the driest inhabited continent in the world, Australia is particularly vulnerable to the impacts of climate change and extreme weather events. The Black Summer fires of 2019-20 burned through 17 million hectares of land across the country, exposing the uncertain and hostile future Australian children face. Photographs of young people and their families fleeing the fires were shared around the world. These poignant and heartbreaking scenes have become symbolic of this climate catastrophe.

Around the world 161 countries recognise in law the right to a healthy environment. Australia is not one of them.

The United Nations recognises that children are among the most vulnerable to the impacts of climate change. Children’s physical and mental health, access to education, food security and adequate housing are all compromised by climate change impacts. For First Nations children and children living with disabilities, climate change compounds existing inequalities these groups face.

## Young leaders are taking action across the globe

A growing movement of children and young people all over the world are raising their voices for a better future. Increasingly, young people are taking action in the streets and in the courts and through international bodies. School Strikes 4 Climate have seen huge attendance which continues to grow. In 2022, a young person led organisation, Youth Verdict, successfully challenged a coal mine project in Queensland. The Land Court of Queensland recommended the mine be refused in part because of its impacts on human rights (protected by the Queensland Human Rights Act 2019). In 2021, five young Australians – including members of First Nations and disability communities – filed a complaint to the UN Special Rapporteurs on Human Rights and the Environment, the Rights of Indigenous peoples and the Rights of persons with Disabilities. The Complainants assert that the Australian Government’s emission targets are insufficient to meet the Paris Agreement, which breaches their rights under international human rights law.

## What is The Convention on the Rights of the Child (CRC)?

The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly in 1989, enshrining the universal human rights for children across the globe. The CRC does not expressly mention the right to a clean, healthy and sustainable environment. However, it provided a foundation stone which led to the right to a clean, healthy and sustainable environment being recognised as a standalone universal right by the UN General Assembly in 2022.



Melbourne Strike Photo. Ryan Chenoweth

## International progress in recognising a child’s right to a healthy environment

In recent years, three landmark resolutions were passed by UN bodies recognising this emerging right. In 2020, the United Nations Human Rights Council (HRC) adopted a resolution “realising the rights of the child through a healthy environment”, and called on States to ensure that the best interests of children are central in environmental decision making and to consider recognising the right to a healthy environment in national law. A year later, the HRC recognised that the right to a clean, healthy and sustainable environment is a human right. And, in 2022 the UN General Assembly adopted a landmark resolution that explicitly recognises the human right to a healthy environment and that environmental damage is felt acutely by children. Critically, the resolution (voted for by Australia and 160 other nations) recognises the human right to a clean, healthy and sustainable environment.

## National progress in recognising a child’s right to a healthy environment

In Australia, no Commonwealth or state / territory law expressly recognises the right to a clean, healthy and sustainable environment. Australia is an outlier in this regard, as the right is legislatively recognised in 161 nations.

Federal laws that aim to preserve a healthy environment are not commonly linked to Australia’s commitments under the CRC.

This research identified gaps in legal protections of a child’s right to a healthy environment particularly in relation to the national environmental law. This report exposes a need for the clear articulation of a child’s right to a healthy environment and outlines steps to achieve this. Australia’s national environmental law fails to address climate change adequately, in particular the impact on Australia of exporting vast amounts of fossil fuels for combustion overseas. The law also does not adequately protect and conserve threatened species or areas of environmental significance.







## Children and Young People's Perspectives

Australian children are demanding greater climate action. A national survey commissioned by the Australian Conservation Foundation in 2023 found 75% of young Australians believe climate change will make life harder for them in the future. Ninety per cent of young Australians agree that they have a right to a healthy environment, and two thirds believe the federal government should pay more attention to their views on climate change. Increasingly young people are exercising their right to be heard politically and before Australian courts. However, children continue to face numerous barriers and limited access to formal judicial mechanisms and remedies. And because Australia has not ratified the Third Optional Protocol to the CRC, there is no mechanism for children to raise Australian government breaches of the CRC.

## A child's right to a healthy environment and the Australian business sector

Under Queensland laws businesses have a legal responsibility to avoid environmental harm. This is not the case under the national environmental law. The Australian business sector does not have a clearly defined legal responsibility to respect children's right to a clean, healthy and sustainable environment. International bodies – such as the CRC Committee – and domestic NGOs have called on Australia to implement stronger corporate regulation in relation to children's rights.



## Recommendations

This report makes a number of recommendations regarding the recognition of children's right to a clean, healthy and sustainable environment in Australia. The recommendations include actions that may be taken by the Commonwealth Government, State and Territory Governments, the Australian Human Rights Commission and National Children's Commissioner and NGOs. Recommendations include that:

- The right to a clean, healthy and sustainable environment is best located in a standalone Federal human rights act. However, if that legislation is not contemplated in the short to medium term then the right should be inserted into an amended national environmental law (the EPBC Act) or equivalent.
- The EPBC Act should be improved to protect children's right to a healthy environment by:
  - Integrating considerations of a child's rights more clearly into the process under the EPBC Act by strengthening the principle of intergenerational equity to specifically include the climate consequences of actions.

- Including a new Matter of National Environmental Significance (MNES) of Protecting the Environment from the Effects of Climate Change. This new MNES would require assessment of the climate consequences (particularly in relation to Australian and global carbon budgets) of actions that exceed a threshold emissions profile.
- Providing clear, up front protection for important environmental values such as protecting and conserving threatened species or areas designated environmentally significant.
- Recognising the interests and rights of children and young people in a National Environmental Standard for Community Engagement and Consultation, and make specific provision for consultation with children and young people in the Standard.
- Develop and implement a National Action Plan on business and human rights.
- Ratify the Optional Protocol to the Convention on the Rights of the Child to provide Australian children with access to an independent complaints procedure to escalate alleged violations of their rights under the CRC to the CRC Committee.

Top left. Kids Climate Strike Photo. Jim McFarlane/MAPgroup

Top Right. Stop Adani Protest Photo. James Thomas

Right. Kids Climate Strike Photo. Jim McFarlane/MAPgroup



# We love **our beautiful planet**

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