

# Children's Right to a Healthy Environment:

## An Australian Perspective 2023



**AUSTRALIAN  
CONSERVATION  
FOUNDATION**

**Nature  
needs us,  
now**



**Save the Children**



**We acknowledge the Traditional Owners of Country** and their continuing connection to land, waters and community. **We pay respect to their Elders past and present** and to the pivotal role that First Nations Peoples continue to play in **caring for Country across Australia.**

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The authors of this report would like to dedicate this report to their children: William, Evelyn, Chloe, Leo, Helena, Johnny, Henry, Nick and to the children of Australia.

Disclaimer

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This report has been prepared by legal staff based in Australia. The information contained in this report has been largely sourced from a desktop review of publicly available documents up to June 2023 and through consultation with children and youth, key stakeholders, experts, ACF, Save the Children and AYCC. While all due care has been taken in compiling this report, ACF, Save the Children AYCC and King & Wood Mallesons accept no responsibility for the accuracy or completeness of information from these sources.

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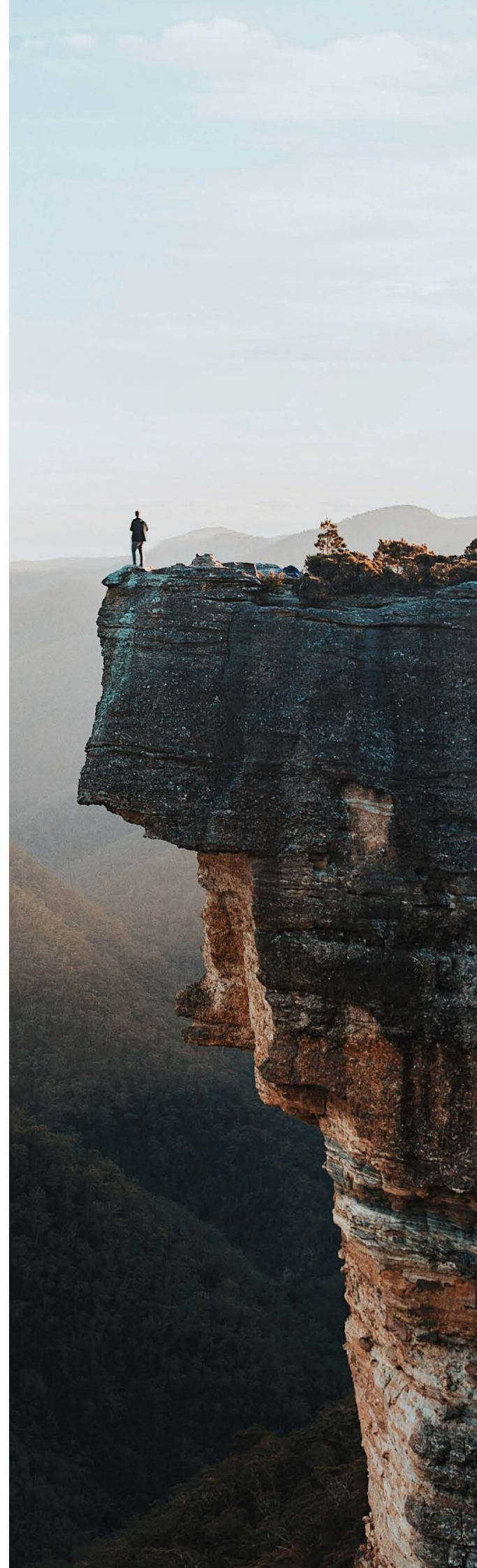
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# Glossary

Term	Meaning
Aarhus Convention	<i>Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Matters 1998</i>
Access to Justice for Children Report	OHCHR report on ‘Access to Justice for Children’ published in 2013
ACF	Australian Conservation Foundation
AHRC	Australian Human Rights Commission
AHRC Act	<i>Australian Human Rights Commission Act 1986</i> (Cth)
ALRC	Australian Law Reform Commission
Basin Plan	Murray-Darling Basin Plan
CAT	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984</i>
CEDAW	<i>Convention on the Elimination of All Forms of Discrimination against Women 1979</i>
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	<i>International Convention on the Elimination of All Forms of Racial Discrimination 1966</i>
CRBP	Children’s Rights and Business Principles
CRC	<i>Convention on the Rights of the Child 1989</i>
CRC Committee	Committee on the Rights of the Child
CRPD	<i>Convention on the Rights of Persons with Disabilities 2006</i>
CRPD Committee	Committee on the Rights of Persons with Disabilities
Dangerous Devices Act	<i>Summary Offences and Other Legislation Amendment Act 2019</i> (Qld)
DCCEEW	Commonwealth Department of Climate Change, Energy, the Environment and Water
Duty of Care Bill	Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (Cth)
EPA	<i>Environmental Protection Act 1994</i> (Qld)
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth)
First Optional Protocol	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
Guiding Principles	United Nations Guiding Principles on Business and Human Rights
G8	Group of 8
G20	Group of 20
GC16	General Comment No. 16 of the CRC Committee on State Obligations regarding the Impact of the Business Sector on Children’s Rights
GC26	General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change
HRC	United Nations Human Rights Council
Human Rights Act	<i>Human Rights Act 2019</i> (Qld)
ICCPR	<i>International Covenant on Civil and Political Rights 1966</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights 1966</i>
ICESCR Committee	Committee on Economic, Social and Cultural Rights
IPCC	Intergovernmental Panel on Climate Change
Joint Statement	Joint Statement of the CRPD Committee, the CEDAW Committee, the ICESCR Committee, the CRC Committee and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families on Human Rights and Climate Change
Miami Conference	Conference of G8 Environment Ministers at Miami, Florida in May 1997 to discuss (among other matters) the Health Implications of Exposure of Children to Environmental Contaminants
Miami Declaration	1997 Declaration of the Environment Leaders of the Eight on Children’s Environmental Health

Term	Meaning
Model Human Rights Act	Australian Human Rights Commission’s Model Human Rights Act
NAP	National Action Plan
NEPC	National Environment Protection Council
NEPC Act	<i>National Environment Protection Council Act 1994</i> (Cth)
NGER Act	<i>National Greenhouse and Energy Reporting Act 2007</i> (Cth)
NGO	Non-governmental organisation
NHRI	National human rights institution
OHCHR	Office of the United Nations High Commissioner for Human Rights (UN Human Rights)
OHCHR Report	<i>Report of the Special Rapporteur on the Issue of Human Rights Obligations relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment</i>
PSWG	Pre-sessional working group of the Committee on the Rights of the Child
QHRC	Queensland Human Rights Commission
Second Optional Protocol	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
Seen and Heard Report	ALRC’s 1997 report entitled ‘ <i>Seen and Heard: Priority for Children in the Legal Process</i> ’
Third Optional Protocol	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
UN	United Nations
UNDRIP	<i>United Nations Declaration on the Rights of Indigenous Peoples 2007</i>
UNEP	United Nations Environment Programme
UNICEF	United Nations Children’s Fund
UPR	Universal Periodic Review
UNSR HRE	United Nations Special Rapporteur on Human Rights and the Environment
UNSR HRE Report	Report of the UNSR HRE on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment
WHO	World Health Organization
World Summit Declaration	Declaration on the Survival, Protection and Development of Children adopted by the World Summit for Children in 1990





# 1. Preface

## Purpose and scope of report

- 1.1 The purpose of this report is to examine the extent to which Australia’s legal framework currently supports the rights of children<sup>1</sup> to a clean, healthy and sustainable environment. The findings in this report are based upon a review of Commonwealth and Queensland legislation.<sup>2</sup> It also considers this existing legislative framework within the context of Australia’s commitments under relevant international human rights treaties and related entities.
- 1.2 This report is informed by the report of the former United Nations Special Rapporteur on Human Rights and the Environment (**UNSR HRE**) on the issue of human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment (**UNSR HRE Report**), and in particular on the relationship between children’s rights and environmental protection.<sup>3</sup> It also follows the publication by UNICEF in September 2020 of a discussion paper on ‘Children’s Right to a Healthy Environment (**RTHE**) in East Asia and the Pacific’<sup>4</sup> (**UNICEF Discussion Paper**) and in June 2022 of a report on ‘Legal Empowerment to Advance Climate and Environmental Justice for Children in East Asia and the Pacific’ (**UNICEF Report**). While the UNICEF Discussion Paper and UNICEF Report considered the extent to which children’s rights to a healthy environment are supported by national laws in Cambodia, Fiji, Indonesia, Mongolia and Viet Nam, this report seeks to provide a uniquely Australian perspective on how these emerging rights are supported by Australian federal and state law.

This report also addresses children’s environmental education, their engagement and participation in environmental affairs, and the role of the business sector in relation to children’s rights to a healthy environment. General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change (**GC26**) was launched on 22 August 2023 and is the first thematic comment by the Committee on the Rights of the Child (**CRC Committee**) on children’s rights and the environment.<sup>5</sup> GC26 also states that the Right to a Healthy Environment (RTHE) is implicit in the CRC; States should phase out the use of coal, oil and gas, and states should incorporate the Right to a Healthy Environment (RTHE) into legislation.<sup>6</sup> This report notes the introduction and development of GC26, but has not been substantially informed by it. The authors of this report prepared submissions on behalf of ACF to the CRC Committee as part of the GC26 process.<sup>7</sup>

- 1.3 The key objectives of this report are therefore to:
- (a) provide an overview of the current state of international law as at August 2023 with respect to children’s right to a healthy environment, including Australia’s contributions to the international discourse and developments regarding these rights and commentary by the Australian judiciary;

(b) assess the extent to which children’s right to a healthy environment is supported by Commonwealth legislation in force as of 1 August 2023;

- (c) assess the extent to which children’s right to a healthy environment is supported by Queensland legislation in force as of 1 August 2023, to provide a snapshot of the extent to which the rights are supported by state legislation within Australia’s federal political system;

(d) assess the extent to which Australian children are able to access environmental education, and engage and participate in environmental affairs;

(e) assess the extent to which the Australian business sector is required to respect and consider children’s right to a healthy environment and developments towards a National Action Plan (**NAP**) on Business and Human Rights; and

(f) present recommendations for future avenues for promoting the recognition of children’s right to a healthy environment under Australian law.

these jurisdictions between the adoption of the Convention on the Rights of the Child (**CRC**)<sup>8</sup> in 1989 and August 2023. The methodology for selecting relevant Commonwealth and Queensland legal instruments involved identifying express references to children’s right to a healthy environment, and otherwise assessing whether a Commonwealth or Queensland legal instrument could be interpreted as applicable, through searches of official databases of federal and state legislation.

- 1.6 The review did not involve a targeted review of subordinate or delegated legislation. To the extent that any secondary legal materials such as relevant policies or regulations are discussed in these reports, they have been included to the extent they assist in the interpretation of primary legislative materials to which they relate.
- 1.7 A broad approach to interpretation of primary legal materials was adopted for this report. The review therefore captured Commonwealth and Queensland legal instruments that refer to the right to a healthy environment in general, or which can otherwise be interpreted as applicable to substantive elements of the right of the child to a clean, healthy and sustainable environment. As the specific contents of this right are yet to be authoritatively defined in international law (although the existence of this right in international law is consolidated or, at the very least, considerably strengthened, by the recent General Assembly resolution recognising ‘the human right to a clean, healthy and sustainable environment’<sup>9</sup>), this report relies on the *Framework Principles on Human Rights and the Environment* set out in the UNSR HRE Report to model the substantive elements of the right.<sup>10</sup> There was no specific consideration of issues relating to

## Methodology and limitations of report

- 1.4 Research for this report was based on desktop review of primary legal materials and academic literature, consultations with ACF and discussions with and feedback from Australian children and young people through a youth consultation process held throughout July 2023.

## Desktop review of primary legal and academic materials

- 1.5 The scope of Commonwealth and Queensland legislation considered include Acts assented to in

<sup>1</sup> The term “children” is used in this report to mean all human beings under the age of 18, in accordance with Article 1 of the CRC.

<sup>2</sup> Queensland was selected as a case study for three key reasons: (1) historically, there has been a strong presence of fuel extraction and fossil fuel heavy industries; (2) it is one of three Australian jurisdictions with a statutory bill of rights; and (3) there is a strong presence of active youth-led climate change litigation. However, Queensland legislation should not be taken to be representative of Australia as a whole.

<sup>3</sup> Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 37th sess, Agenda item 3, UN Doc A/HRC/37/58 (24 January 2018)<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/29/PDF/G1801729.pdf?OpenElement>>.

<sup>4</sup> King & Wood Mallesons and UNICEF, *Children’s rights to a healthy environment in East Asia & the Pacific* (Discussion Paper, September 2020) (*‘Discussion Paper’*)<<https://www.unicef.org/eap/media/6876/file/Child’s%20rights%20to%20a%20healthy%20environment.pdf>>.

<sup>5</sup> See:<<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vHrWghmhzPL092j0u3MJAYhyUPAX9o0tJ4tFwwX4frsfllPka9cgF%2FBur8eYD%2BEeDmuoVnVOpjkwB9eiDayjZA>>.

<sup>6</sup> See GC26 [63], [65] and [67].

<sup>7</sup> Australian Conservation Foundation, Submission to the CRC Committee on its draft GC26 (15 February 2023)<<https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc26/2023/cs/GC26-CS-australian-conservation-foundation-2023-02-15.docx>>.

<sup>8</sup> Opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>9</sup> United Nations General Assembly, *The human right to a clean, healthy and sustainable environment*, 76th sess, Agenda Item 74(b), UN Doc A/RES/76/300 (28 July 2022). See Part 3, ‘A right to a safe, clean and healthy environment’ for further details.

<sup>10</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex, principle 7. We note that our understanding of the right to a healthy environment may evolve over time and the substantive elements of the right are not exhaustive. For further information on the scope and content of the right see New York University School of Law’s Earth Rights Advocacy and the Universal Rights Group, *Unpacking the Right to a Healthy Environment: How National and Regional Laws and Jurisprudence Clarify the Scope and Content of the Universal Right* (Report, January 2023): <https://www.universal-rights.org/urg-policy-reports/unpacking-the-right-to-a-healthy-environment/>.



gender, disability, Indigenous peoples, migration or displacement within the methodology of this report. However, this report does recognise that the right of children to a healthy environment may overlap and intersect with the rights of other marginalised groups or specifically protected groups under international human rights law. It is important to acknowledge that children from overburdened communities, including First Nations children, internally displaced children, and children with disabilities, may be particularly vulnerable to social inequality.

1.8 Likewise, the review did not involve a targeted or systematic review of jurisprudence on the right to a healthy environment, or applicable elements of those rights. To the extent that any case law is discussed in this report, it is included for the purpose of demonstrating that issues concerning children’s right to a healthy environment are being litigated in Australian courts and tribunals, signalling the potential for further legal and normative developments going forward.

1.9 While this report has endeavoured to be as comprehensive as possible, it should not be considered to be exhaustive. The study focused exclusively on two jurisdictions in Australia: the Commonwealth and Queensland. Due to practical limitations, the report does not comprehensively consider all state or territory laws in Australia that directly or indirectly relate to children’s right to a clean, healthy and sustainable environment. Similarly, as noted above, the review did not involve an exhaustive review of relevant jurisprudence of Australian courts and tribunals on the issue of children’s environmental rights, or the interpretation of the legislation identified and considered in this report. This work is not intended to be a comprehensive analysis of the current status of children’s right to a healthy environment under Australian law, but rather a tool for initiating discussions around promoting the recognition of these rights under Australian law. Further engagement with local, state, national and regional stakeholders, as well as additional analysis of other state and territory jurisdictions in Australia, would enhance the findings of this report.



Climate change demonstration Photo: jacoblund / iStock

Youth consultation process

- 1.10 In addition to the primary legal materials and academic literature reviewed, this report is also informed by direct and targeted consultations with Australian children and youth. The youth consultation process was driven by the recognition that children and youth have historically been excluded from spaces of power and decision-making, and that it would be remiss to put forward any proposals for how Australia can advance further legal recognition of children’s environmental rights without input from children and youth themselves.
- 1.11 The youth consultation process comprised of three parts, being the following:
- (a) A national survey of 1,737 children and young people across Australia to seek their views on various topics relating to how they perceive their right to a healthy environment in Australia;
  - (b) Case studies which spotlight some Australian children and youths’ lived experiences of climate crises and their actions in the community to advance children’s rights to a healthy environment in Australia; and
- (c) Youth engagement sessions that involved speaking with 10 Australian children and young people and having an open-ended dialogue on their thoughts and experiences around climate change, the environment and their rights.
- 1.12 The national survey consisted of a series of 16 close-ended questions in various formats, including multiple choice, ranking and sliding scale, prepared and disseminated with the assistance of the polling company, YouGov. The national survey was conducted from 27 July to 8 August 2023 and was distributed through YouGov’s networks of young people across Australia within the targeted age bracket of 13-24 years old. The survey questions addressed, amongst other things, young people’s views on climate change, government actions to address climate change, children’s access to information and education, and their participation in environmental affairs.
- 1.13 See below table for the demographic breakdown of the survey respondents:
- 1.14 The case studies comprised of interviews with young people who each contributed their first-hand insights on the front lines of climate change and environmental action in Australia:

Demographic information	Responses (Total responses: 1737)
Gender	Male (904) Female (833)
Age	13 - 15 (413) 16 - 18 (454) 19 - 21 (406) 22 - 24 (264)
Residence (state or territory)	New South Wales (546) Victoria (491) Queensland (323) Western Australia (168) South Australia (135) Tasmania / Northern Territory / Australian Capital Territory (74)
Residence (capital cities or regional)	Capital cities (1312) Regional (425)





- (a) April Harrison (22 years old). April is a veterinary nursing student from Kinglake, Victoria who uses her personal experience of the 2009 Black Saturday bushfires to help children and young people’s post-trauma recovery, especially in the aftermath of natural disasters and extreme weather events. She is a passionate advocate for the education and mental health of children who have lived experience with trauma.
- (b) Danielle Lam (19 years old). Danielle is a sustainability and environment student from Western Sydney, whose lived experiences of extreme heat in her community and its magnified impact on marginalised people has prompted her to become a young advocate for social and environmental justice. She is a member of various community-based environmental groups and believes in empowering youth to create a sustainable future for everyone.<sup>11</sup>

Interviews were conducted with each of these young people in their homes and filmed by ACF staff and volunteers.

- 1.15 The youth engagement sessions were arranged on an individual or pair basis with young people from Queensland and conducted in an informal interview style online via Microsoft Teams. During the engagement sessions, the young people were given a brief, high-level overview of children’s right to a healthy environment and the context of the report. The young people were then asked a

series of open-ended questions about their thoughts and experiences on three broad topics (with some overlap with the national survey questions, but framed in an open-ended manner) – (i) children’s right to a healthy environment, (ii) children’s access to information and education, and (iii) children’s participation in environmental affairs. These engagement sessions provided qualitative responses that contextualised the quantitative responses obtained from the national survey.

- 1.16 The authors recognise the inherent limitations of the youth consultation process. Despite best efforts to seek input from a diverse pool of children and young people (including regional and indigenous young people), engagement uptake was limited. By its nature, the youth consultation process undertaken is more likely to exclude younger children, children residing in rural or remote communities, First Nations children, children with disabilities, children from culturally and linguistically diverse backgrounds, and generally more marginalised communities.
- 1.17 Efforts were made to organise an in-person half-day workshop in Brisbane during July 2023, targeted at Queensland children and youth people aged 16 to 25 years old that did not go ahead due to limited youth engagement with the event. Online engagements were subsequently arranged with some young people who had registered for the workshop.

<sup>11</sup> Ages at the time of conducting the case studies.

## 2. Summary

### Climate and environmental challenges risk undermining children’s right to a healthy environment in Australia

- 2.1 Climate change disproportionately affects younger generations.<sup>12</sup> The United Nations has long recognised that children are among the most vulnerable to the impacts of climate change.<sup>13</sup> Climate change has serious implications for children’s physical and mental health, access to education, food security, adequate housing, safe drinking water, and safe sanitation.<sup>14</sup> The vulnerability to climate change impacts is magnified for other marginalised groups, such as First Nations children, children with disabilities, children living in poverty and children separated from their families.<sup>15</sup> For these groups of children, the climate crisis is also an intersectional rights crisis, compounding existing inequalities. This is reflected by the complaint filed on 25 October 2021 by five Australians – including members of First Nations and disability communities – 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 and the government has therefore breached the CRC, the Convention on the Rights of Persons with Disabilities, and the United Nations Declaration on the Rights of Indigenous Peoples.<sup>16</sup> This case reflects a global trend which sees children and young people comprising more than one quarter of all plaintiffs in rights-based strategic climate litigation cases filed globally up to 2021.<sup>17</sup>

- 2.2 The Intergovernmental Panel on Climate Change’s (IPCC) recent Sixth Assessment Report warns that “the [Australasia] region faces an extremely challenging future”.<sup>18</sup> As the driest inhabited continent in the world, Australia is particularly vulnerable to the impacts of climate change and extreme weather events.<sup>19</sup> Children are deeply concerned about their “chance for a safe future” because climate change is “on our doorstep”.<sup>20</sup> Over the past four years, Australia has suffered from both fires and floods. The CSIRO’s State of The Climate report identified that fire weather in Australia has increased in intensity and duration since the 1950s.<sup>21</sup> This is illustrated by the 2019-20 Australian bushfire season, which burned over 17 million hectares of land across the country.<sup>22</sup> There has also been an increase in the intensity of heavy rainfall events.<sup>23</sup> Undoubtedly, Australia has acutely experienced the adverse impacts of climate change.

<sup>12</sup> See: <https://www.unicef.org/reports/unless-we-act-now-impact-climate-change-children>; Wim Thiery et al, ‘Intergenerational inequities in exposure to climate extremes’ (2021) 374(6564) Science 158.

<sup>13</sup> See Part 3 of this Report.

<sup>14</sup> Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 37th sess, Agenda item 3, UN Doc A/HRC/37/58 (24 January 2018).<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/29/PDF/G1801729.pdf?OpenElement>> (at [10]).

<sup>15</sup> Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 37th sess, Agenda item 3, UN Doc A/HRC/37/58 (24 January 2018).<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/29/PDF/G1801729.pdf?OpenElement>> (at [10]).

<sup>16</sup> See: [https://envirojustice.org.au/wp-content/uploads/2022/02/UN\\_Climate\\_Change\\_Human\\_Rights\\_FINAL\\_complaint.pdf](https://envirojustice.org.au/wp-content/uploads/2022/02/UN_Climate_Change_Human_Rights_FINAL_complaint.pdf). This is discussed in further detail in Part 5, ‘Complaints to the United Nations Special Rapporteurs’ of this Report.

<sup>17</sup> Elizabeth Donger, ‘Children and youth in strategic climate litigation: advancing rights through legal argument and legal mobilization’ (2022) 11(2) *Transnational Environmental Law* 263.

<sup>18</sup> Intergovernmental Panel on Climate Change, ‘Climate Change 2022: Impacts, Adaptation and Vulnerability’<<https://www.ipcc.ch/report/ar6/wg2/>> p 1585.

<sup>19</sup> See: <https://www.science.org.au/supporting-science/science-policy-and-analysis/reports-and-publications/risks-australia-three-degrees-c-warmer-world>.

<sup>20</sup> Anjali Sharma, *Losing this court case feels like we’ve lost our chance for a safe future* (The Sydney Morning Herald, 15 March 2022)<<https://www.smh.com.au/environment/climate-change/losing-this-court-case-feels-like-we-ve-lost-our-chance-for-a-safe-future-20220315-p5a4sc.html>>.

<sup>21</sup> See: <https://www.csiro.au/en/research/environmental-impacts/climate-change/State-of-the-Climate>.

<sup>22</sup> See: [https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/7234762/upload\\_binary/7234762.pdf](https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/7234762/upload_binary/7234762.pdf).

<sup>23</sup> See: <https://www.csiro.au/en/research/environmental-impacts/climate-change/State-of-the-Climate>.



The CRC and children’s right to a healthy environment

- 2.3 As reflected in the 2018 UNSR HRE Report,<sup>24</sup> the right to a clean, healthy and sustainable environment is “part of a rights tapestry” that “encompasses several other human rights, including the right to clean air, access to safe water, a safe climate, healthy and sustainably produced food, and adequate sanitation, non-toxic environments in which to live, work and play among others”.<sup>25</sup>
- 2.4 The CRC was adopted by the UN General Assembly on 20 November 1989. The CRC enshrines universal human rights for children across the globe. Although the CRC does not expressly mention a right of the child to a clean, healthy and sustainable environment, many articles – expressly and by implication – have strong environmental elements that support the right.<sup>26</sup> Accordingly, the CRC has and continues

to provide a broad normative foundation that has contributed to the right to a clean, healthy and sustainable environment being recognised as a standalone universal right by the General Assembly on 28 July 2022.<sup>27</sup>

International progress in recognising children’s right to a healthy environment

- 2.5 There have been several milestones since the CRC was adopted in 1989 that have recognised the relationship between children’s rights and environmental harm.<sup>28</sup> Notably, the steps taken to recognise a distinct right of children to a clean, healthy and sustainable environment have exponentially increased following the Paris Agreement.<sup>29</sup> Most recently, the Committee on the Rights of the Child confirmed in GC26 that children have a right to a healthy environment.

- 2.6 From 2020 to 2022, three landmark resolutions were passed by UN bodies.<sup>30</sup> In October 2020, the HRC adopted a resolution realising children’s right to a healthy environment, and called on States to ensure that the best interests of children are central in environmental decision making. One year later, the HRC expressly recognised that the right to a clean, healthy and sustainable environment is a human right. Building on this momentum, on 28 July 2022 the UN General Assembly adopted a landmark resolution that explicitly recognises the nexus between environmental damage, the human right to a clean, healthy and sustainable environment and the rights of children (**July 2022 UNGA Resolution**). Importantly, the overwhelming acceptance of the right to a clean, healthy and sustainable environment as a standalone human right indicates strong support for *children’s* right to a healthy environment. This is highlighted by the release of General Comment No. 26 by the CRC Committee.
- 2.7 Australia has played a relatively limited role in the international development of children’s right to a clean, healthy and sustainable environment. Australia has ratified the CRC and the Australian government was particularly active in the 1990s in progressing the CRC domestically and internationally. However, since then, Australia’s participation in recent international developments towards recognising the right has been (comparatively) less proactive.<sup>31</sup> The Australian government has signed and ratified the First and Second Optional Protocols to the CRC, but not the Third Optional Protocol. Ratifying the Third Optional Protocol would allow Australian children to make a complaint to the CRC Committee over alleged violations of their right to a healthy

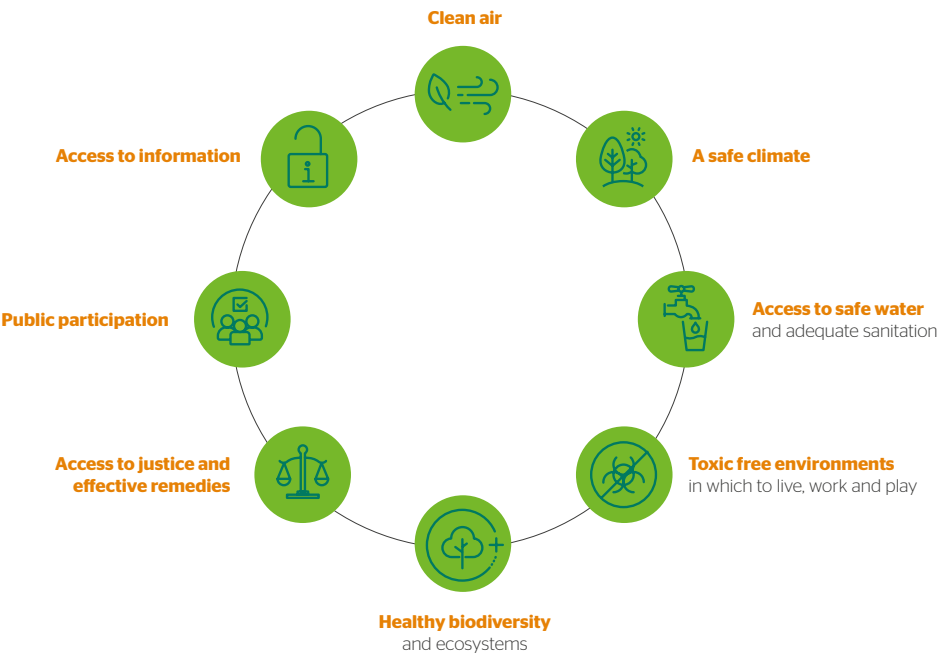
environment.<sup>32</sup> Most recently, Australia voted in favour of the July 2022 UNGA Resolution, along with 160 other UN member states.

- 2.8 A detailed analysis of the international progress in recognising children’s right to a healthy environment, together with Australia’s role in that development, is set out in Part 3 of this report.

National progress in recognising children’s right to a healthy environment

- 2.9 Commonwealth and Queensland laws do not expressly recognise the right to a clean, healthy and sustainable environment. However, a number of legislative instruments contain provisions that recognise intergenerational equity as a principle of ecologically sustainable development. This has created scope for young people to seek a form of recognition of this right before Australian courts, resulting in landmark decisions in recent years.<sup>33</sup>
- 2.10 The gap analysis conducted revealed that some of the elements<sup>34</sup> of children’s right to a clean, healthy and sustainable environment are addressed by Commonwealth and Queensland law (see Part 4 and Appendix D of this Report). However, there is no express connection between the laws that address a healthy environment and the laws addressing the rights of the child. In addition, gaps were identified with respect to legislative protection of children’s rights. The analysis in the report exposes a need for the clear articulation of children’s right to a healthy environment to ensure that implementation and enforcement is effective.<sup>35</sup>

Key elements of the right to a healthy environment



<sup>24</sup> See Part 3, ‘Developments take on a greater sense of urgency from 2016’ of this Report for further details.

<sup>25</sup> Aoife Daly et al, ‘White Paper on the right of the child to a safe, clean, healthy and sustainable environment’ (2022)<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4148506](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4148506)> 1, 6.

<sup>26</sup> See Part 3, ‘Progress between 1989-2016’ for further details; see also GC26, at para 63 page 11.

<sup>27</sup> See Part 3, ‘A right to a safe, clean and healthy environment’ for further details.

<sup>28</sup> See Part 3 Table 2 of this Report for a concise summary.

<sup>29</sup> See Part 3, ‘Developments take on a greater sense of urgency from 2016’ for further details.

<sup>30</sup> See Part 3, ‘A right to a safe, clean and healthy environment’ for further details.

<sup>31</sup> See Part 3, ‘Australia’s role in the international development of children’s right to a healthy environment’ for further details.

<sup>32</sup> See Part 3, ‘Australia and the CRC’ and ‘Why Australia has not ratified the CRC Optional Protocol on a communications procedure’ for further details.

<sup>33</sup> See Part 4, ‘The Commonwealth and the state of Queensland do not expressly recognise the right to a healthy environment in domestic legislation’ and ‘The recognition of intergenerational equity as a principle of ecologically sustainable development within environmental legislation has created scope for young people and their advocates to seek recognition of their right to a healthy environment’ for further details.

<sup>34</sup> See Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018).

<sup>35</sup> See Part 4, ‘The Commonwealth and the state of Queensland implement and enforce environmental law and policy, but more needs to be done to ensure the effectiveness of these laws and to implement children’s right to a healthy environment’ for further details.





2.11 Australian children are demanding greater climate action and are increasingly exercising their right to be heard politically and before Australian courts. However, children continue to face numerous barriers when accessing formal judicial mechanisms and remedies due to their ‘special and dependent’ status under the law.<sup>36</sup> Furthermore, the mechanisms available to Australian children and young people to raise complaints about violations of their rights are somewhat limited. Australia has not ratified the Third Optional Protocol, and there is no mechanism at the national level to pursue redress that is equivalent to it. The Australian Human Rights Commission (AHRC) conciliation process does not provide an effective

remedy as the AHRC’s recommendations do not have binding effect. Notably, the *Human Rights Act 2019* (Qld) (*Human Rights Act*) provides a limited domestic avenue for children to have their human rights complaints heard by the Queensland Human Rights Commission (QHRC).<sup>37</sup>

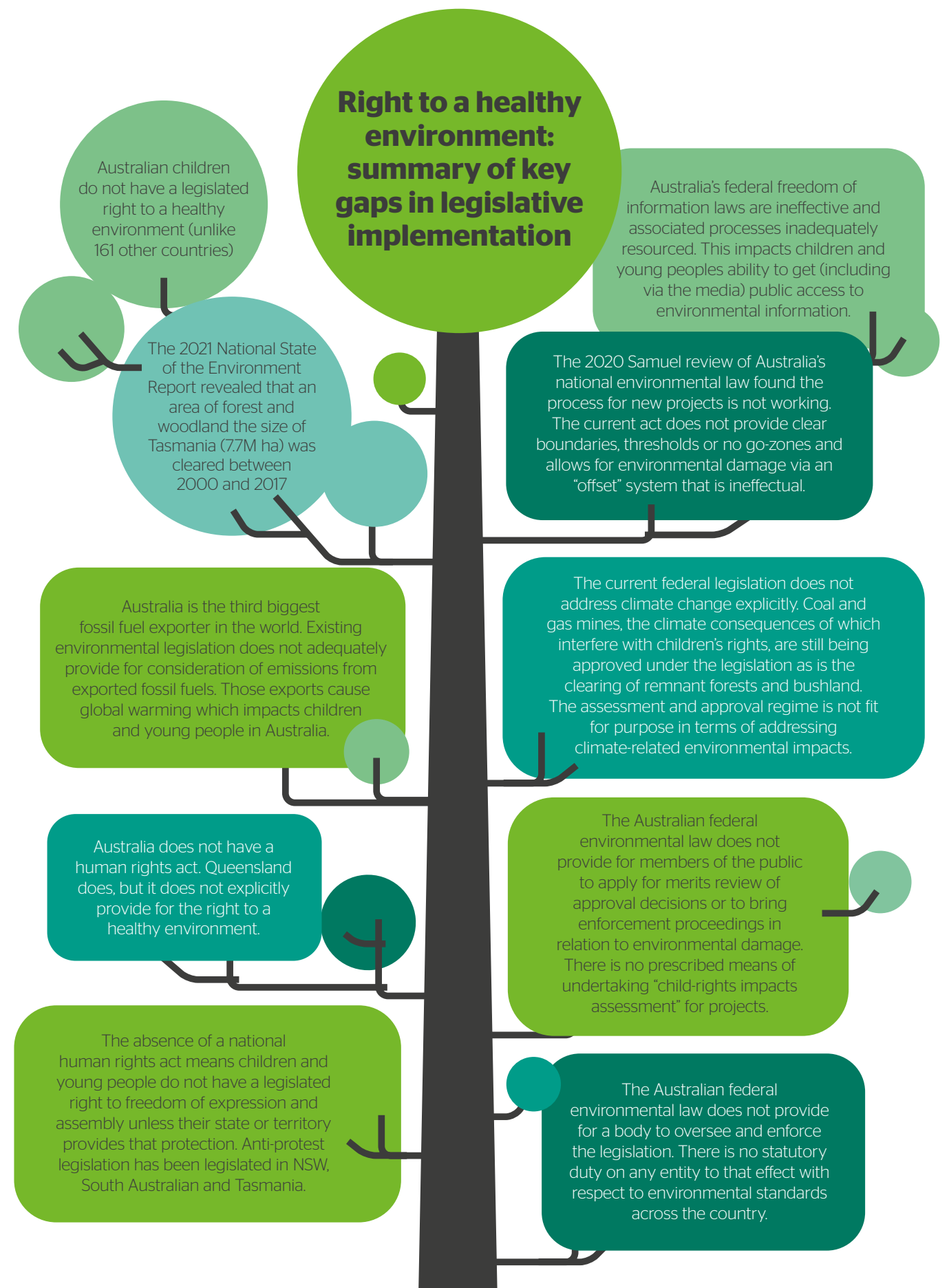
2.12 National progress in recognising children’s right to a healthy, clean and sustainable environment can be improved by:

- (a) strengthening Australia’s international commitments in international normative developments; and
- (b) reviewing / reforming Commonwealth and Queensland legislation.<sup>38</sup>

<sup>36</sup> See Part 4, ‘Barriers faced by children in Australia when accessing formal justice mechanisms’ for further details.

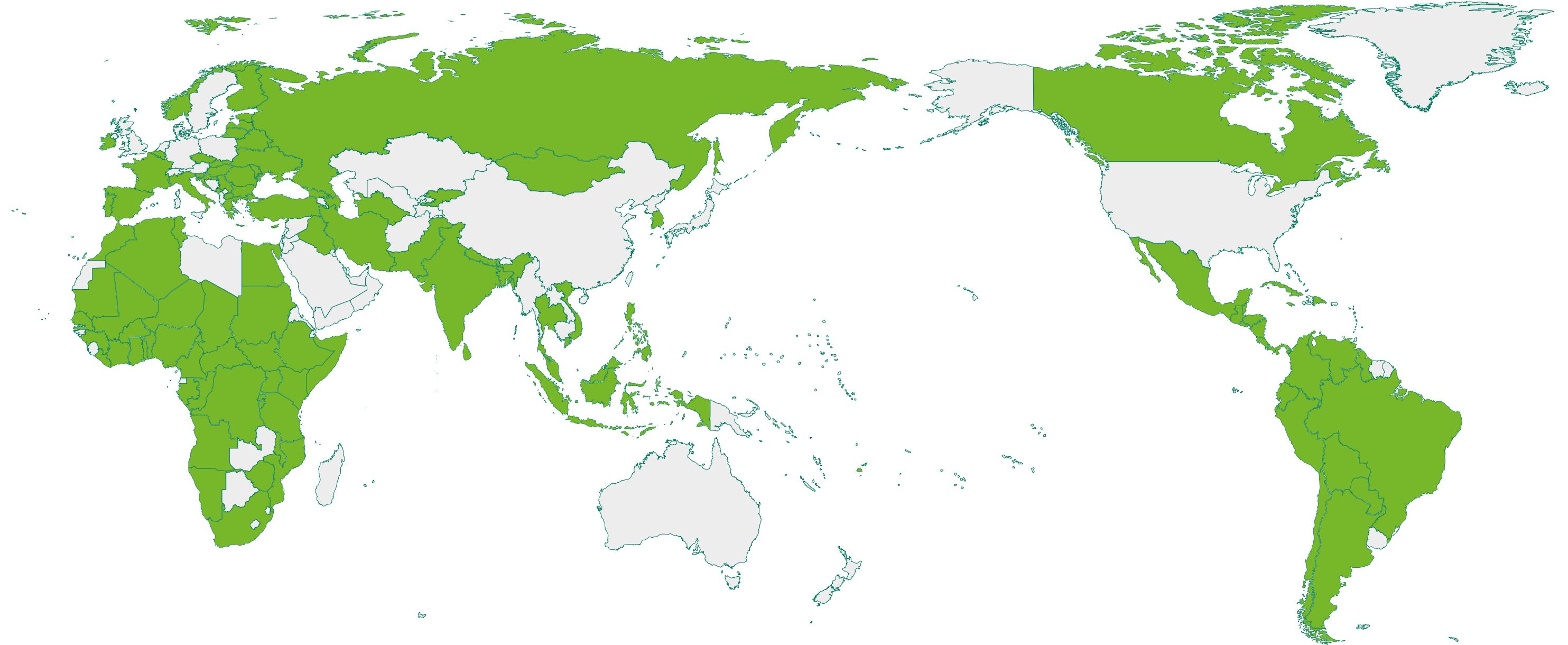
<sup>37</sup> See Part 4, ‘Access to independent complaints mechanisms’ for further details.

<sup>38</sup> See Part 4, ‘Priority issues for further consideration’ for further details.





## Countries that legally recognise the right to a healthy environment



- |                       |                            |                                |                     |                 |              |               |                           |                                    |                        |                               |
|-----------------------|----------------------------|--------------------------------|---------------------|-----------------|--------------|---------------|---------------------------|------------------------------------|------------------------|-------------------------------|
| • Albania             | • Bhutan                   | • Chile                        | • Ecuador           | • Greece        | • Jamaica    | • Malawi      | • Niger                   | • Republic of Moldova              | • Slovenia             | • Tunisia                     |
| • Algeria             | • Bolivia                  | • Colombia                     | • Egypt             | • Grenada       | • Jordan     | • Malaysia    | • Nigeria                 | • Romania                          | • Somalia              | • Turkey                      |
| • Angola              | • Bosnia and Herzegovina   | • Comoros                      | • El Salvador       | • Guatemala     | • Kazakhstan | • Maldives    | • North Macedonia         | • Russian Federation               | • South Africa         | • Turkmenistan                |
| • Antigua and Barbuda | • Botswana                 | • Congo                        | • Estonia           | • Guinea        | • Kenya      | • Mali        | • Norway                  | • Rwanda                           | • South Sudan          | • Uganda                      |
| • Armenia             | • Brazil                   | • Costa Rica                   | • Eswatini          | • Guinea-Bissau | • Kuwait     | • Mauritania  | • Pakistan                | • Saint Kitts and Nevis            | • Spain                | • Ukraine                     |
| • Argentina           | • Bulgaria                 | • Cote d'Ivoire                | • Equatorial Guinea | • Guyana        | • Kyrgyzstan | • Mauritius   | • Palau                   | • Saint Lucia                      | • Sri Lanka            | • United Arab Emirates        |
| • Austria             | • Burkina Faso             | • Croatia                      | • Eritrea           | • Haiti         | • Latvia     | • Mexico      | • Panama                  | • Saint Vincent and the Grenadines | • Sudan                | • United Republic of Tanzania |
| • Azerbaijan          | • Burkina Faso             | • Cuba                         | • Ethiopia          | • Honduras      | • Lebanon    | • Monaco      | • Paraguay                | • São Tomé and Príncipe            | • Suriname             | • Uruguay                     |
| • Bahrain             | • Burundi                  | • Cyprus                       | • Fiji              | • Hungary       | • Lesotho    | • Mongolia    | • Peru                    | • Sweden                           | • Switzerland          | • Uzbekistan                  |
| • Bangladesh          | • Cabo Verde               | • Czechia                      | • Finland           | • Iceland       | • Liberia    | • Montenegro  | • Philippines             | • Saudi Arabia                     | • Syrian Arab Republic | • Venezuela                   |
| • Belize              | • Canada                   | • Democratic Republic of Congo | • France            | • India         | • Libya      | • Morocco     | • Poland                  | • Senegal                          | • Tajikistan           | • Vietnam                     |
| • Belarus             | • Cameroon                 | • Denmark                      | • Gabon             | • Indonesia     | • Lithuania  | • Mozambique  | • Portugal                | • Serbia                           | • Thailand             | • Yemen                       |
| • Belgium             | • Central African Republic | • Djibouti                     | • Gambia            | • Iran          | • Luxembourg | • Namibia     | • Qatar                   | • Seychelles                       | • Timor-Leste          | • Zambia                      |
| • Benin               | • Chad                     | • Dominican Republic           | • Georgia           | • Ireland       | • Madagascar | • Nepal       | • Republic of South Korea | • Sierra Leone                     | • Togo                 | • Zimbabwe                    |
|                       |                            |                                | • Ghana             | • Iraq          | • Malta      | • Netherlands |                           | • Slovakia                         |                        |                               |
|                       |                            |                                | • Germany           | • Italy         |              | • Nicaragua   |                           |                                    |                        |                               |



Australian children’s education, engagement and participation in environmental affairs<sup>39</sup>

2.13 The Climate Change Authority is an independent statutory body established under the *Climate Change Authority Act 2011* (Cth) and funded by the federal government. It is currently the only federal government-funded body which has the role of providing public education and access to information regarding climate change, through a series of fact sheets which provide information on a range of climate change issues. Nevertheless, there are multiple examples of children and youth expressing their views on environmental affairs across Australia. Part 5 of this report considers six case studies which illustrate the diverse range and novel strategies employed by children and young people to act on climate change and environmental issues in Australia. Despite the large-scale and high-profile nature of the actions, child and youth climate activists have experienced trivialisation, dismissal, and obstructions.<sup>40</sup>

2.14 Government practices that promote child and youth engagement and participation in environmental affairs are especially limited at the Commonwealth level. At a state level, there are some notable initiatives to encourage youth participation on environmental affairs. There are also a number of children and youth focused NGOs that continue to advocate for youth engagement in environmental affairs through a combination of active campaigning, education and best-practice guidance.<sup>41</sup>

2.15 Under domestic law, there is no express requirement for children and youth to be consulted on the development of environmental laws.<sup>42</sup> The *Environment Protection and Biodiversity Conservation*

*Act 1999* (Cth) (**EPBC Act**) and *Environmental Protection Act 1994* (Qld) (**EPA**) only contain general provisions. Concerns have been raised about the scope of reprisals against environmental human rights defenders in Australia – which have included children or young people.<sup>43</sup>

2.16 There are few express provisions that recognise children’s right to an environmental education in legislation and policy. ‘Sustainability’ is a cross curriculum priority in the revised national curriculum. Queensland laws contains more specific provisions on environmental education through the *Nature Conservation Act 1992*, *Human Rights Act 2019*, *Education (General Provisions) Act 2006*, and the *Queensland Plan Act 2014*.<sup>44</sup>

2.17 There are several Commonwealth and Queensland conservation and environmental protection laws that contain provisions requiring authorities to collect, update and disseminate environmental information to the public. However, these laws do not refer to specific rights of children to access environmental information. Ultimately, in the absence of an entrenched protection of the rights contained in the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice on Environmental Matters (**Aarhus Convention**),<sup>45</sup> access to environmental information has often been curtailed at the national level.<sup>46</sup>

2.18 Anecdotally, legal and political action by Australian children has demonstrated a high degree of environmental engagement and access to education for certain groups of children and youths. However, barriers to youth engagement, education and participation in environmental affairs endure and more can be done to improve children’s access to environmental information. This could be achieved through:

- (a) increased youth engagement and capacity building strategies;
- (b) outreach and advocacy on behalf of Australian children and young people through domestic and international forums; and
- (c) domestic law reform, especially in relation to criminal laws and sentencing guidelines related to or concerning non-violent protest activities.<sup>47</sup>

Children’s right to a healthy environment and the Australian business sector

2.19 Under Queensland laws<sup>48</sup> businesses have a legal responsibility to avoid environmental harm. This is not the case under Commonwealth environmental law. However, 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. For example, the development of a NAP to implement the United Nations Guiding Principles on Business and Human Rights (**Guiding Principles**), and the introduction of legislation that makes it mandatory for Australian companies to conduct human rights and environmental due diligence.<sup>49</sup>

2.20 Australia has made some limited progress towards those recommendations.<sup>50</sup> For example, the *Modern Slavery Act 2018* (Cth) introduced mandatory modern slavery reporting for certain businesses carrying on business in Australia. Relevantly, that reporting must cover actions taken by reporting entities to assess and address modern slavery risks, including human rights due diligence (to the extent it relates to modern slavery risks). A May 2023 statutory review of the *Modern Slavery Act*

acknowledges the global trend towards due diligence processes as a core strategy for addressing human rights abuses and modern slavery practices, and recommends that the *Modern Slavery Act* incorporates a mandatory due diligence requirement in future.<sup>51</sup> While the *Modern Slavery Act* does not relate to environmental harm specifically, it may serve as a model for future human rights (including environmental rights) due diligence laws in Australia.<sup>52</sup> At the state level, Queensland’s *Human Rights Act* allows businesses to ‘opt-in’ to the obligations that public entities are subject to under the Act. Additionally, businesses are indirectly impacted when engaging in procurement contracts with the Queensland Government.

2.21 Australia has not actively participated in recent negotiations towards adopting a draft international multilateral treaty on business activities and human rights.<sup>53</sup>

2.22 Some child-centred international organisations have developed useful tools and frameworks to assist businesses with monitoring the impact of their operations on children’s right to a clean, healthy and sustainable environment. However, without domestic legal backing these tools place the onus on businesses to self-regulate.<sup>54</sup> Developments in the EU might provide a useful example for Australia to further develop the regulation of business activities.<sup>55</sup>

2.23 This report considered the following recommendations to strengthen the role of Australian businesses in relation to children’s right to a clean, healthy and sustainable environment:

- (a) implementing a NAP on Business and Human Rights;
- (b) increasing Australia’s involvement in negotiations for a treaty on business and human rights; and
- (c) domestic legal reform.<sup>56</sup>

<sup>39</sup> We note clause 22 of the *Maastricht Principles on the Human Rights of Future Generations* (**Maastricht Principles**) which refers to the participation and representation of children and future generations. Although not legally binding, the Maastricht Principles recognise that the human rights of children and future generations must be understood in the evolving legal context of recognising humanity’s relationships with the natural world, including the right to a healthy environment. We further note [89] of GC26, which refers to the requirement to seek the views of children and experts.

<sup>40</sup> See Part 5, ‘Australia has educational and procedural duties in relation to children’s right to a healthy environment’ for further details.

<sup>41</sup> See Part 5, ‘What practices exist that promote child and youth engagement and participation in environmental affairs?’ for further details.

<sup>42</sup> However, see cl 22 of the *Maastricht Principles*, referred to at footnote 42.

<sup>43</sup> See Part 5, ‘Does Australia recognise participatory rights of children and youth in environmental decision-making?’ for further details.

<sup>44</sup> See Part 5, ‘Does Australia recognise rights to environmental education in legislation or policy?’ for further details.

<sup>45</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters*, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) (‘*Aarhus Convention*’).

<sup>46</sup> See Part 5, ‘Does Australia recognise public rights of access to environmental information and is this information practically accessible for children?’ for further details.

<sup>47</sup> See Part 5, ‘Priority issues for further consideration’ for further details.

<sup>48</sup> See Part 6, ‘The business sector does not yet have a clearly defined legal responsibility to respect children’s right to a healthy environment’ for further details.

<sup>49</sup> See Part 6, ‘The business sector does not yet have a clearly defined legal responsibility to respect children’s right to a healthy environment’ for further details.

<sup>50</sup> See Part 6, ‘The business sector does not yet have a clearly defined legal responsibility to respect children’s right to a healthy environment’ for further details.

<sup>51</sup> Professor John McMillan AO, *Report of the statutory review of the Modern Slavery Act 2018 (Cth): The first three years* (25 May 2023) 71.

<sup>52</sup> For further detail see page 145 ‘17. Regulation of businesses (including State-owned) to protect children from environmental harm. Includes obligation for businesses to conduct ‘child-rights due diligence’ for actual and proposed actions on the rights of children through environmental harm’.

<sup>53</sup> See Part 6, ‘Australia has not participated in recent negotiations on a draft multilateral treaty on business activities and human rights’ for further details.

<sup>54</sup> See Part 6, ‘International examples’ for further details.

<sup>55</sup> See Part 6, ‘The emergence of human rights due diligence in the European Union’ for further details.

<sup>56</sup> See Part 6, ‘Priority issues for further consideration’ for further details.



# Conclusion and recommendations

2.24 This report makes a number of recommendations regarding the recognition of children’s right to a clean, healthy and sustainable environment under Commonwealth and Queensland law. The recommendations include actions that may be taken (as appropriate) by the Commonwealth Government, Queensland Government, AHRC and National Children’s Commissioner, and/or NGOs. To reflect the interrelated nature of international legal/ normative developments, and domestic law reform and advocacy, the recommendations are categorised according to the following four categories:

- (a) Australia’s international commitments and engagement in international normative developments towards greater recognition of children’s right to a healthy environment;
- (b) domestic law reform, both at the federal and state level (in Queensland);
- (c) advocacy in international and domestic forums; and
- (d) youth engagement and capacity development strategies.

2.25 Each recommendation is provided with an indicative timeline for action, which is categorised into: (i) short-term actions; (ii) medium-term actions; and (iii) longer-term actions.

#	Recommendations	Responsible entity	Indicative timeline
(a) Australia’s international commitments and engagement in international normative developments			
1	Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure 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.	Commonwealth Government	Medium-term
2	Sign up to the Intergovernmental Declaration on Children, Youth and Climate Action and consistent with that Declaration, commit to (among other aims): <ul style="list-style-type: none"><li>Advocating for global recognition of children’s inalienable right to a healthy environment;</li><li>Enhancing efforts to respect, promote and consider the rights of children and young people in implementation of the Paris Agreement at all levels; and</li><li>Enhancing the meaningful participation of children and youth in climate change processes.</li></ul>	Commonwealth Government	Medium-term
3	In relation to the further development of a multilateral treaty on business and human rights: <ul style="list-style-type: none"><li>Attend the ninth session of the open-ended intergovernmental working group with a mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, to be held in 2023; and</li><li>Participate in the negotiation of a draft Business and Human Rights Treaty, with a view to Australia ratifying this instrument in the future.</li></ul>	Commonwealth Government	Medium-term
4	Integrate a climate change-based approach to periodic national reporting to UN treaty bodies and related entities including the CRC Committee, ICESCR Committee, CEDAW Committee, CRPD Committee, Human Rights Committee, through the Universal Periodic Review process to the Human Rights Council, and Voluntary National Reviews to the High-Level Political Forum on Sustainable Development.	Commonwealth Government	Longer-term
(b) Domestic law reform			
5	The right to a clean, healthy and sustainable environment is best located in a standalone federal human rights act.	Commonwealth Government	Medium-term

#	Recommendations	Responsible entity	Indicative timeline
6	Develop and implement a federal human rights act which addresses environmental and children’s rights (including a standalone right to a healthy environment <sup>57</sup> ) and expands the functions of the AHRC to receive, inquire into and conciliate in respect of complaints regarding alleged violations of rights set out in a federal human rights act.	Commonwealth Government	Medium-term
7	Any federal human rights act should include the rights enshrined in Article 9 of the <i>Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)</i> , which provides the following: <ol style="list-style-type: none"><li>“Each Party shall guarantee a safe and enabling environment for persons, groups and organisations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.</li><li>Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.</li><li>Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.”</li></ol>		
8	Incorporate a requirement in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth) for officers of the Commonwealth to act consistently with the federal human rights act right to a healthy environment and to consider the right when exercising their functions under federal legislation that affects human rights and environmental legislation.	Commonwealth Government	Medium-term
9	Include a standalone right to a healthy environment in the <i>Human Rights Act</i> .	Queensland Government	Medium-term
10	Strengthen state and federal legislative measures corresponding to the following aspects of children’s right to a healthy environment: <ul style="list-style-type: none"><li>Climate change</li><li>Children’s rights to an adequate standard of living</li><li>Children’s rights to play and recreation</li><li>Children’s rights to express views and have them considered</li><li>Participatory rights of children on environmental matters</li><li>Protection of children from reprisals for participating or expressing views on environmental matters</li><li>Effective remedies for children’s rights violations</li><li>State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects</li><li>State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed policies</li><li>Binding obligations on businesses to comply with the:<ul style="list-style-type: none"><li>Guiding Principles on Business and Human Rights;</li><li>Children’s Rights and Business Principles;</li><li>Recommendations of the Committee on the Rights of the Child in its general comment No. 16;</li><li>Recommendations of the General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change (General Comment No. 26).</li></ul></li></ul>	Commonwealth Government  Queensland Government	Medium-term
11	Develop and implement a National Action Plan on Business and Human Rights	Commonwealth Government	Medium-term

<sup>57</sup> See also an expression of the right to a healthy environment in the AHRC’s December 2022 paper, “Position paper: A Human Rights Act for Australia”, available at <[https://humanrights.gov.au/sites/default/files/free\\_equal\\_hra\\_2022\\_-\\_main\\_report\\_rgb\\_0\\_0.pdf](https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf)>.



#	Recommendations	Responsible entity	Indicative timeline
12	Review and, if necessary, revise criminal laws and sentencing guidelines related to or concerning non-violent protest activities, including offences introduced by the <i>Summary Offences and Other Legislation Amendment Act 2019</i> (Qld).	Commonwealth Government Queensland Government	Medium-term
13	Monitor the development in the European Union of mandatory environmental and human rights due diligence requirements for large entities and consider implementing similar legal requirements.	Commonwealth Government	Medium-term
14	Introduce extraterritorial liability for violations of environmental and human rights (including children's rights) committed by Australian companies overseas, and establish mechanisms to monitor, investigate and redress these violations. This will also involve cooperation with those jurisdictions in which Australian companies operate.	Commonwealth Government	Medium-term
15	<p>Amend the EPBC Act or equivalent (if by way of new legislation) to include or modify the following elements:</p> <p><i>Intergenerational Equity</i></p> <ul style="list-style-type: none"> <li>Integrate considerations of children's rights more clearly into the referral and assessment process under the EPBC Act by strengthening the principle of intergenerational equity to specifically include the climate consequences of actions. This may also include strengthening the principle as a relevant consideration in the context of projects and developments with significant Scope 3 emissions.</li> </ul> <p><i>Independent Authority</i></p> <ul style="list-style-type: none"> <li>Create an independent Environment Protection Agency. The EPA must be bound to apply the principle of intergenerational equity in its processes and decision making. Consideration should be given to how children's and young person's perspectives can be incorporated substantively into the new Agency.</li> <li>The EPA should be subject to a statutory duty to enforce the legislation.</li> </ul> <p><i>Climate</i></p> <ul style="list-style-type: none"> <li>The objects of the legislation should be amended to explicitly address the impact of climate change on matters of national environmental significance (MNES) and the need to reduce emissions to protect MNES. These objects should be mandatory considerations for all aspects of the administration of the Act.</li> <li>Require full disclosure of all emissions through the life cycle of projects. This includes emissions emitted inside Australia and from fossil fuels exported from Australia.</li> <li>Include a new Matter of Environmental Significance 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.</li> <li>Include in the legislation or the relevant national standard the need to identify and protect habitat necessary for species survival and recovery as global temperatures increase.</li> <li>Include in the legislation or the relevant national standard a stipulation that carbon offsetting cannot be considered in deciding whether to approve or refuse fossil fuel extraction and processing actions.</li> </ul> <p><i>Biodiversity</i></p> <ul style="list-style-type: none"> <li>Provide clear, up front protection for important environmental values such as threatened species and their habitat by using "no-go zones" and other measures to designate areas where development will not be permitted.</li> <li>Implement through legislation or a national standard a provision that ensures the relevant decision-maker may not approve an action that will have unacceptable impacts on MNES.</li> <li>Implement a national standard that ends the destruction of primary, remnant, old-growth or high-conservation value forests and bushland.</li> <li>Create a national standard for offsetting biodiversity loss which ensures that offsets are a genuine last resort, are permanent, secure and additional.</li> </ul>	Commonwealth Government	Short-term

#	Recommendations	Responsible entity	Indicative timeline
	<p><i>Nuclear actions</i></p> <ul style="list-style-type: none"> <li>Retain the long standing and prudent national prohibition on nuclear power in Australia. Retain the current requirement for assessment and approval of the impact of other nuclear action on the environment under national environmental law.</li> </ul> <p><i>Participation rights</i></p> <ul style="list-style-type: none"> <li>Recognise 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.</li> <li>Create a system for merits review of approval/refusal decisions allowing third parties to challenge decisions on the facts and policy rather than just administrative process.</li> <li>Create third party enforcement rights so members of the public have an accessible and low-cost jurisdiction to approach to enforce the law in the face of breaches of the legislation.</li> </ul> <p><i>First Nations</i></p> <ul style="list-style-type: none"> <li>The objects of the legislation should be amended to recognise Aboriginal and Torres Strait Islander peoples' knowledge of Country, and stewardship of its landscapes, ecosystems, plants and animals; to foster the involvement of First Nations in land management; and expand the ongoing and consensual use of traditional ecological knowledge across Australia's landscapes.</li> </ul> <p><i>Right to a Clean, Healthy and Sustainable Environment</i></p> <ul style="list-style-type: none"> <li>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 EPBC Act or equivalent.</li> </ul>		
<b>(c) Advocacy in domestic and international forums</b>			
16	<p>Prepare and submit parallel national reports to UN treaty bodies and related entities in respect of periodic reviews of Australia's compliance with relevant international human rights treaties, to specifically address the impacts of Australia's existing climate change and environmental protection laws and policies on the right to a clean, healthy and sustainable environment, and to advocate for greater recognition of this right under Australian law (especially for children and young people). Consider collaborating with other interested civil society stakeholders and NHRIs like the ALRC, Law Council of Australia, AHRC, and Human Rights Law Centre to prepare joint submissions.</p> <p>NGOs may consider participating in the following upcoming review processes:</p> <ul style="list-style-type: none"> <li>the ninth periodic review of Australia under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>58</sup> commencing in July 2022;</li> <li>the seventh periodic review of Australia under the International Covenant on Civil and Political Rights (ICCPR)<sup>59</sup>, commencing in 2023;</li> <li>the seventh periodic review of Australia under the CRC, commencing in January 2024;</li> <li>the fourth periodic review of Australia under the Convention on the Rights of Persons with Disabilities (CRPD),<sup>60</sup> commencing in August 2026; and</li> <li>the fourth Universal Periodic Review of Australia, commencing in 2026.</li> </ul>	NGOs	Short-term
17	Monitor the Australian Parliamentary Joint Committee on Human Rights' Inquiry into Australia's Human Rights Framework due to report by 31 March 2024.	NGOs	Short-term

<sup>58</sup> Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW').

<sup>59</sup> International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').

<sup>60</sup> Convention on the Rights of Persons with Disabilities, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD').





### 3. International progress in recognising children’s right to a healthy environment

#### International context: children’s right to a healthy environment

- 3.1 Since the adoption of the CRC in 1989, there has been growing international recognition of the existence of the right to a clean, healthy and sustainable environment and that children are a unique group of rights-holders in relation to the natural environment. While there are no international legal instruments currently in force that explicitly prescribe a substantive right of children to a clean, healthy and sustainable environment, the process of recognition of this right has accelerated in recent years as the effects of anthropogenic climate change, pollution and biodiversity loss – the triple planetary crises – have become readily apparent.
- 3.2 161 States (not including Australia) recognise some form of a right to a healthy environment in, among other instruments, international agreements to which they are party, or in their national constitutions, legislation or policies.<sup>61</sup> Multiple regional human rights instruments also recognise the human right to a healthy environment, including: the ASEAN Human Rights Declaration,<sup>62</sup> the African Charter on Human and Peoples’ Rights,<sup>63</sup> and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.<sup>64</sup> Relatedly, although not expressly codified in the European Convention on Human Rights, the European Court of Human Rights has consistently recognised the right to a healthy environment based on other rights specifically protected under the European Convention.<sup>65</sup>
- 3.3 Key steps in this process are summarised in the timeline at Table 2 below and discussed in further detail in the paragraphs that follow.

Table 2: Timeline of key international developments towards recognition of children’s right to a clean, healthy and sustainable environment.

#	Recommendations	Responsible entity	Indicative timeline
18	AHRC and National Children’s Commissioner to prepare a Children’s Rights Report that specifically addresses the topic of children’s right to a clean, healthy and sustainable environment; the extent to which these rights are protected under Australian law; and provide recommendations for how these rights can be further entrenched and protected under Australian law.	AHRC / National Children’s Commissioner NGOs	Medium-term
(d) Youth engagement and capacity building strategies			
19	Develop toolkits and provide capacity-building and legal education to assist children and young people, particularly from First Nations communities, in overcoming barriers to participating in political and legal processes.  Tailor these activities to support children and young people to participate in consultations conducted by the CRC Committee and other UN treaty bodies, as well as consultations on legislative reform conducted by the federal and state governments.	Commonwealth Government Queensland Government NGOs	Medium-term
20	Increase government support to organisations working on climate change and environmental issues, particularly youth organisations.	Commonwealth Government Queensland Government	Short- to medium-term

Date	Event
16 June 1972	The 1972 United Nations Conference on the Human Environment in Stockholm adopted a series of principles for sound management of the environment including the <i>Declaration of the United Nations Conference on the Human Environment</i>
20 November 1989	<i>Convention on the Rights of the Child</i> adopted by the UN General Assembly
September 1990	World leaders meet at the UN Headquarters in New York for the World Summit for Children and adopt the Declaration on the Survival, Protection and Development of Children
May 1997	Group of 8 (G8) environment ministers attend the Miami Conference to discuss the health implications of child exposure to environmental contaminants and pass the Miami Declaration
May 2002	‘A World Fit for Children’ Declaration
July 2016	The United Nations Human Rights Council (HRC) calls on States to address the impacts of climate change on the rights of children to a clean, healthy and sustainable environment

Photo: Black Photography & Design

<sup>61</sup> Human Rights Council, *The human right to a safe, clean, healthy and sustainable environment*, UN DOC A/HRC/48/L.23/Rev.1 (5 October 2021) 2.

<sup>62</sup> ASEAN Human Rights Declaration. See: [https:// asean.org/ asean-human-rights-declaration/](https://asean.org/asean-human-rights-declaration/).

<sup>63</sup> African (Banjul) Charter on Human and Peoples’ Rights, signed 27 June 1981, 21 ILM 58 (entered into force 21 October 1986). Article 24 provides that: “All peoples shall have the right to a general satisfactory environment favorable to their development”.

<sup>64</sup> Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, signed 17 November 1988 (entered into force 16 November 1999). Article 11 provides that:

“1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. The States Parties shall promote the protection, preservation, and improvement of the environment.”

<sup>65</sup> See: [https:// www.echr.coe.int/Documents/FS\\_Environment\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf).



Date	Event
September 2016	CRC Committee held its Day of General Discussion on the topic of ‘Children’s Rights and the Environment’
June 2017	The Office of the United Nations High Commissioner for Human Rights ( <b>OCHR</b> ) Report on the relationship between climate change and the full and effective enjoyment of the rights of the child ( <b>OCHR Report</b> ) is adopted at the 35 <sup>th</sup> session of the HRC
January 2018	Report of the Special Rapporteur on Human Rights and the Environment on the issue of human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment ( <b>UNSR HRE Report</b> ) is adopted at the 37 <sup>th</sup> session of the HRC
2018	HRC becomes the first UN body to review the relationship between environmental protection and human rights in the context of climate change
October 2020	HRC passes a resolution realising the rights of the child through a healthy environment
June 2021	CRC Committee announces that it will draft a new General Comment on the CRC on the issue of children’s rights and the environment, with a particular focus on the climate crisis
October 2021	HRC passes resolutions that: <ul style="list-style-type: none"><li>▪ recognise that a clean, healthy and sustainable environment is a human right and calls upon States to implement this right; and</li><li>▪ establish a mandate for a Special Rapporteur on the promotion and protection of human rights in the context of climate change</li></ul>
November 2021	The United Nations Environment Programme published the <i>Principles and Policy Guidance on Children’s Rights to a Safe, Clean, Healthy and Sustainable Environment in the ASEAN Region (ASEAN Principles and Policy Guidance)</i>
March 2022	Dr. Ian Fry is appointed as the first Special Rapporteur on the promotion and protection of human rights in the context of climate change
July 2022	UN General Assembly passes a resolution that: <ul style="list-style-type: none"><li>▪ recognises the right to a clean, healthy and sustainable environment is a human right;</li><li>▪ notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;</li><li>▪ affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;</li><li>▪ calls upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.</li></ul>
22 August 2023	The CRC present General Comment No. 26 on Children’s Rights and the Environment with a Special Focus on Climate Change.

Progress between 1989-2016

3.4 The link between children’s rights and environmental rights has further crystallised within the international community following the adoption of the CRC, first open to signatures in 1989. The CRC is the most widely ratified human rights treaty in history, with over 196 State parties having ratified, acceded or succeeded to it.<sup>66</sup> The ubiquity of the Convention is particularly significant in the context of children’s environmental rights, as the risks of environmental pollution to children’s rights are expressly recognised in Article 24 and Article 29 of the CRC, both in the context of the right of the child to the enjoyment of the highest attainable standard of health,<sup>67</sup> as well as children’s educational rights.<sup>68</sup> Besides these express references to the environment in the context of children’s rights, many other articles of the CRC contain strong environmental dimensions that provide a broader normative foundation for the development of specific rights to a clean, healthy and sustainable environment.<sup>69</sup>

3.5 In 1990, over 70 heads of state and government and 88 other senior officials met at the United Nations Headquarters in New York for the World Summit for Children – the largest-ever gathering of world leaders at the UN.<sup>70</sup> The summit adopted the Declaration on the Survival, Protection and Development of Children (**World Summit Declaration**), in which the assembled world leaders committed to work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future.<sup>71</sup> They also adopted a Plan of Action for implementing the World Summit Declaration, which recognised that: “*children have the greatest at stake in the preservation of the environment and its judicious management for sustainable development as their survival and development depends on it*”.<sup>72</sup>

3.6 The next major development came in May 1997, when the Environment Ministers of the G8 met in Miami, Florida, to discuss (among other matters) the Health Implications of Exposure of Children to Environmental Contaminants (**Miami Conference**). At the Miami Conference, the G8 environment ministers agreed to a declaration that reaffirmed the priority of children’s environmental health in their own countries, as well as in bilateral and multilateral agendas (**Miami Declaration**).<sup>73</sup> The Miami Declaration expressed specific commitments for protecting children’s health in relation to: environmental risk assessments and standard setting; exposure to lead; microbiologically safe drinking water; air quality; environmental tobacco smoke; threats to children’s health from endocrine disrupting chemicals; and the impacts of global climate change on children’s health.<sup>74</sup>

3.7 In May 2002 a special session of the General Assembly was convened to review progress made since the 1990 World Summit for Children and to renew international commitments to children’s rights.<sup>75</sup> The special session brought together government leaders, heads of State, non-governmental organisations, children’s

advocates and young people. The culmination of this special session was the ‘A World Fit for Children’ declaration, in which States Parties committed to safeguarding the natural environment for present and future generations and declared that they would “*give every assistance to protect children and minimise the impact of natural disasters and environmental degradation on them*”.<sup>76</sup>

Developments take on a greater sense of urgency from 2016

3.8 However, the most significant normative developments towards recognition of a distinct right of children to a clean, healthy and sustainable environment have arisen in the past seven years, as global action on climate change has become increasingly time-critical. In 2016, the HRC called upon States to address the impacts of climate change on the right of children to a clean, healthy and sustainable environment, and requested the OHCHR to consult with Members States and other relevant stakeholders (including UNICEF, UNEP, the WHO, and the IPCC) to prepare a detailed analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child (**OHCHR Report**).<sup>77</sup>

3.9 The CRC Committee devoted its 2016 Day of General Discussion to the issue of children’s rights and the environment. The overall objective of the general discussion day was to promote understanding of the relationship between children’s rights and the environment; identify what needs to be done for child rights-related laws, policies and practices to take adequate account of environmental issues; and for environment-related laws, policies and practices to be child-sensitive.<sup>78</sup> Eight out of the 39 pages of the Outcome Report outlined recommendations for States, international organisations, civil society organisations, and the CRC Committee itself to adopt to protect children’s rights in the context of the environment.<sup>79</sup>

<sup>66</sup> See: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en).

<sup>67</sup> CRC Article 24.

<sup>68</sup> CRC Article 29.

<sup>69</sup> UNICEF / KWM Discussion Paper at pp. 5-6 (in particular Figure 1). See: <https://www.unicef.org/eap/media/6876/file/Child's%20rights%20to%20a%20healthy%20environment.pdf>.

<sup>70</sup> See: <https://www.un.org/en/conferences/children/newyork1990>.

<sup>71</sup> The 71 heads of state and government and 88 other senior officials in attendance declared that they would work for common measures for the protection of the environment, at all levels, so that all children can enjoy a safer and healthier future: *World Declaration on the Survival, Protection and Development of Children*, UN Doc UNE/ICEF(063.1)/W67 (30 September 1990) [20(9)].

<sup>72</sup> See: <http://www.un-documents.net/wsc-plan.htm>.At [26].

<sup>73</sup> See: <http://www.g8.utoronto.ca/environment/1997miami/children.html>.

<sup>74</sup> See: <http://www.g8.utoronto.ca/environment/1997miami/children.html>.

<sup>75</sup> See: <https://www.un.org/en/development/devagenda/children.shtml>.

<sup>76</sup> The declaration also acknowledged that a number of environmental problems and trends, including global warming, ozone layer depletion, air pollution and hazardous waste, need to be addressed to ensure the health and well-being of children (at [26]); *A World Fit for Children*, GA Res S-27/2, UN Doc A/RES/S-27/2 (11 October 2002) [7(10)].

<sup>77</sup> Human Rights Council, *Human rights and climate change*, 32<sup>nd</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/32/33 (18 July 2016, adopted 1 July 2016) [5].

<sup>78</sup> See: <https://www.ohchr.org/en/events/days-general-discussion-dgd/2016/2016-day-general-discussion-childrens-rights-and>.

<sup>79</sup> See: <https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2016/DGOutcomereport-May2017.pdf> (at Part 6).



3.10 The OHCHR Report was adopted at the 35<sup>th</sup> session of the HRC in June 2017. The key conclusions of the OHCHR Report included that the impacts of climate change “clearly undermine the effective enjoyment of the rights enshrined in the Convention on the Rights of the Child”;<sup>80</sup>

- (a) “the human rights obligations and responsibilities contained in the Convention on the Rights of the Child, the Paris Agreement and other international human rights instruments require States and other duty bearers, including businesses, to take action to protect the rights and best interests of children from the adverse effects of climate change”;<sup>81</sup> and
- (b) children have “a right to meaningful participation in climate policymaking” and should “play an active role in inspiring and shaping more effective climate policies”.<sup>82</sup>

3.11 In 2018, the HRC adopted the Report of the Special Rapporteur on Human Rights and the Environment on the issue of human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment (**UNSR HRE Report**).<sup>83</sup> The report:

- (a) emphasised the increased attention being paid to the relationship between the rights of children and environmental harm;
- (b) described how the effects of environmental harm interfere with the full enjoyment of the rights of the child;
- (c) outlined the human rights obligations of States relating to children’s rights in the environmental context; and

(d) addressed the relationship of future generations and children’s rights.<sup>84</sup>

The report highlighted that children are among the most vulnerable to environmental harm, and that: “[i]t is critical...that discussions of future generations take into account the rights of the children who are constantly arriving, or have already arrived, on this planet. We do not need to look far to see the people whose future lives will be affected by our actions today. They are already here”.<sup>85</sup> The report concluded with several recommendations aimed at protecting the rights of children from environmental harm.

3.12 Following the publication of the OHCHR Report and the UNSR HRE Report, the HRC in 2018 became the first UN body to review the relationship between environmental protection, human rights – specifically children’s rights.

**A right to a clean and healthy environment**

3.13 In October 2020, the HRC adopted a resolution realising children’s right to a healthy environment.<sup>86</sup> The HRC resolution is discussed in more detail below at paragraph 5.2. In October 2021, in a landmark resolution, the HRC expressly recognised for the first time that a clean, healthy and sustainable environment is a human right and called upon States to implement this right.<sup>87</sup> In parallel, the HRC also adopted a resolution establishing a mandate for a Special Rapporteur on the promotion and protection of human rights in the context of climate change.<sup>88</sup> The current and inaugural Special Rapporteur, Dr. Ian Fry was appointed in March 2022.

3.14 The United Nations Environment Programme published the ASEAN Principles and Policy Guidance in November 2021. That report provides essential policy guidance for governments, society, business, the media, and children to implement the fundamental principles for realising children’s right to a clean, healthy and sustainable environment. Although Australia does not fall within the scope of the report, it is equally relevant as a useful resource that can inform the right to a healthy environment in Australia. Additionally, Australian experts (including some of the authors of this report) assisted in the development of the ASEAN Principles and Policy Guidance.

3.15 On 28 July 2022 – with 161 votes in favour (including by Australia) and 8 abstentions – the General Assembly adopted a landmark resolution that explicitly recognises the right to a clean, healthy and sustainable environment as a human right, and the disproportionate impact of environmental damage on persons in vulnerable situations, including children.<sup>89</sup> The resolution is based on the text adopted by the HRC in October 2021. Although not legally binding on UN member States, the resolution by the General Assembly is significant for three reasons. Firstly, it formally recognises the right to a clean, healthy and sustainable environment as a standalone human right under international law. Secondly, it creates additional impetus for States to enshrine the right under their domestic laws. Lastly, the overwhelming acceptance of the general human right to a healthy environment indicates strong support for children’s rights to a healthy environment.

3.16 On the same day, Dr. Fry presented his first report to the General Assembly. Importantly, the report recognised that children – who are among the most affected by climate change – “*are the least able to participate in current decision-making*”.<sup>90</sup> Among other things, the Special Rapporteur recommended that the General Assembly encourage all States to: (1) “*include youth representatives in national parliaments to highlight climate concerns*”; and (2) “*give [legal]*

*standing to children and young people*”. The Special Rapporteur also called for COP27 to establish a youth advisory committee on loss and damage.<sup>91</sup>

3.17 In parallel, the CRC Committee is also advancing international recognition of children’s environmental rights. In June 2021, the Committee announced that it will draft General Comment No.26 on the issue of children’s rights and the environment, with a particular focus on the climate crisis.<sup>92</sup> This is a significant development, as it is through such General Comments that the Committee provides States Parties to the CRC with authoritative guidance on the contents and interpretation of the Convention. General Comment No.26 was published in August 2023, following consultations with human rights institutions, UN agencies, children and young people, and other key stakeholders. GC26 has provided significant clarification around States’ obligations in relation to climate change and children’s rights.<sup>93</sup>

3.18 In September 2022, the GC26 Children’s Advisory Team published the ‘Report of the first Children and Young People’s Consultation’. The first round of consultations occurred from 31 March to 30 June 2022. 7,416 children from 103 countries shared their views on their rights, the environment and climate change.<sup>94</sup> The consultation process revealed six key demands:

- (a) children want to enjoy a clean, healthy environment;
- (b) children want to be listened to, taken seriously and to work together with adults to bring about change;
- (c) children call for bold, urgent action from governments, corporations and all adults;
- (d) children call for international cooperation;
- (e) children call for more awareness raising and education on environment and climate change; and
- (f) children share their ideas for solutions.<sup>95</sup>

<sup>80</sup> See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/110/91/PDF/G1711091.pdf?OpenElement> (at [29]).

<sup>81</sup> See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/110/91/PDF/G1711091.pdf?OpenElement> (at [52]).

<sup>82</sup> See: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/110/91/PDF/G1711091.pdf?OpenElement> (at [52]).

<sup>83</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/37/58 (24 January 2018).

<sup>84</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/37/58 (24 January 2018).

<sup>85</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/37/58 (24 January 2018) at [68].

<sup>86</sup> Human Rights Council, *Rights of the child: realizing the rights of the child through a healthy environment*, 45<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/45/30 (13 October 2020).

<sup>87</sup> See Human Rights Council, *The human right to a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/48/L.23/Rev.1 (5 October 2021).

<sup>88</sup> See Human Rights Council, *Mandate of the Special Rapporteur on the promotion and protection of human rights in the context of climate change*, GA Res 48/14, UN Doc A/HRC/RES/48/14 (13 October 2021, adopted 8 October 2021).

<sup>89</sup> United Nations General Assembly, *The human right to a clean, healthy and sustainable environment*, 76<sup>th</sup> sess, Agenda Item 74(b), UN Doc A/RES/76/300 (28 July 2022).

<sup>90</sup> United Nations General Assembly, *Promotion and protection of human rights in the context of climate change*, 76<sup>th</sup> sess, Agenda Item 69(b), UN Doc A/RES/77/226 (26 July 2022) (at [73]).

<sup>91</sup> Ibid [97]-[100].

<sup>92</sup> ‘Draft general comment No. 26 on children’s rights and the environment with a special focus on climate change’ *Office of the High Commissioner on Human Rights* (Web Page) <<https://www.ohchr.org/EN/HRBodies/CRC/Pages/GC26-Environment.aspx>> (‘Draft GC26’).

<sup>93</sup> ‘General comment on children’s rights and the environment with a special focus on climate change: Concept note’ *Office of the High Commissioner on Human Rights* (Web Page) <[https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC\\_GC26\\_concept\\_note.aspx](https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC_GC26_concept_note.aspx)> (‘Concept Note’).

<sup>94</sup> See: <https://childrightsenvironment.org/reports/>.

<sup>95</sup> See: <https://childrightsenvironment.org/wp-content/uploads/2022/09/Report-of-the-first-Children-and-Young-Peoples-Consultation.pdf>.



Australia’s role in the international development of children’s right to a healthy environment

- 3.19 Australia has played a relatively limited role in the international development of children’s right to a clean, healthy and sustainable environment. However, this might change in light of the present Labor government’s position on climate change, and Australia’s vote in favour of the landmark General Assembly resolution discussed above.
- 3.20 Australia ratified the CRC on 17 December 1990. The Australian government also participated in the World Summit for Children in 1990.<sup>96</sup> In May 1991, Australia formally ratified the World Summit Declaration and the accompanying Plan of Action, which led to the publication of Australia’s National Program of Action, the *Our Children, Our Future* report, in 1994.<sup>97</sup>
- 3.21 However, since then, Australia’s participation in recent international developments towards recognition of a right to a clean, healthy and sustainable environment, including in the context of children’s rights and the CRC, has been comparatively limited. While the OHCHR has engaged with numerous other UN member States in relation to its various reports on the interface between human rights and climate change, Australia has not contributed to these processes in any official capacity. For example, the Australian government has not made any submissions in relation to the OHCHR’s thematic reports on:
- (a) climate change and the right to health;<sup>98</sup>
  - (b) climate change and the rights of the child;<sup>99</sup>
  - (c) human rights, climate change and migration;<sup>100</sup>

- (d) gender-responsive climate action;<sup>101</sup>
  - (e) the impact of climate change on the rights of persons with disabilities;<sup>102</sup>
  - (f) the impact of climate change on the rights of older persons;<sup>103</sup> and
  - (g) the impact of climate change on the rights of people in vulnerable situations.<sup>104</sup>
- 3.22 On 14 March 2022, Australia’s National Children’s Commissioner, situated within the Australian Human Rights Commission, presented her submissions in relation to GC26.<sup>105</sup> The submissions focused on the first hand experiences of Australian children and young people and the way in which Australian children and young people are exercising their voices and rights in Australia. The National Children’s Commissioner expressed that, “It is hoped that General Comment 26 will lead to better recognition by States Parties, businesses, and all stakeholders that climate change is a human rights and a children’s rights issue.”<sup>106</sup>
- 3.23 The Australian government’s official position, prior to its vote in favour of the UN General Assembly resolution, appears to have been that there is no settled, universally accepted right to a clean, healthy and sustainable environment under international human rights law, and that the CRC does not include the general right of children to a healthy environment or protection against climate change. The National Children’s Commissioner does not address this position in her submissions.
- 3.24 This position was expressly communicated to the CRC Committee during Australia’s most recent cycle of periodic national reporting to the Committee. Pursuant to Article 44 of the CRC, Australia is obliged to submit periodic reports to the CRC Committee every five years regarding measures adopted to give effect to

the rights recognised in the CRC and progress made regarding enjoyment of those rights.<sup>107</sup> Australia submitted its combined fifth and sixth periodic reports under Article 44 of the CRC on 15 January 2018.<sup>108</sup> On 1 March 2019, the CRC Committee published a list of issues for Australia to respond to in relation to the combined periodic reports, which included requesting that Australia provide information on: “the efforts made to address the problem of climate change and to reduce the vulnerabilities and risks for children as a result of climate change”.<sup>109</sup> On 4 July 2019, the Australian government replied to the Committee’s request for further information, stating that: “as a matter of international law, the Convention does not extend to include a general right to the environment or protection against climate change. However, the Australian Government can advise that it has ratified the Paris Agreement and is committed to effective international action on climate change”.<sup>110</sup>

3.25 In a recent parliamentary petition lodged by a group of 16 citizens on 18 October 2021, the House of Representatives was requested to: “debate and vote on a motion urging the executive government to sign the Intergovernmental Declaration on Children, Youth and Climate Action by 31 December 2021 at the latest”.<sup>111</sup> Under the Intergovernmental Declaration on Children, Youth and Climate Action, the 32 State signatories (which do not include Australia)<sup>112</sup> have committed to consider (among other things):

- (a) advocating for global recognition of children’s inalienable right to a healthy environment;
- (b) enhancing efforts to respect, promote and consider the rights of children and young people in implementation of the Paris Agreement at all levels; and

- (c) enhancing the meaningful participation of children and youth in climate change processes.<sup>113</sup>

3.26 In a response to this petition recorded in Hansard, then Foreign Minister Senator Marise Payne stated on 14 February 2022 that: “*The Australian Government recognises the importance of a safe, clean, and sustainable environment for the realisation of a range of existing human rights. However, the Government does not consider there is a universally accepted, standalone right to a safe, clean, and healthy environment under international human rights law*”.<sup>114</sup>

3.27 While this position is not unexpected in circumstances where the right to a clean, healthy and sustainable environment is not explicitly enshrined in any existing international legal instrument that Australia has ratified, it does signal that the Australian government may yet recognise such a right in the course of further normative developments towards a settled definition of this right and greater consensus within the international community confirming the existence of a standalone right to a clean, healthy and sustainable environment. This belief is strengthened by Australia’s support of the recent General Assembly resolution discussed above. Moreover, the possibility of further evolution of the Australian Government’s position on the existence of standalone rights to a healthy environment cannot be discounted following the change of government after the 2022 federal election, especially in circumstances where the incoming Labor government has stated its intention to end “the climate wars” in Australian politics.<sup>115</sup>

<sup>96</sup> See: [https://sites.unicef.org/specialsession/how\\_country/edr\\_australia\\_en.PDF](https://sites.unicef.org/specialsession/how_country/edr_australia_en.PDF); and [https://sites.unicef.org/specialsession/how\\_country/index.html](https://sites.unicef.org/specialsession/how_country/index.html).

<sup>97</sup> See: [https://sites.unicef.org/specialsession/how\\_country/edr\\_australia\\_en.PDF](https://sites.unicef.org/specialsession/how_country/edr_australia_en.PDF).

<sup>98</sup> See: <https://www.ohchr.org/en/climate-change/impact-climate-change-enjoyment-right-health>.

<sup>99</sup> See: <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-child>.

<sup>100</sup> See: <https://www.ohchr.org/en/climate-change/human-rights-climate-change-and-migration>.

<sup>101</sup> See: <https://www.ohchr.org/en/climate-change/gender-responsive-climate-action>.

<sup>102</sup> See: <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-persons-disabilities>.

<sup>103</sup> See: <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-older-persons>.

<sup>104</sup> See: <https://www.ohchr.org/en/climate-change/impact-climate-change-rights-people-vulnerable-situations>.

<sup>105</sup> <https://humanrights.gov.au/our-work/legal/submission/general-comment-26-childrens-rights-and-environment-special-focus-climate>.

<sup>106</sup> <https://humanrights.gov.au/our-work/legal/submission/general-comment-26-childrens-rights-and-environment-special-focus-climate>.

<sup>107</sup> *Convention on the Rights of the Child* art. 44.

<sup>108</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NX5K84mxchSTGj%2fIJ9aCBhclMP6Gwa5BR1%2fmU5u9sa5UjOIJ7w5Jtfn9E3Yuo%2fg2e453uzr6q4zJRsaUDCywUy>.

<sup>109</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NWBviw18d0Hid7IKThUYumFj1Db2Qzyxbe5UJnzeAy502HUm5Rv91p2Cbe4tB8t22ieJ9bu3%2bWlff%2fHK9K9pA5Y> at [9(c)].

<sup>110</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRICAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NXES%2b%2bNnkGNV05qJniCMuhmKS7pksMF%2fL7gnd2g2xrtlvRO5VCFfmJ%2bzncCqhv%2fj4BGKvRq9h7pqPq8UgceAYekuV59PmeUVoYF2Q6N9n7Ntw%3d%3d> at [58].

<sup>111</sup> See Hansard: Hansard - House of Representatives 18/10/2021 Parliament of Australia (aph.gov.au).

<sup>112</sup> To date, 32 countries have signed up to the Declaration, including: Spain, Sweden, Norway, Republic of Korea, The Netherlands, Qatar, Peru, Marshall Islands, Luxembourg, Mexico, Chile, Fiji and Jamaica. See: Declaration on Children, Youth and Climate Action | UNICEF.

<sup>113</sup> See: Declaration on Children, Youth and Climate Action | UNICEF.

<sup>114</sup> See Hansard: Hansard - House of Representatives 14/02/2022 Parliament of Australia (aph.gov.au).

<sup>115</sup> See: <https://www.sbs.com.au/news/article/anthony-albanese-has-made-his-key-election-promises-his-next-hurdle-is-to-deliver-them/yjmxr7ovs>.



Australia does not expressly recognise a constitutional right to a healthy environment

3.28 The Australian Constitution does not expressly recognise a constitutional right to a healthy environment. Additionally, it does not provide an express or enumerated power that would allow the Commonwealth to legislate on matters concerning the environment. Instead, the Commonwealth relies on its power to legislate to give effect to Australia’s obligations under international treaties and conventions under the external affairs power (section 51(xxix)) or the broad corporations power (section 51(xx)). The Australian Constitution also contains clauses which empower the Parliament to protect human health under the banner of *peace, order and good government* (e.g section 51(xxiiiA)).

3.29 Australia does not have a bill of rights or human rights act at a Commonwealth level. Attempts have been made to introduce such a bill, most recently through private member’s bill—the Australian Bill of Rights Bill 2019—introduced by Andrew Wilkie.<sup>116</sup> The Bill contemplated the adoption of a federal bill of rights that would codify fundamental rights that could directly or indirectly assist in recognising children’s rights to a clean, healthy and sustainable environment under Australian law. In particular, article 18 of the draft bill of rights concerns the rights of the child and expressly stipulates (among other things) that every child has the fundamental rights and freedoms set out in the bill of rights to the greatest extent possible compatible with the age of the individual child.<sup>117</sup> In addition, the Parliamentary Joint Committee on Human Rights is currently conducting an inquiry into Australia’s human rights framework which will consider, among other issues, whether Australia should enact a federal human rights Act. As part of the

inquiry the Australian Human Rights Commission has produced a model human rights Act, which includes the right to a healthy environment.

- 3.30 Moreover, article 29 of the draft Bill, sought to codify environmental rights, including that every person (including Australian children, as expressly recognised by article 18 of the draft Bill) has the right to an environment that is not harmful to their health or well-being, and that the Commonwealth or State government will take appropriate steps to protect the environment for the benefit of present and future generations through reasonable legislative and other measures that:
- (a) prevent pollution and ecological degradation;
  - (b) promote conservation; and
  - (c) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.<sup>118</sup>
- 3.31 The Australian Bill of Rights Bill 2019 did not proceed and was removed from the Notice Paper on 24 March 2020.<sup>119</sup> The draft Bill is as an example of a proposed reform and is not necessarily a best practice model. The current government does not appear to have a stance on whether a Commonwealth bill of rights will be introduced soon. However, as flagged at [3.29], an inquiry into whether Australia should enact a federal human rights Act is currently underway.<sup>120</sup>
- 3.32 Such efforts for reform have also been made by civil society stakeholders, most recently by the AHRC in March 2023 which published its position paper, *A Human Rights Act for Australia*, which proposes a model for a national Human Rights Act.<sup>121</sup> The model human rights Act proposes the inclusion of a number of rights derived from international human rights instruments such as the ICCPR, ICESCR, CRC, CRPD and the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**),<sup>122</sup> and notably, includes the right to a healthy environment.

- 3.33 The proposed wording of the right to a healthy environment is comparatively limited, addressing every person’s right to an environment that “*does not produce adverse health consequences in the following respects: (a) Every person has the right not to be subject to unlawful pollution of air, water and soil. (b) Every person has the right to access safe and uncontaminated water, and nutritionally safe food*”.<sup>123</sup> While certain substantive elements of the right are contemplated (e.g. clean air and water, safe food), the scope of these substantive rights are somewhat qualified by terms such as the “*unlawful* pollution of air, water and soil” (emphasis added). Lawful polluting activities would as such not contravene this right.
- 3.34 Furthermore, procedural elements of the right, such as the right to environmental education and participation in environmental matters, are not contemplated in this expression of the right to a healthy environment.
- 3.35 The preamble to the Queensland Constitution states that “[t]he people of Queensland...determine to protect our unique environment”. The preamble also honours First Nations people, “*whose lands, winds and waters we all now share*”. However, the Constitution clarifies that the preamble does not create any cause of action. There is no express mention of environmental rights in the body of the Queensland Constitution.

Australia and the CRC

- 3.36 Australia formally ratified the CRC on 17 December 1990. The *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**) gives effect to Australia’s obligations under key international human rights treaties, which includes the CRC. It also articulates the role and responsibilities of the AHRC.

- 3.37 Australia has also ratified two Optional Protocols that supplement the CRC. Optional Protocols are separate treaties that complement and add to the CRC, by either: clarifying matters or obligations set out in the Convention; addressing new or emerging concerns relevant to the CRC; or, by creating a procedure for the operation and enforcement of the CRC. States are not obliged to sign, accede to, or ratify each Optional Protocol, but instead may independently choose whether to be bound (especially as State obligations under Optional Protocols tend to be more specific and onerous).<sup>124</sup> There are currently three Optional Protocols that supplement the CRC, which respectively:
- (a) increase protection of children from involvement in armed conflict (**First Optional Protocol**);<sup>125</sup>
  - (b) increase protection of children from sale, prostitution and pornography (**Second Optional Protocol**);<sup>126</sup> and
  - (c) create a mechanism whereby children can make complaints directly to the CRC Committee to investigate alleged violations of their rights (**Third Optional Protocol**).<sup>127</sup>
- 3.38 In short, Australia has signed and ratified the First and Second Optional Protocols, but not the Third Optional Protocol. This means that Australian children cannot make a complaint to the CRC Committee. The Third Optional Protocol is discussed in detail below (see paragraphs 3.56 to 3.64).
- 3.39 The status of Australia’s ratification of the CRC and the three Optional Protocols is summarised at Table 1 in Appendix A to this report.

<sup>116</sup> Australian Bill of Rights Bill 2019 (Cth).

<sup>117</sup> Australian Bill of Rights Bill 2019 (Cth) pt 5 div 1 art 18.

<sup>118</sup> Australian Bill of Rights Bill 2019 (Cth) pt 5 div 1 art 29.

<sup>119</sup> See: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r6404](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6404).

<sup>120</sup> See also the Australian Labor Party’s 2021 National Platform, accessed at <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf>.

<sup>121</sup> Australian Human Rights Commission, *Position Paper: A Human Rights Act for Australia* (7 March 2023), accessed at <https://humanrights.gov.au/human-rights-act-for-australia>.

<sup>122</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (*‘UNDRIP’*).

<sup>123</sup> Ibid, page 372.

<sup>124</sup> See: <https://www.unicef.org/child-rights-convention/strengthening-convention-optional-protocols>.

<sup>125</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en#EndDec).

<sup>126</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=_en).

<sup>127</sup> Optional Protocol to the Convention on the Rights of the Child on a communications procedure. See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=_en).



Australia’s periodic reporting to the CRC Committee

- 3.40 Each cycle of periodic reporting by State parties to the CRC Committee under article 44 of the CRC offers important insights into a reporting State’s compliance with its obligations under the Convention. The periodic reporting process also provides an opportunity for the Committee to pose specific questions (through a ‘list of issues’) to each State Party regarding its compliance with the CRC. The Committee also welcomes reports on how the CRC is being implemented within the reporting State, from international, regional, national and local organisations, including individual NGOs or coalitions of NGOs, NHRIs and Ombudspersons.<sup>128</sup>
- 3.41 State responses to lists of issues presented by the CRC Committee, and alternative reports submitted by key stakeholders including NGOs, NHRIs and Ombudspersons, inform the content of the Committee’s Concluding Observations on each national periodic report, including any recommendations by the Committee for the reporting State to improve its compliance with the CRC.<sup>129</sup> The periodic reporting mechanism through which the CRC Committee reviews State parties’ compliance with and implementation of the CRC is summarised at Table 2 in Appendix A of this report.
- 3.42 In total, Australia has submitted six national reports to the CRC Committee regarding its compliance with the CRC and the First Optional Protocol and Second Optional Protocol, as summarised in the timeline at Table 3 in Appendix A of this report. As shown in this timeline, Australia’s periodic reports to the Committee are attracting increasing attention from non-State parties such as NGOs and other relevant stakeholders. This suggests that international, domestic and local civil society actors consider the periodic review process to be an important forum for advocacy and lobbying in relation to Australia’s record on children’s rights, including its recognition of children’s right to a clean, healthy and sustainable environment.

Australia’s reporting and the right to a clean, healthy and sustainable environment

Australia’s periodic reporting to the CRC Committee

- 3.43 None of Australia’s periodic national reports submitted to the CRC Committee to date have discussed children’s rights in connection with environmental degradation or climate change.<sup>130</sup> However, in a notable shift, the impacts of Australia’s environmental and climate change policies on children’s rights and Australia’s implementation of the CRC have been identified by the Committee as areas of concern during its review of Australia’s progress in implementing its obligations under the Convention.
- 3.44 Following its review of Australia’s joint fifth and sixth periodic report and related submissions by civil society organisations, the CRC Committee noted in its Concluding Observations on 27 September 2019 that it is:
- “**very concerned about the State party’s position that the Convention does not extend to protection from climate change.** The Committee emphasizes that the effects of climate change have an undeniable impact on children’s rights, for example the rights to life, survival and development, non-discrimination, health and an adequate standard of living. It is also concerned that the State party has made insufficient progress on the goals and targets set out in the Paris Agreement and about its continuing investment in extractive industries, in particular coal. The Committee expresses its concern and disappointment that a protest led by children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrates disrespect for the right of children to express their views on this important issue” (emphasis added).<sup>131</sup>

- 3.45 In light of these concerns, the Committee recommended that Australia:
- (a) strengthen its support to organisations working on climate change and environmental issues;<sup>132</sup> and
  - (b) develop toolkits for holding public consultations with children on issues that affect them, including on climate change and the environment.<sup>133</sup>
- 3.46 The Committee further urged Australia to:
- (a) ensure that children’s views are taken into account in developing policies and programmes addressing climate change, the environment and disaster risk management and to increase children’s awareness and preparedness for climate change and natural disasters;<sup>134</sup> and
  - (b) promptly take measures to reduce its emissions of greenhouse gases by establishing targets and deadlines to phase out the domestic use and export of coal and to accelerate the transition to renewable energy, including by committing to meeting 100 per cent of its electricity needs with renewable energy.<sup>135</sup>
- 3.47 During this review cycle, several prominent Australian NGOs and NHRIs prepared and submitted alternative national reports to the Committee, including the Law Council of Australia,<sup>136</sup> Human Rights Law Centre<sup>137</sup> and the AHRC.<sup>138</sup> These reports did not specifically consider the nexus between Australia’s implementation of and compliance with the CRC, nor its environmental and climate change

policies in the context of protection of children’s environmental rights. However, submissions by Our Children’s Trust<sup>139</sup> and the Global Initiative for Economic, Social and Cultural Rights (in combination with the Centre for International Environmental Law)<sup>140</sup> drew the Committee’s attention specifically to what these organisations considered to be the inadequacy of Australia’s emissions reduction and climate change targets and policies. These civil society organisations expressly framed their critique of Australia’s climate change targets and policies as children’s rights issues, and therefore urged the CRC Committee to express concern about the incompatibility of Australia’s energy policy with its obligations to protect children’s rights under the Convention, and to make recommendations for Australia to increase the ambition of its climate change targets.<sup>141</sup>

3.48 Australia is due to submit its next national report on 15 January 2024, during the seventh reporting cycle for the CRC. In light of intervening normative developments in the international community towards more widespread recognition of children’s rights to a clean, healthy and sustainable environment since Australia’s last national report, it is likely that issues of Australia’s recognition of children’s environmental rights under domestic and international law, and the consistency of its climate change mitigation and adaptation laws and policies with its obligations under the CRC, will become key issues for the CRC Committee and other relevant civil society stakeholders during the next review cycle.

<sup>128</sup> See: <https://www.ohchr.org/en/treaty-bodies/crc/information-civil-society-ngos-and-nhris>.  
<sup>129</sup> *Convention on the Rights of the Child* art 45(d).  
<sup>130</sup> See:  
<sup>131</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NWFNCtCrUn3lRntjF1lP2gZpa035aKkorCHAPJx8bIZmDed5owOGcbWFeosUSgDTfKNqA7hBC3KiwAm8SBo665E> at [40].

<sup>132</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NWFNCtCrUn3lRntjF1lP2gZpa035aKkorCHAPJx8bIZmDed5owOGcbWFeosUSgDTfKNqA7hBC3KiwAm8SBo665E> at [15(b)].  
<sup>133</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NWFNCtCrUn3lRntjF1lP2gZpa035aKkorCHAPJx8bIZmDed5owOGcbWFeosUSgDTfKNqA7hBC3KiwAm8SBo665E> at [22(e)].  
<sup>134</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NWFNCtCrUn3lRntjF1lP2gZpa035aKkorCHAPJx8bIZmDed5owOGcbWFeosUSgDTfKNqA7hBC3KiwAm8SBo665E> at [41(a)].  
<sup>135</sup> See: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsK5X2w65LgiRF%2fS3dwPS4NWFNCtCrUn3lRntjF1lP2gZpa035aKkorCHAPJx8bIZmDed5owOGcbWFeosUSgDTfKNqA7hBC3KiwAm8SBo665E> at [41(b)].  
<sup>136</sup> See: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT\\_CRC\\_NGO\\_AUS\\_33218\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT_CRC_NGO_AUS_33218_E.pdf).  
<sup>137</sup> See: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT\\_CRC\\_NGO\\_AUS\\_33216\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT_CRC_NGO_AUS_33216_E.pdf).  
<sup>138</sup> See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).  
<sup>139</sup> See: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT\\_CRC\\_NGO\\_AUS\\_35851\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT_CRC_NGO_AUS_35851_E.pdf). Our Children’s Trust is a non-profit organisation based in the United States that aims to elevate the voices of young people to secure legal rights to a healthy atmosphere and healthy climate on behalf of present and future generations.  
<sup>140</sup> See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).  
<sup>141</sup> See: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT\\_CRC\\_NGO\\_AUS\\_35851\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT_CRC_NGO_AUS_35851_E.pdf); [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).



Australia’s periodic reporting under other human rights treaties and international legal instruments

3.49 Other than through the CRC Committee, Australia is also required to submit periodic reports to and appear before other relevant United Nations human rights treaty bodies in relation to the other core international human rights treaties to which it is a party.<sup>142</sup> Many of these reporting processes include mechanisms for interested third parties like NGOs and NHRIs to participate and make submissions. While the CRC Committee is arguably the most relevant international human rights forum for addressing human rights issues that specifically affect children and young people, other human rights treaty bodies may nevertheless offer other important opportunities to further advance Australia’s recognition of children’s right to a healthy environment, both at an international and domestic level. This is because children’s right to a healthy environment may intersect with more general civil and political or social and economic rights, as well as the rights of other specifically protected groups under international human rights law such as women and girls, persons with disabilities, and Indigenous peoples.

3.50 In addition to the CRC, Australia’s periodic reporting obligations to UN treaty bodies and related entities include reporting under:

- (a) the Universal Periodic Review (UPR) process;
- (b) the ICCPR;
- (c) the ICESCR;
- (d) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);<sup>143</sup>
- (e) the CRPD;
- (f) the Convention on the Elimination of All Forms of Racial Discrimination (CERD);<sup>144</sup> and
- (g) the CEDAW.

3.51 A summary of the key features of these reporting mechanisms can be found in Appendix B. Likewise, Appendix C of this report summarises notable developments driven by these treaty bodies in relation to the recognition of the human rights implications of climate change, as well as specific comments and recommendations previously directed at Australia, relevant to climate change and human rights. These other periodic review mechanisms may offer conducive forums beyond the CRC Committee to advance Australia’s recognition at an international level of children’s right to a healthy environment, given the express recognition already by human rights treaty bodies of the impact of climate change on human rights. For example:

- (a) the Human Rights Committee has expressly recognised the relationship between the right to life and environmental degradation and climate change.<sup>145</sup> This may mean that environmental rights will feature more prominently as part of the Committee’s next periodic review of Australia’s compliance with the ICCPR, which is due to commence in 2023;<sup>146</sup>
- (b) the Committee on Economic, Social and Cultural Rights (ICESCR Committee) has recognised the potential environmental dimensions of the right to the enjoyment of the highest attainable standard of living under article 12 of the ICESCR,<sup>147</sup> and has already explicitly considered the nexus between climate change and Australia’s human rights obligations under the ICESCR in the context of Australia’s periodic national reporting to the Committee, as outlined in Appendix C;
- (c) the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has already explicitly recognised the disproportionate impact of climate change on the rights of women and girls protected

- under CEDAW in its General Comment No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change;<sup>148</sup> and
  - (d) the Committee on the Rights of Persons with Disabilities (CRPD Committee) has also increasingly addressed the impacts of climate change on the rights of persons with disabilities. For example, in May 2020, the CRPD Committee issued a joint statement along with the CEDAW Committee, the ICESCR Committee, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the CRC Committee, on Human Rights and Climate Change (Joint Statement).<sup>149</sup> The Joint Statement noted (among other issues) that the risk of harm arising from the adverse impacts of climate charge is “particularly high for those sectors of the population that are already marginalized or in vulnerable situations ... such ... children... [and] persons with disabilities”.<sup>150</sup>
- 3.52 As outlined in further detail at Appendix C, these treaty bodies have also specifically considered Australia’s climate change mitigation and adaptation policies in the context of its obligations under relevant international human rights legal instruments.
- Senate inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia**
- 3.53 Another area that civil society actors may explore to further promote the recognition of the right to a clean, healthy and sustainable environment under domestic and international law, is in the context of the rights of indigenous peoples. The UNDRIP is

the most comprehensive international instrument on the rights of Indigenous peoples. UNDRIP addresses both individual and collective rights of Indigenous peoples, including specifically: cultural rights and identity; rights to education, health, employment, language;<sup>151</sup> as well as the right to conservation and protection of the environment and the productive capacity of their lands or territories and resources.<sup>152</sup> The Declaration also acknowledges the intersection between the rights of children and Indigenous peoples, by stipulating under article 22 that: “particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration”.<sup>153</sup>

3.54 UNDRIP was adopted by the UN General Assembly on 13 September 2007 by a majority of 144 Member States. Although Australia was one of four States that voted against the adoption of the Declaration (along with New Zealand, Canada and the United States), it has since reversed this position and now supports UNDRIP.<sup>154</sup> UNDRIP has an express focus on the rights and special needs of Indigenous youth and children, including in relation to the right to conservation and protection of the environment (article 29).<sup>155</sup> On 29 March 2022, the Australian Senate referred an inquiry into the application of UNDRIP to the Legal and Constitutional Affairs References Committee for inquiry and report by 15 September 2022.<sup>156</sup> However, this inquiry lapsed when the 46<sup>th</sup> Parliament was dissolved for the June 2022 election. On 2 August 2022, the Senate of the 47<sup>th</sup> Parliament referred an inquiry with new terms of reference to the Joint Standing Committee on

<sup>142</sup> See: <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/united-nations-human-rights-reporting>.

<sup>143</sup> *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) (‘CAT’).

<sup>144</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, 660 UNTS 195 (entered into force 4 January 1969) (‘CERD’).

<sup>145</sup> See Item 2 of Appendix C, ‘Review of Australia’s international human rights record by UN treaty bodies and related entities in the context of climate change’ on the General Comment No. 36.

<sup>146</sup> In the Report of the Working Group on the Universal Periodic Review of Australia (21 June to 9 July 2021), there were several recommendations relating to the environment and climate change to be considered and responded to by Australia including recommendations at [146.111]-[146.118] and [146.275], most of which focused on the nexus between the impacts of climate change and the human rights of vulnerable groups.

<sup>147</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) – The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 22<sup>nd</sup> sess, Agenda Item 3, Un Doc E/C.12/2000/4 (11 August 2000) 2 [4].

<sup>148</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’).

<sup>149</sup> Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, UN Doc HRI/2019/1 (14 May 2020).

<sup>150</sup> Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, UN Doc HRI/2019/1 (14 May 2020) 1[3].

<sup>151</sup> See: <https://www.ohchr.org/en/indigenous-peoples/un-declaration-rights-indigenous-peoples#:~:text=The%20Declaration%20addresses%20both%20individual,all%20matters%20that%20concern%20them>.

<sup>152</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (‘UNDRIP’) art 29.

<sup>153</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (‘UNDRIP’) art 22.

<sup>154</sup> See: <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

<sup>155</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) (‘UNDRIP’) arts 22, 29.

<sup>156</sup> See: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/UNDRIP](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/UNDRIP).





Aboriginal and Torres Strait Islander Affairs and all public submissions previous lodged to the initial inquiry were accepted.<sup>157</sup> According to the Terms of Reference, the inquiry is specifically directed to the following:

- (a) the international experience of implementing the UNDRIP;
- (b) options to improve adherence to the principles of UNDRIP in Australia;
- (c) how implementation of the Uluru Statement from the Heart can support the application of the UNDRIP; and
- (d) any other related matters.<sup>158</sup>

3.55 The Senate inquiry has received submissions and held public hearings through to June 2023. The report is yet to be released.

Why Australia has not ratified the CRC Optional Protocol on a communications procedure

3.56 Australia has not ratified the Third Optional Protocol on a communications procedure to the CRC Committee. While there is potential for the Australian Government’s position to shift following the results of the 2022 federal election, as recently as 18 October 2021, then federal Attorney-General Senator Michaelia Cash reiterated the Australian Government’s position regarding the ratification of the Third Optional Protocol as follows:

“The Australian Government is not proposing to ratify the Optional Protocol to the CRC on Communications Procedures at this time. The Government considers the rights and opportunities afforded by this instrument are adequately protected in the existing instruments to which Australia is a party”.<sup>159</sup>

3.57 This sentiment is reflected in Annex 1 of Australia’s third UPR in December 2020:

“Children are able to bring communications under the complaints mechanisms to which Australia is a party – the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of Persons with Disabilities and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment”.<sup>160</sup>

3.58 The AHRC has previously criticised this approach, stating in its most recent Children’s Rights Report published in 2019, that it: *“neglects the fact that mechanisms for other treaty bodies have not been designed for children. It also sends a message to children that breaches of their rights are not seen as having the same importance as breaches of adult rights”*.<sup>161</sup> As noted in the AHRC’s submission to the CRC Committee in relation to Australia’s joint fifth and sixth periodic reports under article 44 of the CRC, the National Children’s Commissioner has since 2013 recommended that the Australian government ratify the Third Optional Protocol, as *“[r]atification of the third Optional Protocol would provide new protections for children, and a similar level of accountability for children’s rights as exist for rights under other UN Conventions”*.<sup>162</sup>

3.59 In each periodic review of Australia since the Third Optional Protocol was first adopted in 2011, the CRC Committee has encouraged and recommended that Australia further strengthen its fulfilment of children’s rights under the CRC by ratifying the Third Optional Protocol.<sup>163</sup>

3.60 The Third Optional Protocol supplements article 12 of the CRC, which enshrines the fundamental right of children to be heard and taken seriously. It does so by creating a mechanism for children to submit complaints directly to the CRC Committee regarding alleged violations of their rights under the CRC.<sup>164</sup> However, the CRC Committee only has competence to receive complaints against States that are party to both the CRC and the Third Optional Protocol.<sup>165</sup> To date, the Third Optional Protocol has been ratified by 48 countries,<sup>166</sup> meaning that all of these States recognise the competence of the CRC Committee to adjudicate complaints from children, groups of children, or their representatives, in relation to alleged violations by these States of their obligations under the CRC. Because Australia has not ratified the Third Optional Protocol, this complaints mechanism is not available to Australian children. Moreover, even if Australia were to ratify the Third Optional Protocol, the CRC Committee is only able to consider complaints in circumstances where the complainants have first exhausted all available domestic remedies (unless access to such remedies is unreasonably prolonged, or unlikely to bring effective relief).<sup>167</sup> Despite this, it is arguable that there are insufficient domestic remedies available to exhaust. The authors of the 2022 United Nations Human Rights Committee communication discussed at 5.16 and 5.18 below satisfied this procedural hurdle without filing a domestic complaint in Australia.

3.61 One of the factors that may have contributed to the Australian Government’s reticence to ratify the Third Optional Protocol is the recent high-profile complaint brought by a group of 16 children from 12 countries against five major polluter Group of 20 (G20) countries. The complaint filed in 2019

<sup>157</sup> See: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Affairs/UNDRIP](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP).  
<sup>158</sup> See: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Aboriginal\\_and\\_Torres\\_Strait\\_Islander\\_Affairs/UNDRIP/Terms\\_of\\_Reference](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP/Terms_of_Reference).  
<sup>159</sup> See: Hansard - House of Representatives 18/10/2021 Parliament of Australia (aph.gov.au). The Attorney-General’s statement was in response to a petition made to the House of Representatives on 24 May 2021, which sought to have Australia recognise the competence of the CRC Committee to monitor Australia’s compliance with the CRC, that is, through ratification of the Third Optional Protocol.

<sup>160</sup> See: <https://www.ag.gov.au/sites/default/files/2020-12/annex-1-upr-2021.pdf>.  
<sup>161</sup> Australian Human Rights Commission, *Children’s Rights Report 2019 – In Their Own Right: Children’s Rights in Australia* (Report, 28 October 2019) 44.  
<sup>162</sup> Australian Human Rights Commission, *Information relating to Australia’s joint fifth and sixth report under the Convention on the Rights of the Child, second report on the Optional Protocol on the sale of children, child prostitution and child pornography, and second report on the Optional Protocol on the involvement of children in armed conflict* (Submission to the Committee on the Rights of the Child, 1 November 2018) 7 [34].  
<sup>163</sup> Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 44 of the Convention – Concluding observations: Australia*, 60<sup>th</sup> sess, UN Doc CRC/C/AUS/CO/4 (28 August 2012) 21 [85]; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) 16 [52].  
<sup>164</sup> *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, GA Res 17/18, UN Doc No. A/RES/66/138 (19 December 2011) (*Third Optional Protocol*) art 1.  
<sup>165</sup> *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, GA Res 17/18, UN Doc No. A/RES/66/138 (19 December 2011) (*Third Optional Protocol*) art 1.  
<sup>166</sup> State parties that have ratified the Third Optional Protocol include Brazil, Denmark, Finland, France, Germany and Thailand. See ‘Depositary: Status of Treaties, Chapter IV Human Rights 11. d Optional Protocol to the Convention on the Rights of the Child on communications procedure’ *United Nations Treaty Collection* (Web Page)<[https://treaties.un.org/pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg\\_no=IV-11-d&src=IND](https://treaties.un.org/pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-11-d&src=IND)>.  
<sup>167</sup> *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, GA Res 17/18, UN Doc No. A/RES/66/138 (19 December 2011) (*Third Optional Protocol*) art 7(e).





## 4. National progress in recognising children’s right to a healthy environment

### The Commonwealth and the State of Queensland do not expressly recognise the right to a healthy environment in domestic legislation

#### Commonwealth

- 4.1 Commonwealth legislation does not expressly recognise a right to a healthy environment. However, this right is to some extent protected by environmental protection legislation. The key federal environmental protection legislation is the EPBC Act. It creates a national scheme to protect those aspects of the environment that are matters of national environmental significance.<sup>173</sup>
- 4.2 The objects of the EPBC Act, whilst not comprehensive (for example they do no mention climate change), are generally consistent with the protection of a healthy environment and include to “assist in the co-operative implementation of Australia’s international environmental responsibilities”<sup>174</sup> and “promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources”.<sup>175</sup> Principles of ecologically sustainable development expressly includes the principle of intergenerational equity.<sup>176</sup> In summary, the principle of intergenerational equity expresses a concept of fairness among generations in the use, conservation and stewardship of the environment and its natural resources.<sup>177</sup>

#### Sharma v Minister for the Environment

**Key child / youth stakeholders:** Anjali Sharma, Isolde Raj-Seppings, Ambrose Malachy Hayes, Tomas Webster Arbizu, Bella Paige Burgemeister, Laura Fleck Kirwan, Ava Princi, Luca Gwyther Saunders and Veronica Hester (the Applicants).

**Target entities:** Commonwealth government of Australia, through the Minister for the Environment (the Minister).

In 2020, the Applicants commenced proceedings in the Federal Court against the Minister and mining company Vickery Coal Pty Ltd (Vickery Coal). The case relates to an application by Vickery Coal’s parent company, Whitehaven Coal Pty Ltd, to the Minister to expand and extend an existing coal mine in northern New South Wales (Expansion Project). If approved, the Expansion Project would increase total coal extraction from the mine site from 135 million tonnes to 168 million tonnes, producing an additional 100 Mt of carbon emissions.<sup>178</sup> The alleged harms include personal injury, property damage and pure economic loss.<sup>179</sup>

The Applicants claimed the Minister owes them and other Australian children a duty of care when considering whether to approve the Expansion Project under her powers under the EPBC Act.<sup>180</sup> The Applicants brought the

against Argentina, Brazil, France, Germany and Turkey claimed that these States had failed to take necessary preventative and precautionary measures to respect, protect, and fulfil the complainants’ rights to life, health and culture by recklessly causing and perpetuating life-threatening climate change through their carbon emissions.<sup>168</sup>

3.62 The five respondent States were strategically targeted by the complainants: not only are they parties to both the CRC and the Third Optional Protocol; they are also all G20 members and therefore constitute some of the world’s leading economies and major historical emitters. The complainants contended that as members of the G20, each of the respondent States must set a precedent for other countries, by reducing emissions at the greatest possible rate and in a manner consistent with a scale that is scientifically established to protect life.<sup>169</sup> As the G20 also includes major emitters such as the United States, China, the European Union, and Australia, the

complaint was also intended to compel Argentina, Brazil, France, Germany and Turkey to use all available legal, diplomatic, and economic tools to exert pressure on other major emitters to also decarbonise at a scale and rate necessary to achieve collective goals of emission reduction.<sup>170</sup>

3.63 While the CRC Committee ultimately ruled that the complaint was inadmissible, it indicated that a State Party to the CRC could be held responsible for the negative impacts of its carbon emissions on the rights of children both within and outside its national territory.<sup>171</sup> The Committee found that it could not rule on whether the five States had violated their respective obligations under the CRC because the complainants had not already exhausted all remedies available to them under domestic law in the respective States.<sup>172</sup>

3.64 It remains to be seen whether the change in government following the 2022 federal election will trigger any changes in Australia’s approach to ratifying the Third Optional Protocol.

<sup>168</sup> See, eg, Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 107/2019*, UN Doc CRC/C/88/D/107/2019 (8 October 2021) (‘Sacchi v Germany’) 4 [3.1].

<sup>169</sup> See, eg, Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 107/2019*, UN Doc CRC/C/88/D/107/2019 (8 October 2021) (‘Sacchi v Germany’) 3[2.3].

<sup>170</sup> See, eg, Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 107/2019*, UN Doc CRC/C/88/D/107/2019 (8 October 2021) (‘Sacchi v Germany’) 3[2.3].

<sup>171</sup> Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019*, UN Doc CRC/C/88/D/104/2019 (8 October 2021) [10.21] (‘Sacchi v Argentina’); Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 107/2019*, UN Doc CRC/C/88/D/107/2019 (8 October 2021) [9.20] (‘Sacchi v Germany’); Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 106/2019*, UN Doc CRC/C/88/D/106/2019 (8 October 2021) [10.20] (‘Sacchi v France’); Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 108/2019*, UN Doc CRC/C/88/D/108/2019 (8 October 2021) [9.20] (‘Sacchi v Turkey’); Committee on the Rights of the Child, *Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 105/2019*, UN Doc CRC/C/88/D/105/2019 (8 October 2021) [10.21] (‘Sacchi v Brazil’).

<sup>172</sup> *Sacchi v Turkey* 14[9.20]; *Sacchi v Germany* 16[9.20]; *Sacchi v France* 14[10.20]; *Sacchi v Brazil* 16[10.20]; *Sacchi v Argentina* 15[10.21].

<sup>173</sup> We note Professor Graeme Samuel AC’s independent review of the EPBC Act, which was reported to the Australian Government in October 2020. The review found that “The EPBC Act is outdated and requires fundamental reform. It does not enable the Commonwealth to effectively fulfil its environmental management responsibilities to protect nationally important matters.” Accessed at <https://epbcreview.environment.gov.au/resources/final-report>. We further note the ACF’s submission to the Parliamentary Joint Committee’s Inquiry into Australia’s Human Rights Framework, which provide that “laws protecting the environment clearly need improvement given current trends. Legislating a right provides an overarching protection focussed on protecting people from environmental degradation as opposed to traditional (and arguably more piecemeal) approaches seen in planning and environment legislation”. Accessed at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/HumanRightsFramework/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Submissions).

<sup>174</sup> EPBC Act, section 3(1)(e).

<sup>175</sup> EPBC Act, section 3(1)(b).

<sup>176</sup> EPBC Act, section 3A(c).

<sup>177</sup> See, eg, Oxford University Press, *Max Planck Encyclopaedia of International Law*, (online at April 2021) ‘Intergenerational Equity’ <<https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1421>>.

<sup>178</sup> *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 at [7].

<sup>179</sup> *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 at [92].

<sup>180</sup> *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 at [1].



application on their own behalf (but since they were all under the age of 18 at the time they commenced proceedings, had to act through a litigation representative, Sister Marie Brigid Arthur of the Roman Catholic Brigidine Order of Victoria) as well as by way of a representative proceeding on behalf of all children ordinarily residing in Australia.<sup>181</sup>

The lead applicant in the proceedings, Anjali Sharma, was motivated to act on climate change after a 2017 family trip to India, where she witnessed the experience of severe flooding first-hand.<sup>182</sup> The Instagram account she started on climate change issues gained over 12,000 followers in a year and evolved into in-person campaigning. Sharma joined and has become a big part of the Australian chapter of School Strike 4 Climate.<sup>183</sup>

The Applicants have expressed their frustration over the perceived inaction of Australian policymakers to take more ambitious action on the ‘climate crisis’.<sup>184</sup> The case is a key example of novel and strategic climate litigation that has been rising in Australia over recent years. Represented by Equity Generation Lawyers, the case was framed in terms of intergenerational equity and the law of negligence, since the Applicants would be directly impacted by the intergenerational injustices caused by climate change.

4.3 In *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 (**First Instance Judgment**), Justice Bromberg found that the Minister owed a duty of care to Australian children to consider climate change harms when considering whether to approve a coal mine project in New South Wales under the EPBC Act. In an important jurisprudential development, the Court readily accepted the scientific evidence for climate change

and recognised the intergenerational injustice that climate change imposes on the Applicants and other children in Australia. However, this landmark decision was overturned by the Full Federal Court in March 2022,<sup>185</sup> with the three-judge bench rejecting Justice Bromberg’s novel duty of care in three separate sets of reasons. Chief Justice Allsop was of the view that the duty of care “throws up for consideration at the point of breach matters that are core policy questions unsuitable in their nature and character for judicial determination”.<sup>186</sup> Similarly, Justice Wheelahan deferred to the political arena, finding that the resolution of the issues in contention “is uniquely suited to elected representative and executive government responsible for law-making and policy-making”.<sup>187</sup> Notably, however, the appeal did not question or debate the science on climate change. As the Chief Justice wrote:

“The threat of climate change and global warming was and is not in dispute between the parties in this litigation. The seriousness of the threat is demonstrated by the attention given to it by many countries around the world, and the attempts made by them to reach agreement and to co-operate to reduce the emission of carbon dioxide and other greenhouse gases in order to reduce the rate of increase of the Earth’s surface temperature. Those steps of international diplomacy and international co-operation in scientific matters, including research, have had the consequence that many countries and constituent political parts of countries have adjusted national and regional policy to meet the recognised threat. The debate over the appropriate steps to take at a national and international level has not been without its international and national political controversy.”<sup>188</sup>

4.4 To build on and address the “gap exposed” in the Sharma decisions, the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (Cth) (**Duty of Care Bill**)

was introduced to the Commonwealth Parliament as a Private Senators’ Bill by Independent Senator David Pocock.<sup>189</sup> Supported by Anjali Sharma, the Duty of Care Bill seeks to impose a statutory duty of care when “significant decisions” are made that are “likely to directly or indirectly result in substantial greenhouse gas emissions” to protect the health and wellbeing of current and future generations.<sup>190</sup> The Duty of Care Bill would impose two statutory duties in relation to such significant decisions, requiring the decision maker to:

- First, “consider the likely impact of the emissions on the health and wellbeing of current and future Australian children and consider their health and wellbeing as the paramount consideration”; and
- Second, “[i]n the case of decisions involving the exploration or extraction of coal, oil or gas, the decision maker is prevented from making decisions where the resulting greenhouse gas emissions are likely to pose a material risk of harm to the health and wellbeing of current and future Australian children.”<sup>191</sup>

4.5 In his Second Reading Speech, Senator Pocock emphasised that “it is our role, the role of legislators, of parliamentarians to ensure we have a duty of care to our children and the ones still to come”.<sup>192</sup> The Statement of Compatibility with Human Rights expressly refers to GC26, but notes that the Duty of Care Bill “does not engage any of the applicable rights or freedoms” despite any cross-over.<sup>193</sup>

4.6 The Duty of Care Bill was referred to the Senate Environment and Communities Legislation Committee on 3 August 2023, with the Committee’s report due on 1 February 2024.<sup>194</sup>

4.7 The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) provides for a process whereby the Parliamentary Joint Committee on Human Rights (PJCHR) may scrutinise bills and acts for compatibility with human rights (as recognised in the seven core human rights treaties ratified by Australia) and to report to both Houses of the Parliament on that issue, including bills or acts that propose to limit the right to a healthy environment in reliance on Article 12 (Right to Health) of the ICESCR.<sup>195</sup> We are not, however, aware of any evidence demonstrating the extent to which, in practice, the Committee considers climate change as a human rights issue pursuant to Article 12 and assesses proposed bills accordingly.

Queensland

4.8 As with the EPBC Act, the **EPA** does not explicitly provide for a right to a healthy environment. However, it states as its object “to *protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (ecologically sustainable development)*”.<sup>196</sup>

4.9 The *Human Rights Act 2019* similarly does not state a general environmental right. However, section 28 of this Act does consider environmental conservation in the context of the cultural rights of First Nations peoples. It states that Aboriginal and Torres Strait Islander peoples have rights to maintain and strengthen their distinctive spiritual, material and economic relationship with, and to “*conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources*” with which they have a connection under Aboriginal tradition or Island custom.<sup>197</sup>

<sup>181</sup> *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560 at [4].

<sup>182</sup> Natasha Kaul, ‘The schoolgirl who took Australia’s environment minister to court on climate change’ SBS Hindi (online, 10 August 2021) .

<sup>183</sup> Miki Perkins, ‘Anjali Sharma breaking new ground in climate fight’ Sydney Morning Herald (online, 5 March 2021) .

<sup>184</sup> See Meg Keneally, ‘Stepping up when adults don’t: ‘It’s just so real for us right now’, The Guardian (online, 26 September 2021).

<sup>185</sup> *Minister for the Environment v Sharma* [2022] FCAFC 35.

<sup>186</sup> *Minister for the Environment v Sharma* [2022] FCAFC 35 at [7] (per Allsop CJ).

<sup>187</sup> *Minister for the Environment v Sharma* [2022] FCAFC 35 at [868] (per Wheelahan J).

<sup>188</sup> *Minister for the Environment v Sharma* [2022] FCAFC 35 at [1].

<sup>189</sup> See: [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1385\\_ems\\_6e6bab02-d8fe-4dab-a67d-61095ede364b/upload\\_pdf/EM\\_23S21.pdf;fileType=application%2Fpdf;https://adutyofcare.davidpocock.com.au/](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1385_ems_6e6bab02-d8fe-4dab-a67d-61095ede364b/upload_pdf/EM_23S21.pdf;fileType=application%2Fpdf;https://adutyofcare.davidpocock.com.au/) .

<sup>190</sup> See: [https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/27117/0042/hansard\\_frag.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/27117/0042/hansard_frag.pdf;fileType=application%2Fpdf).

<sup>191</sup> See: [https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/27117/0042/hansard\\_frag.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/27117/0042/hansard_frag.pdf;fileType=application%2Fpdf); see also p 3 of the Explanatory Memorandum to the Bill, accessed at [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1385\\_ems\\_6e6bab02-d8fe-4dab-a67d-61095ede364b/upload\\_pdf/EM\\_23S21.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1385_ems_6e6bab02-d8fe-4dab-a67d-61095ede364b/upload_pdf/EM_23S21.pdf;fileType=application%2Fpdf).

<sup>192</sup> See: [https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/27117/0042/hansard\\_frag.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/27117/0042/hansard_frag.pdf;fileType=application%2Fpdf), p 25.

<sup>193</sup> See: [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1385\\_ems\\_6e6bab02-d8fe-4dab-a67d-61095ede364b/upload\\_pdf/EM\\_23S21.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/s1385_ems_6e6bab02-d8fe-4dab-a67d-61095ede364b/upload_pdf/EM_23S21.pdf;fileType=application%2Fpdf).

<sup>194</sup> See: [https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?page=0;query=Climate%20Change%20Amendment%20\(Duty%20of%20Care%20and%20Intergenerational%20Climate%20Equity\)%20Bill%202023;rec=6;resCount=Default](https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p?page=0;query=Climate%20Change%20Amendment%20(Duty%20of%20Care%20and%20Intergenerational%20Climate%20Equity)%20Bill%202023;rec=6;resCount=Default).

<sup>195</sup> The PJCHR has previously considered Article 12 (Right to Health) of the ICESCR in response to the removal of the extended standing for judicial review of decisions under the EPBC Act in 2015. While the PJCHR considered that the removal of a right of a person or bodies who are committed to environmental protection from seeking to enforce the protections in the EPBC Act may engage and limit the right to a healthy environment, in this instance, it ultimately found that in that case that the bill does not limit the right to health; see:<[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Scrutiny\\_reports/2016/Thirty-fifth\\_report\\_of\\_the\\_44th\\_Parliament/c01](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports/2016/Thirty-fifth_report_of_the_44th_Parliament/c01)>.

<sup>196</sup> EPA, section 3.

<sup>197</sup> *Human Rights Act 2019* (Qld) s 28(2)(e).



4.10 The *Torres Strait Fisheries Act 1984* (Qld) and *Torres Strait Islander Land Act 1991* (Qld) also provide rights to First Nations communities’ traditional way of life and livelihood<sup>198</sup> and recognise the spiritual, social, historical, cultural and economic significance of land and waters to traditional owners.<sup>199</sup>

4.11 Legislative protections of the Indigenous right to preserve the health and traditional use of land and waters are particularly relevant in light of the ongoing Federal Court proceedings of *Pabai Pabai v Commonwealth of Australia* (VID622/2021). The applicants in these proceedings are First Nations leaders from the Gudamalulgal nation of the Torres Strait Islands. They assert that the federal government has a duty of care to take reasonable steps to protect the Torres Strait Islander people, the marine environment, and their native title rights and customs from the effects of climate change.

4.12 The *Human Rights Act* provides that international law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.<sup>200</sup> In accordance with this provision, decisions of international human rights bodies which link the right to a healthy environment to other rights stated in the *Human Rights Act* may inform the development of this right in Queensland law.<sup>201</sup> The recognition of intergenerational equity as a principle of ecologically sustainable development within environmental legislation has created scope for young people and their advocates to seek recognition of their right to a healthy environment

4.13 The key environmental protection laws in the Commonwealth and Queensland are the EPBC Act and the EPA, respectively. While neither of these laws explicitly provides for children’s right to a healthy environment, both contain provisions which reflect aims of intergenerational equity as an element of ecologically sustainable development.

4.14 One of the objects of the EPBC Act is “to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources”.<sup>202</sup> Multiple provisions in the Act require the Minister to take into account the principles of ecologically sustainable development.<sup>203</sup> These principles are enumerated as follows:

- (a) “decision making processes should effectively integrate both long term and short term economic, environmental, social and equitable considerations”;
- (b) “if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation”;
- (c) “the principle of inter generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations” (emphasis added);
- (d) “the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making”;
- (e) “improved valuation, pricing and incentive mechanisms should be promoted”.<sup>204</sup>

4.15 Ecologically sustainable development is also an object of the EPA, which it defines as “[protecting] Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends”.<sup>205</sup> It also establishes a number of ‘standard criteria’ which decision-makers must consider when applying the Act, which includes principles of environmental policy as set out in the Intergovernmental Agreement on the Environment, being the precautionary principle, intergenerational equity and conservation of biological diversity and ecological integrity.<sup>206</sup>

4.16 A range of laws at both the federal and Queensland level echo the EPBC Act and EPA, providing that certain decisions under these Acts are to be made in accordance with principles of ecologically sustainable development or use, which include principles of intergenerational equity. These laws cover matters including water,<sup>205</sup> fisheries,<sup>206</sup> natural heritage and conservation,<sup>207</sup> planning,<sup>208</sup> and pollution.<sup>209</sup>

4.17 The principles of ecologically sustainable development and intergenerational equity have been considered and applied by Australian courts in a number of states. The use by litigants to contest the development or extension of coal mines is particularly notable. In the Queensland case of *New Acland Coal Pty Ltd v Ashman and Chief Executive, Department of Environment and Heritage Protection* (No 4) [2017] QLC 24, a community association challenged the expansion of an open-cut thermal coal mine in the Darling Downs on the basis that the loss of grazing or cropping land and impact on local groundwater supplies would make the land on which the mine was to be situated unproductive or at least less productive for future generations. This argument was successful at first instance, and the Member recommended that the project be refused on grounds of noise and groundwater pollution as well as intergenerational equity.<sup>210</sup> In particular, the Member held that the fact that the extension was inconsistent with the principle of intergenerational equity was sufficient to, in and of itself, warrant rejection.<sup>211</sup>

4.18 This finding was specifically overturned in the subsequent decision of *New Acland Coal Pty Ltd v Smith* (2018) 230 LGERA 88, which held that the principle of intergenerational equity was not determinative and should not be viewed in isolation from other principles of ecologically sustainable development, including the precautionary principle and the principle of conservation of biological diversity and ecological integrity.<sup>212</sup>

4.19 *New Acland Coal v Smith* was subsequently appealed in the matter of *Oakey Coal Action Alliance LLC v New Acland Coal Pty Ltd & Ors* [2021] HCA

2. That appeal was successful, and the High Court referred the initial application in *New Acland Coal v Ashman & Anor* back to the Land Court for a full rehearing.<sup>213</sup> That application was heard throughout late 2021 and a decision of Member Stilgoe in *New Acland Coal Pty Ltd v Oakey Coal Action Alliance Inc. & Ors* (No 2) [2021] QLC 44 recommended that the mining lease applied for by New Acland be granted subject to certain approvals from the Coordinator-General.

4.20 Despite the decision in *New Acland Coal v Smith*, the successful appeal of that decision in the High Court and subsequent rehearing in late 2021, the principle of intergenerational equity has since been applied successfully to challenge other coal projects in Australia. In 2019, the NSW Land and Environment Court refused consent to the development of an open-cut coal mine in the Gloucester Valley, holding that the Scope 3 carbon emissions of the project would impose an unjust burden on future generations:

“There is also inequity in the distribution between current and future generations. The economic and social benefits of the Project will last only for the life of the Project (less than two decades), but the environmental, social and economic burdens of the Project will endure not only for the life of the Project but some will continue for long after. The visual impact of the Project, even after mining rehabilitation, will continue. The natural scenery and landscape will be altered forever, replaced by an artificial topography and landscape. The social impacts on culture and community, especially for the Aboriginal people whose Country has been mined, will persist. A sacred cultural land created by the Ancestors of the Aboriginal people cannot be recreated by mine rehabilitation. As discussed below, the Project will emit greenhouse gases and contribute to climate change, the consequences of which will burden future generations.

<sup>198</sup> *Torres Strait Islander Land Act 1991*, preamble and sections 3 and 7; *Torres Strait Fisheries Act 1984*, section 7.

<sup>199</sup> *Torres Strait Fisheries Act 1984*, Article 1(1)(m); *Torres Strait Islander Land Act 1991*, preamble.

<sup>200</sup> Section 48(3).

<sup>201</sup> Section 48(3).

<sup>202</sup> Section 3(b).

<sup>203</sup> Sections 37B(2), 131(2)(b); 136(2)(a); 146(2)(b); 146F(2).

<sup>204</sup> Section 3A.

<sup>205</sup> *Water Act 2007* (Cth), section 4(2); *Water Act 2000* (Qld), section 7.

<sup>206</sup> *Fisheries Management Act 1991* (Cth), section 3A; *Fisheries Administration Act 1991*, section 6A; *Fisheries Act 1994* (Qld), section 3(5).

<sup>207</sup> *Natural Heritage Trust of Australia Act 1997* (Cth), section 21; *Great Barrier Reef Marine Park Act 1975* (Cth), section 3AA; *Nature Conservation Act 1992* (Qld), section 11; *Marine Parks Act 2004* (Qld), Schedule; *Coastal Protection and Management Act 1995* (Qld), section 16; *Cape York Peninsula Heritage Act 2007* (Qld), section 3.

<sup>208</sup> *Planning Act 2016* (Qld), section 3; *Sustainable Ports Development Act 2015* (Qld), section 2.

<sup>209</sup> *Agricultural and Veterinary Chemicals (Queensland) Act 1994* (Qld), Preamble.

<sup>210</sup> *New Acland Coal Pty Ltd v Ashman and Chief Executive, Department of Environment and Heritage Protection* (No 4) [2017] QLC 24, [14], [1344].

<sup>211</sup> See E Cleary, (2021) ‘Judicial Consideration of Intergenerational Equity in Australian Coal Mine Approval Litigation’ *Environmental and Planning Law Journal*, Vol. 38, p 12.

<sup>212</sup> *New Acland Coal Pty Ltd v Smith* (2018) 230 LGERA 88, [267].

<sup>213</sup> *Oakey Coal Action Alliance LLC v New Acland Coal Pty Ltd & Ors* [2021] HCA 2, [102].



The benefits of the Project are therefore distributed to the current generation but the burdens are distributed to the current as well as future generations (inter-generational inequity)”.<sup>214</sup>

4.21 The NSW Independent Planning Commission also cited the impact of climate change on intergenerational equity in refusing the development application of a coal mine by KEPCO Bylong Australia Pty Ltd.<sup>215</sup> The IPC found that the long-term impacts on groundwater, contribution towards climate change through greenhouse gas emissions, impacts on intergenerational equity and adverse heritage impacts and adverse visual impacts on the Bylong Valley landscape outweighed the potential benefits from allowing the project. This decision was upheld by the NSW Land and Environment Court in December 2020<sup>216</sup> and by the NSW Court of Appeal in August 2021.<sup>217</sup>

4.22 Intergenerational equity is also a ground on which Youth Verdict, an organisation of young people in Queensland, challenged Waratah’s Galilee Coal Mine Project.<sup>218</sup> Relevantly, in closing submissions delivered 14 June 2022, counsel for Youth Verdict emphasised that intergenerational equity is a mandatory criterion requiring the Court to balance the threat of environmental harm to the *entire* environment of Queensland, including its people and communities, when considering the impact of, for instance, the opening of a new coal mine.<sup>219</sup> In its November 2022 decision, the Land Court of Queensland considered that intergenerational equity was a factor which weighed against approving the mining lease and environmental authority applications for the Project:

“The principle of intergenerational equity places responsibility with today’s decision makers to make wise choices for future generations. The children of today and of the future will bear both the more extreme effects of climate change and the burden of adaptation and mitigation in the second half of this century. Their best interests are not served by actions that narrow the options for achieving the Paris Agreement temperature goal”.<sup>220</sup>

**Both the Commonwealth and the State of Queensland address many of the substantive elements of children’s rights to a healthy environment in domestic law and policy, but do not substantially link children’s rights to environmental rights**

4.23 While many of the elements of children’s right to a clean, healthy and sustainable environment are addressed by both Commonwealth and Queensland law, there is no linkage between laws addressing a healthy environment and laws addressing the



ACF Community Griffith Electorate and ACF Community Brisbane South & Logan - market stall *Photo: Roger Ferrett*

rights of the child. This can be contrasted with developments in the Australian Capital Territory (ACT).<sup>221</sup> The ACT is currently the only Australian jurisdiction that is in the process of codifying the right to a healthy environment in the *Human Rights Act 2004* (ACT). The Right to a Healthy Environment Discussion Paper was released on 30 June 2022 and public submissions closed on 31 August 2022. If enacted:

“[a statutory] right to a healthy environment would give rise to certain general obligations that would require immediate action by the Government.<sup>222</sup> In addition, there would be an obligation on the Government to take further positive measures to improve the enjoyment of the right via appropriate means and within available resources. It would also require the Government not to take backwards steps that would reduce protection of the right. These aspects of the right would also be subject to reasonable limitations”.

4.24 On 26 October 2023 the ACT government introduced the *Human Rights (Healthy Environment) Amendment Bill 2023* to provide for statutory recognition of the right to a healthy environment in the *Human Rights Act 2004* (ACT). If passed this will be first legislative recognition of the right in Australia.<sup>223</sup>

4.25 Appendix D contains a detailed analysis of the Commonwealth and Queensland legislative instruments in place across a number of different relevant categories. The categories considered are consistent with those set out in the *Framework Principles on Human Rights and the Environment* contained in the UNSR HRE Report to model substantive elements of the right to a clean, healthy and sustainable environment.<sup>224</sup> These categories were considered relevant as they relate to children’s right to a healthy, clean and sustainable environment and include: air pollution;

climate change; water pollution; chemicals, toxic substances and waste; loss of biodiversity and access to nature; mining; children’s rights to life, health and development; and children’s right to an adequate standard of living (among others). From this analysis, the following key gaps in the legislative protection of children’s rights under Commonwealth and Queensland laws were identified:

- (a) **Climate change:** legislation at the Queensland and federal levels does not yet provide an explicit articulation of the right to a clean, healthy, and sustainable environment.
- (b) **Children’s right to an adequate standard of living:** legislation at the Queensland and federal level does not yet provide a clear linkage between a healthy environment (in the ecological sense) and children’s right to an adequate standard of living.
- (c) **Children’s right to play and recreation:** legislation at the federal level does not clearly articulate this right.
- (d) **Children’s right to express views and have them considered, participatory rights of children on environmental matters, and the protection of children from reprisals for participating or expressing views on environmental matters:** while children in Australia have been active in advocating for climate change action and environmental protection, legislation at both the federal and Queensland levels does not clearly link the rights of children and young people to express their views and participate politically with environmental matters. Special attention should also be paid to the participatory rights of children from overburdened communities.<sup>225</sup> There is no specific legislation providing protection of children from reprisals for expressing these views. Moreover, some legislation (such as Queensland’s *Summary Offences and Other Legislation Amendment Act 2019* (Qld) (**Dangerous Devices Act**)) may

<sup>214</sup> Gloucester Resources Ltd v Minister for Planning (2019) 234 LGERA 257, [415]; see also E Cleary, (2021) ‘Judicial Consideration of Intergenerational Equity in Australian Coal Mine Approval Litigation’ *Environmental and Planning Law Journal*, Vol 38, p 19.

<sup>215</sup> <https://www.ipcnsw.gov.au/resources/pac/media/files/pac/projects/2018/10/bylong-coal-project/determination/bylong-coal-project-ssd-6367--statement-of-reasons-for-decision.pdf>.

<sup>216</sup> *KEPCO Bylong Australia Pty Ltd v Independent Planning Commission* (No 2) [2020] NSWLEC 179.

<sup>217</sup> *KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc* [2021] NSWCA 216.

<sup>218</sup> <https://www.youthverdict.org.au/our-objection>; see *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21 at [108]-[124], [1223], [1240], [1400], [1536], [1588]-[1603], [1651], [1841]-[1843].

<sup>219</sup> Closing Written Submissions of Youth Verdict Ltd & The Brimblebox Alliance, available at: [https://www.youthverdict.org.au/\\_files/ugd/b4b563\\_9d62930d4d5847ed93eaa0abeb3c76bf.pdf](https://www.youthverdict.org.au/_files/ugd/b4b563_9d62930d4d5847ed93eaa0abeb3c76bf.pdf).

<sup>220</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21, at [1603].

<sup>221</sup> See also s 21(1) of the *Environment Protection Act 2017* (Vic), which lists as a ‘principle of equity’ that ‘all people are entitled to live in a safe and healthy environment irrespective of their personal attributes or location’. Section 11 says that in administering the Act and the regulations, regard should be given to the principles of environment protection. Decision-makers are also required to take the principles of environment protection into account when making certain decisions under the Act (see note to section 11).

<sup>222</sup> Some stakeholders considered that the right to a healthy environment should not be defined as an economic, cultural and social right that is subject to progressive realisation (nor a civil and political right which are subject to negative obligations) as there were concerns that this may create ambiguity in implementation.

<sup>223</sup> <https://www.abc.net.au/news/2023-10-26/canberra-proposed-bill-legislating-right-to-healthy-environment/103022148>.

<sup>224</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex, principle 7.

<sup>225</sup> See clause 22(d) of the *Mauntricht Principles* regarding the creation of institutions to provide for children’s participatory rights.



restrict rights of protest for climate activists through the imposition of criminal penalties. Although the scope of this report was confined to Commonwealth and Queensland law, notably, the NSW, South Australian and Tasmanian parliaments have recently enacted anti-protest legislation.<sup>226</sup> This indicates a general trend towards harsher penalties across Australian jurisdictions, which will have negative implications on children’s rights to expression and participation.

- (e) *Effective remedies for children’s rights violations*: a 2019 report by the AHRC found that “[t]he legal protections of children’s rights in Australia are not comprehensive and do not provide an effective remedy for violations”.<sup>227</sup> While remedies exist at the federal and Queensland level for breach of environmental and child protection laws, they do not yet provide specific remedies for breach of children’s right to a healthy environment.
- (f) *State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects and policies*: the Queensland *Human Rights Act* requires public entities in Queensland to make decisions in a manner consistent with human rights. However, there is currently no general obligation at either the state or federal level to conduct an impact assessment which specifically focuses on children’s rights.
- (g) *Binding obligations on businesses to comply with the Guiding Principles; CRBP; Recommendations of the Committee on the Rights of the Child in its general comment No. 16*: there are currently no binding obligations on businesses to comply with these principles or recommendations. However, European proposals for human rights and environmental due diligence laws provide an example of how the Guiding Principles might inform domestic legislation to require companies to undertake human rights as well as environmental due diligence (see paragraphs 6.28 to 6.33 below for further detail).

The Commonwealth and the State of Queensland implement and enforce environmental law and policy, but more needs to be done to ensure the effectiveness of these laws and to implement children’s right to a healthy environment

- 4.26 Children’s right to a healthy environment is not clearly articulated in either Commonwealth or Queensland legislation. Therefore, it is difficult to establish implementation and enforcement of this right.
- 4.27 Implementation and enforcement of environmental laws is shared between the Commonwealth Department of Climate Change, Energy, the Environment and Water (DCCEEW) and state authorities. In Queensland, the relevant authorities are the Department of Environment and Science and the Department of State Development, Manufacturing, Infrastructure and Planning.<sup>228</sup> Environmental assessments are undertaken cooperatively by state and federal agencies and approvals granted under both Queensland and federal law.<sup>229</sup>
- 4.28 DCCEEW monitors compliance with legislation. Where DCCEEW receives reports or intelligence indicating a possible breach, it can conduct inquiries and investigations. Where a breach is identified, the EPBC Act provides for penalties including directed environmental audits, infringement notices, civil and criminal prosecution, remediation orders or determination, or enforceable undertakings.
- 4.29 Under the Queensland EPA, persons or corporations have a duty to not carry out activities that may cause environmental harm without taking mitigating measures, as well as to notify the relevant authority of any harm

caused. Where environmental harm is caused or suspected, the administering authority (which may be the Department of Environment and Science, Department of Agriculture and Fisheries or a local government authority) may take action including inspections, environmental evaluation, environmental protection orders, clean-up notices, penalty infringement notices, cost recovery or (in serious cases) prosecution.<sup>230</sup>

- 4.30 Australian courts have considered children’s environmental rights under federal and Queensland law in the cases of *Youth Verdict v Waratah Coal* (in relation to children’s rights under Queensland’s *Human Rights Act*) and *Sharma v Minister for the Environment* (in relation to a duty of care applicable to the Minister’s exercise of her powers under the EPBC Act). The Sharma First Instance Judgment was consistent with, though did not establish, an independent children’s right to a healthy environment.<sup>231</sup> Aside from that first instance decision, which was overturned on appeal, the courts have not established, implemented or enforced an independent children’s right to a healthy environment.
- 4.31 Proposals for reform of environmental legislation in Australia have noted that the EPBC Act covers a limited list of specific matters of “national environmental significance”: world heritage properties; national heritage places; wetlands of international importance; listed threatened species and ecological communities; listed migratory species; Commonwealth marine areas; the Great Barrier Reef Marine Park; nuclear actions (such as uranium mines); and water resources in relation to large coal mining and coal seam gas developments. There have been proposals to expand the remit of the EPBC Act to climate change, land clearing, air pollution, land clearing, ecosystems and protected areas.<sup>232</sup> Critiques of the EPBC Act have also noted that the Act has not stopped a continuing decline

in biodiversity, possibly as a result of factors including ‘delays in listing threatened species and communities, poor implementation of recovery plans, issues with environmental offsets, inadequate protection of critical habitat and high levels of Ministerial discretion’.<sup>233</sup>

- 4.32 Reform proposals for the *National Environment Protection Council Act 1994* (Cth) (**NEPC Act**) framework have flagged that National Environment Protection Measures made under this legislation have failed to keep pace with international regimes and do not include sanctions for non-compliance.<sup>234</sup>

Access to justice and effective remedies

Barriers faced by children in Australia when accessing formal justice mechanisms

- 4.33 As summarised in the OHCHR’s ‘Access to justice for children’ report in 2013 (**Access to Justice for Children Report**): “Access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights”.<sup>235</sup> Despite the criticality of access to justice for the enjoyment of human rights, children and young people have traditionally faced significant barriers to accessing formal justice mechanisms due to their special and dependent status under many legal systems.<sup>236</sup> Some of the most critical barriers summarised by the OHCHR in its Access to Justice for Children Report include the following:
  - (a) the complexity of justice systems makes them difficult for children to understand , as children are often unaware of their rights and the availability of legal services, while legislation and procedures

<sup>226</sup> *Roads and Crimes Legislation Amendment Act 2022* (NSW); *Police Offences Amendment (Workplace Protection) Bill 2022* (Tas); see also *Summary Offences (Obstruction of Public Places) Amendment Bill 2023* (SA).

<sup>227</sup> AHRC, *Children’s Rights Report 2019*, <https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>, page 41.

<sup>228</sup> <https://www.awe.gov.au/environment/epbc/state-federal-government-working-together#queensland>.

<sup>229</sup> <https://www.awe.gov.au/environment/epbc/state-federal-government-working-together#queensland>.

<sup>230</sup> <https://environment.des.qld.gov.au/?a=88912>.

<sup>231</sup> See [4.2]-[4.3] above.

<sup>232</sup> See article by Sophie Power published in the Parliamentary Library Briefing Book: Key issues for the 46th Parliament (July 2019): [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook46p/EnvironmentalLaw](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/EnvironmentalLaw); Department of Climate Change, Energy, the Environment and Water, *Nature Positive Plan: better for the environment, better for business* (Report, December 2022)<<https://www.dcceew.gov.au/sites/default/files/documents/nature-positive-plan.pdf>>; Professor Graeme Samuel AC, *Independent Review of the EPBC Act* (Final Report, October 2022)<<https://epbcactreview.environment.gov.au/sites/default/files/2021-01/EPBC%20Act%20Review%20Final%20Report%20October%202020.pdf>>.

<sup>233</sup> Ibid.

<sup>234</sup> Article by Sophie Power published in the Parliamentary Library Briefing Book: Key issues for the 46th Parliament (July 2019): [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook46p/EnvironmentalLaw](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook46p/EnvironmentalLaw).

<sup>235</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 3 [3].

<sup>236</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 6 [13].



- concerning the treatment and participation of children in legal proceedings are often ill adapted to children’s rights and specific needs;<sup>237</sup>

(b)

the justice system can be intimidating for children, who may often fear reprisals or otherwise lack trust and confidence that their complaints will be taken seriously and fairly assessed;<sup>238</sup>

(c)

adults are often gatekeepers for children’s access to justice. Parents or guardians may themselves be unaware of children’s rights or know how to support their children. Likewise, in many legal systems, children do not have independent capacity, or ‘standing’, to act in proceedings without their parents or legal representatives, which can potentially create conflicts of interests and result in the adult representative not acting in the best interests of the child;<sup>239</sup> and

(d)

these barriers to accessing formal justice processes are exacerbated for children belonging to particularly vulnerable groups, such as children in alternative care, children with disabilities, children living in poverty, indigenous children, girls and other groups that are exposed to additional forms of identity-based stigmatisation or discrimination.<sup>240</sup>
- 4.34

The CRC Committee has recognised additional structural challenges to children accessing justice in cases involving business entities.<sup>241</sup> These difficulties are particularly acute for children
- belonging to marginalised and disadvantaged groups, as well as younger children.<sup>242</sup> More generally, the CRC Committee has noted in its General Comment No. 5 on general measures of implementation of the CRC, that for the rights under the Convention to have meaning, effective remedies must be available to address violations.<sup>243</sup> Given the “*special and dependent status*” of children, the CRC Committee has called on States to “*give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives*”.<sup>244</sup> Likewise, where rights are found to have been breached, “*there should be appropriate reparation, including compensation*”.<sup>245</sup>

4.35

Given these unique barriers, the Access to Justice for Children Report calls upon States to ensure that their national legal systems have the capacity to accept and address complaints from or on behalf of children, while fully respecting, protecting and ensuring their rights in line with a child-sensitive approach.<sup>246</sup> Accordingly, the OHCHR defines a child-sensitive approach to access to justice as one that: “*requires the legal empowerment of all children. They should be enabled to access relevant information and to effective remedies to claim their rights, including through legal and other services, child rights education, counselling or advice, and support from knowledgeable adults. Moreover, access to justice for children requires taking into account children’s evolving maturity and understanding when exercising their rights*”.<sup>247</sup>
- 4.36

In an Australian context, the Law Council of Australia in 2017 undertook a comprehensive review into the state of access to justice in Australia for people experiencing significant disadvantage, including children and young people. The culmination of this review, the Justice Project report published in 2018, found that some of the key barriers experienced by children in Australia when accessing the justice system include the following:

(a)

the complexity of the justice system and its adversarial nature makes it difficult for children to understand, navigate and equally participate in the system. Likewise, adult perceptions of children’s capabilities can work against the interests of children by either underestimating their capability and thereby denying them the right to be heard, or alternatively, assuming that children have equal capability to adults;<sup>248</sup>

(b)

children often experience age-related communication barriers in court as their social communication skills, vocabulary and language skills are not as developed as adults;<sup>249</sup>

(c)

persons aged under 18 years have limited capacity to participate in the legal system without an adult or legal representative, which in some cases can lead to conflicts of interest between the child and means that the adult does not act in the best interests of the child. Likewise, the dependency of children can create financial barriers, denying access to private legal assistance;<sup>250</sup>

(d)

in the civil justice system, many children may experience psychological barriers to accessing justice, as they view civil court processes as complicated, intimidating, expensive, overwhelming and not a realistic option to resolve their legal issues;<sup>251</sup> and

(e)

there is a need for specialist legal services and specialist courts for children and young people.<sup>252</sup>

4.37

Although now 26 years old, the Australian Law Reform Commission’s (ALRC) seminal 1997 report entitled ‘*Seen and Heard: Priority for Children in the Legal Process*’<sup>253</sup> (**Seen and Heard Report**) remains the most comprehensive examinations of young people and the legal system undertaken in Australia to date.<sup>254</sup> The Seen and Heard Report detailed the barriers to children accessing justice in Australia in respect of civil remedies, including the following which arguably remain relevant today:

(a)

minimal grants for legal aid being provided to children for civil matters;<sup>255</sup>

(b)

assumptions about children’s incapacity mean that some children are by definition ineligible to participate in some legal processes. For example, there are evidentiary rules concerning whether children are competent to give evidence and whether their evidence must be independently corroborated;<sup>256</sup>

(c)

legislation does not provide specifically that someone taking civil action on behalf of a child should conduct the litigation in the best interests of the child and does not give guidance on how to determine what the child’s best interests are in civil matters;<sup>257</sup>

(d)

civil proceedings initiated by a child without the intervention of a guardian *ad litem* (formerly called the ‘next friend’) may be dismissed by the court and the solicitor on the record ordered to pay costs. However, these proceedings may continue where there is no objection from another party. This liability for costs is a disincentive for any representative whom a child may consult to represent him or her directly;<sup>258</sup> and

<sup>237</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 6 [14].

<sup>238</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 7 [15].

<sup>239</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 7 [16].

<sup>240</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 7 [17].

<sup>241</sup> See: General Comment No 16 (n 108) 18[66]-[7]: These barriers include that: (a) cases involving business are often resolved through out-of-court settlements and in the absence of a developed body of case law; (b) in jurisdictions where case law has persuasive or precedential value, children and their families may be less likely to litigate against private enterprises due to uncertainties surrounding the outcome of such actions; (c) there are significant power, resource and information asymmetries between children and business, including the prohibitive costs involved in litigation against companies and difficulties securing legal representation for such actions; (d) obtaining remedies for abuses that occur in the context of a business’ global operations can be particularly fraught, including where subsidiaries or other related companies lack insurance or have limited liability; and (e) the use of procedural hurdles in foreign jurisdictions to defeat extraterritorial claims.

<sup>242</sup> Committee on the Rights of the Child, General Comment No 12: The right of the child to be heard, UN Doc CRC/C/GC/12 (20 July 2009) 6[4].

<sup>243</sup> Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 43, and 44, para.6)*, 34<sup>th</sup> sess, UN Doc CRC/GC/2003/5 (27 November 2003) 7 [24]<<https://www.refworld.org/docid/4538834f11.html>>.

<sup>244</sup> Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 43, and 44, para.6)*, 34<sup>th</sup> sess, UN Doc CRC/GC/2003/5 (27 November 2003) 7 [24]<<https://www.refworld.org/docid/4538834f11.html>>.

<sup>245</sup> Committee on the Rights of the Child, *General Comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 43, and 44, para.6)*, 34<sup>th</sup> sess, UN Doc CRC/GC/2003/5 (27 November 2003) 7 [24]<<https://www.refworld.org/docid/4538834f11.html>>.

<sup>246</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 8 [21].

<sup>247</sup> Human Rights Council, *Access to justice for children: Report of the United Nations High Commissioner for Human Rights*, 25<sup>th</sup> sess, Agenda Items 2 and 3, UN Doc A/HRC/25/35 (16 December 2013) 4 [5].

<sup>248</sup> Law Council of Australia, *The Justice Project Final Report – Part 1: Children and Young People* (Report, August 2018) 19-<<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf>>.

<sup>249</sup> Law Council of Australia, *The Justice Project Final Report – Part 1: Children and Young People* (Report, August 2018) 20-<<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf>>.

<sup>250</sup> Law Council of Australia, *The Justice Project Final Report – Part 1: Children and Young People* (Report, August 2018) 23-24-<<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf>>.

<sup>251</sup> Law Council of Australia, *The Justice Project Final Report – Part 1: Children and Young People* (Report, August 2018) 25-<<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf>>.

<sup>252</sup> Law Council of Australia, *The Justice Project Final Report – Part 1: Children and Young People* (Report, August 2018) 27-<<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Children%20and%20Young%20People%20%28Part%201%29.pdf>>.

<sup>253</sup> See: <https://www.alrc.gov.au/wp-content/uploads/2019/08/ALRC84.pdf>.

<sup>254</sup> See: <https://humanrights.gov.au/our-work/seen-and-heard-priority-children-legal-process-1997>.

<sup>255</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (Report No 84, 30 September 1997) [2.136]-[2.143].

<sup>256</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (Report No 84, 30 September 1997) [4.5].

<sup>257</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (Report No 84, 30 September 1997) [13.12].

<sup>258</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (Report No 84, 30 September 1997) [13.16].

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- (e) some young people may have a cause of action they wish to pursue independently and many are sufficiently mature to do so. Many young people live independently: while they may have causes of action, they do not necessarily have any suitable family member to act as a guardian *ad litem* or ‘next friend’.<sup>259</sup>

4.38 Six years later, in 2003, the NSW Law and Justice Foundation published a public consultation report on Access to Justice and Legal Needs.<sup>260</sup> This report identified the following general barriers to access to justice for children:

(a) delays and lengthy proceedings;<sup>261</sup>

(b) *inappropriate* legal procedures, cross examination and rules of evidence;<sup>262</sup>

(c) *stereotypical* views of young people held by some court officers;<sup>263</sup>

(d) lack of skills of magistrates in dealing with children and young people;<sup>264</sup>

(e) lack of information available to young people about what they can expect when they go to court;<sup>265</sup>

(f) lack of legal capacity to initiate proceedings;<sup>266</sup>

(g) lack of awareness of specialist tribunals;<sup>267</sup>

(h) power imbalances in mediation and conciliation processes;<sup>268</sup>

(i) lack of trust and confidence in community organisations;<sup>269</sup>

(j) lack of transport to access services;<sup>270</sup>

(k) lack of quality and consistency of service in community organisations;<sup>271</sup>

(l) lack of trust and confidence in government authorities;<sup>272</sup>

(m) lack of knowledge of complaints systems and complaint handling bodies;<sup>273</sup> and

(n) fear of retribution if complaints are made.<sup>274</sup>

4.39 Another report worth noting is the 2012 Legal Australia-wide Survey Report.<sup>275</sup> According to National Legal Aid, it is the largest survey of legal needs ever conducted in the world that explores the obstacles for access to justice.<sup>276</sup>

The report highlights that socioeconomically disadvantaged groups – including single parents – have heightened vulnerability when it comes to
- accessing justice.<sup>277</sup> This has broader implications for their children seeking to initiate litigation, since children do not have legal standing.
- 4.40 More recently, the Law Council of Australia published a position paper in November 2021 entitled ‘Addressing the legal needs of the missing middle’.<sup>278</sup> While this report does not specifically consider children’s access to justice, it does include children and young people within a group of individuals who do not meet eligibility criteria for publicly funded legal services yet lack the resources to afford a private lawyer’s assistance for all or part of their legal matter.<sup>279</sup> Amongst other themes, the issue of prohibitive costs and legal complexity emerged as key areas giving rise to unmet legal needs for this group.<sup>280</sup>
- ## Access to independent complaints mechanisms
- 4.41 In addition to the general barriers noted above, the mechanisms available to Australian children and young people to raise complaints about violations of their rights are somewhat limited. As noted above, at an international level, because Australia is not a signatory to the Third Optional Protocol, Australian children and young people are unable to submit complaints directly to the CRC Committee to adjudicate alleged violations of their rights under the CRC. Instead, their options are limited to domestic complaints mechanisms.
- 4.42 The CRC Committee has noted that all States need an independent human rights institution with responsibility for promoting and protecting
- children’s rights,<sup>281</sup> and that such institutions should have the power to consider individual complaints and petitions, and carry out investigations, including those submitted on behalf of or directly by children.<sup>282</sup> The Committee further noted that NHRIs, “*also have a duty to seek to ensure that children have effective remedies – independent advice, advocacy and complaints procedures – for any breaches of their rights*”.<sup>283</sup>
- 4.43 At a national level, the AHRC receives and investigates complaints of discrimination, harassment and bullying based on a person’s sex, disability, race and/or age.<sup>284</sup> The AHRC also has general powers to inquire into any act or practice that may be contrary to any ‘human right’ (including rights and freedoms recognised in the ICCPR, or declared by any relevant international instrument)<sup>285</sup> if it receives a complaint alleging a human rights violation or if it appears desirable to the Commission to do so.<sup>286</sup> However, such powers are not as expansive as recommended by the CRC Committee, with the focus of complaints to the AHRC concerning more anti-discrimination protections, rather than investigations of alleged violations of Australia’s obligations under the CRC and other international human rights treaties.
- 4.44 While the AHRC is an independent agency, it is not a court and therefore the conciliation process is not like a court hearing.<sup>287</sup> Moreover, while the AHRC Act provides the statutory basis for the role of the National Children’s Commissioner,<sup>288</sup> the functions of the Commissioner do not extend to investigating any complaints of alleged children’s rights violations (whether under the CRC specifically, or other domestic and international
- <sup>259</sup> Australian Law Reform Commission, *Seen and heard: priority for children in the legal process* (Report No 84, 30 September 1997) [13.17].

<sup>260</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>261</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii. <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>262</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>263</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>264</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>265</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>266</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>267</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>268</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxvii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>269</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxxiii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>270</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxxiii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>271</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxxiii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>272</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxxiii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>273</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxxiii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>274</sup> Law and Justice Foundation, *Access to Justice and Legal Needs: A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW* (Report, August 2003) xxxiii <[http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/\\$file/public\\_consultations\\_report.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/EA0F86973A9B9F35CA257060007D4EA2/$file/public_consultations_report.pdf)>.

<sup>275</sup> Law and Justice Foundation, *Legal Australia-wide survey: Legal Needs in Australia* (Report, August 2012)<<https://www.nationallegalaid.org/resources/legal-australia-wide-survey/>>.

<sup>276</sup> Law and Justice Foundation, *Legal Australia-wide survey: Legal Needs in Australia* (Report, August 2012)<<https://www.nationallegalaid.org/resources/legal-australia-wide-survey/>>.
- <sup>277</sup> Law and Justice Foundation, *Legal Australia-wide survey: Legal Needs in Australia* (Report, August 2012)<<https://www.nationallegalaid.org/resources/legal-australia-wide-survey/>>.

<sup>278</sup> Law Council of Australia, *Addressing the legal needs of the missing middle* (Research Paper, November 2021)<<https://www.lawcouncil.asn.au/publicassets/dbfb44f8-7558-ec11-9444-005056be13b5/20211130-RP-Addressingthelegalneedsofthemissingmiddle.pdf>>.

<sup>279</sup> Law Council of Australia, *Addressing the legal needs of the missing middle* (Research Paper, November 2021) 6 [21]<<https://www.lawcouncil.asn.au/publicassets/dbfb44f8-7558-ec11-9444-005056be13b5/20211130-RP-Addressingthelegalneedsofthemissingmiddle.pdf>>.

<sup>280</sup> Law Council of Australia, *Addressing the legal needs of the missing middle* (Research Paper, November 2021) 17 [71]<<https://www.lawcouncil.asn.au/publicassets/dbfb44f8-7558-ec11-9444-005056be13b5/20211130-RP-Addressingthelegalneedsofthemissingmiddle.pdf>>.

<sup>281</sup> Committee on the Rights of the Child, *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, UN Doc CRC/GC/2002/2 (15 November 2002) (‘General Comment No 2’) 2 [7].

<sup>282</sup> Committee on the Rights of the Child, *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, UN Doc CRC/GC/2002/2 (15 November 2002) (‘General Comment No 2’) 3 [13].

<sup>283</sup> Committee on the Rights of the Child, *General Comment No. 2 (2002): The role of independent national human rights institutions in the promotion and protection of the rights of the child*, UN Doc CRC/GC/2002/2 (15 November 2002) (‘General Comment No 2’) 4 [13].

<sup>284</sup> See: <https://humanrights.gov.au/our-work/complaint-information-service/information-people-making-complaints>.

<sup>285</sup> *Australian Human Rights Commission Act 1986* (Cth) s 3.

<sup>286</sup> *Australian Human Rights Commission Act 1986* (Cth) ss 11(f), 20(1).

<sup>287</sup> See: <https://humanrights.gov.au/complaints/information-people-making-complaints>.

<sup>288</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46MA.
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- legal instruments more generally).<sup>289</sup> Rather, the functions of the National Children’s Commissioner enumerated in the Act are confined to: (i) promoting discussion and awareness of matters relating to the human rights of children in Australia; (ii) undertaking research, educational or other programs for the purpose of promoting respect for the human rights of children in Australia; and (iii) examining existing and proposed Commonwealth laws for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia.<sup>290</sup>
- 4.45 In the absence of national human rights legislation, complaints to the AHRC are mainly concerned with addressing unlawful discrimination under applicable anti-discrimination legislation, rather than the investigation and adjudication of human rights abuses, including violations under CRC and other human rights instruments to which Australia is a party. In the absence of direct recourse to the CRC Committee pursuant to the Third Optional Protocol, children and young people in Australia have no equivalent complaints mechanism at a national level through the AHRC or the National Children’s Commissioner, to pursue redress for violations of their rights enshrined in the CRC.
- 4.46 While the current legislative framework at the Commonwealth level provides fairly limited recourse for children and young people to make complaints to the AHRC or National Children’s Commissioner regarding alleged violations of their rights under the CRC, that is not to limit the potential for such complaints mechanisms to be established in future. As discussed at paragraphs 3.29 to 3.30 above, the Australian Bill of Rights Bill 2019 proposed the codification of a national bill of rights, which includes express protections for the rights of children as well as environmental rights.

The draft legislation also proposes that the AHRC be granted additional powers and functions to, among other things, inquire into any act or practice that may infringe a right of freedom set out in the bill of rights,<sup>291</sup> and that the Commission be able to receive complaints alleging that any act or practice infringes a right or freedom set out in the draft bill of rights.<sup>292</sup>

- 4.47 These proposed complaints and inquiry powers under the Australian Bill of Rights Bill 2019 are similar to the powers of the QHRC under the *Human Rights Act*. Section 61 of the *Human Rights Act* empowers the QHRC to deal with human rights complaints in relation to any contravention of section 58(1) of the Act by a public entity in relation to an act or decision of that entity.<sup>293</sup> Section 58(1) makes it illegal for a public entity to act or make a decision in a way that is incompatible with human rights, or otherwise fail to given proper consideration to human rights when making a decision.<sup>294</sup> ‘Public entity’ is defined under section 9 of the *Human Rights Act* and includes a Queensland government department, agency or other ‘government entity’;<sup>295</sup> a public service employee; the Queensland Police Service; a Minister; and local government entities.<sup>296</sup>

- 4.48 Human rights complaints to the QHRC under the *Human Rights Act* are confined to those rights defined under Part 2 of the Act. Relevant rights include:

- (a) the right to life;<sup>297</sup>
- (b) the right of every child, without discrimination, to the protection that is needed by the child, and is in the child’s best interests, because of being a child;<sup>298</sup>

- (c) the right of all persons with a particular, cultural, religious, racial or linguistic background, to enjoy their culture, to declare and practise their religion, and to use their language;<sup>299</sup> and
- (d) the rights of Aboriginal peoples and Torres Strait Islander peoples to enjoy their distinct cultural rights.<sup>300</sup>

- 4.49 There are no age restrictions for submitting a human rights complaint under the *Human Rights Act*.<sup>301</sup>

- 4.50 Besides the QHRC, there are also NGOs in Queensland that provide assistance to children seeking redress for alleged violations of their rights. A notable example is the Youth Advocacy Centre, which offers free legal services, youth support and family support assistance and services to young people.<sup>302</sup> It also provides information on children’s rights and resources for exploring how to enforce these rights.<sup>303</sup>

- 4.51 Similar services and resources are available through Queensland Community Legal Centres, the Aboriginal & Torres Strait Islander Legal Service, YFS Legal, Legal Aid Queensland, and Hub Community Legal. However, these services and resources are often under-resourced with rigorous needs-based criteria for support.

## Priority issues for further consideration

- 4.52 National progress in recognising children’s right to a healthy, clean and sustainable environment can be fostered both by strengthening Australia’s international commitments and its engagement in processes to develop international norms, and by reviews of and reforms to domestic legislation.

### Australia’s international commitments and engagement in international normative developments

- 4.53 As set out above, Australia has not yet shown significant involvement in the international forums which have sought to define and recognise children’s right to a clean, healthy and sustainable environment. National protection of this right would be strengthened by ratifying international commitments relevant to children’s right to a healthy environment, as well as more proactive participation by Australian representatives in international bodies relating to children’s rights, the environment and climate change. Specific actions that Australia could take include:

- (a) Ratifying the Third Optional Protocol 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.
- (b) Signing up to the Intergovernmental Declaration on Children, Youth and Climate Action and consistent with that Declaration, commit to (among other aims):
  - (i) Advocating for global recognition of children’s inalienable right to a healthy environment;
  - (ii) Enhancing efforts to respect, promote and consider the rights of children and young people in the implementation of the Paris Agreement at all levels; and
  - (iii) Enhancing the meaningful participation of children and youth in climate change processes;
- (c) In relation to the further development of a multilateral treaty on business and human rights:

<sup>289</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46MB.

<sup>290</sup> *Australian Human Rights Commission Act 1986* (Cth) s 46MB(1).

<sup>291</sup> Australian Bill of Rights Bill 2019 (Cth) s 13(a).

<sup>292</sup> Australian Bill of Rights Bill 2019 (Cth) s 15.

<sup>293</sup> *Human Rights Act 2019* (Qld) ss 61(a), 63.

<sup>294</sup> *Human Rights Act 2019* (Qld) s 58(1).

<sup>295</sup> *Human Rights Act 2019* (Qld) s 9.

<sup>296</sup> *Human Rights Act 2019* (Qld) s 9.

<sup>297</sup> *Human Rights Act 2019* (Qld) s 16.

<sup>298</sup> *Human Rights Act 2019* (Qld) s 26.

<sup>299</sup> *Human Rights Act 2019* (Qld) s 27.

<sup>300</sup> *Human Rights Act 2019* (Qld) s 28.

<sup>301</sup> *Human Rights Act 2019* (Qld) s 64.

<sup>302</sup> See: <https://www.yac.net.au/>.

<sup>303</sup> See, eg: <https://www.yac.net.au/legal-info-2/>.



<ul style="list-style-type: none"> <li>(i) attending future sessions of the open-ended intergovernmental working group with a mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights; and</li> <li>(ii) participating in the negotiation of a draft Business and Human Rights Treaty, with a view to Australia ratifying this instrument in the future; and</li> <li>(d) integrating a climate change-based approach to periodic national reporting to UN treaty bodies and related entities including the CRC Committee, ICESCR Committee, CEDAW Committee, CRPD Committee, Human Rights Committee, and through the Universal Periodic Review process to the HRC.</li> </ul>	<ul style="list-style-type: none"> <li>healthy environment and to consider the right when exercising their functions under federal legislation that affects human rights and environmental legislation;</li> <li>(c) including a standalone right to a healthy environment in the <i>Human Rights Act</i>;</li> <li>(d) strengthening Queensland and federal legislative measures corresponding to the following aspects of children’s right to a healthy environment: <ul style="list-style-type: none"> <li>(i) Climate change;</li> <li>(ii) Children’s rights to an adequate standard of living;</li> <li>(iii) Children’s rights to play and recreation;</li> <li>(iv) Children’s rights to express views and have them considered;</li> <li>(v) Participatory rights of children on environmental matters;</li> <li>(vi) Protection of children from reprisals for participating or expressing views on environmental matters;</li> <li>(vii) Effective remedies for children’s rights violations;</li> <li>(viii) State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects;</li> <li>(ix) State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed policies;</li> <li>(x) Right to a safe and enabling environment and other related protest rights; and</li> <li>(xi) Binding obligations on businesses to comply with the: <ul style="list-style-type: none"> <li>(A) Guiding Principles;</li> <li>(B) Children’s Rights and Business Principles (<b>CRBP</b>);</li> <li>(C) Recommendations of the CRC Committee in its General Comment No. 16;</li> <li>(D) Recommendations of the General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change (General Comment No. 26).</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>(e) develop and implement a NAP on Business and Human Rights;</li> <li>(f) review and, if necessary, revise criminal laws and sentencing guidelines related to or concerning non-violent protest activities, including offences introduced by the <i>Dangerous Devices Act</i>;</li> <li>(g) monitor the development in the European Union of mandatory environmental and human rights due diligence requirements for large entities and consider implementing similar legal requirements;</li> <li>(h) introduce extraterritorial liability for violations of environmental and human rights (including children’s rights) committed by Australian companies overseas, and establish mechanisms to monitor, investigate and redress these violations. This will also involve cooperation with those jurisdictions in which Australian companies operate;</li> <li>(i) repeal Australian Charities and Not-for-profits Commission Governance Standard 3 in line with recommendations from the 2018 ACNC Legislative Review, to provide greater capacity of child focused organisations to undertake charitable advocacy on environmental and human rights issues; and</li> <li>(j) remove elements of the newly legislated <i>Electoral Legislation Amendment (Political Campaigners) Act 2021</i> (Cth) that act as a barrier to participation of independent community voices in election debates, including child focused organisations.</li> <li>(k) Amend the EPBC Act or equivalent (if by way of new legislation) to include or modify the following elements: <ul style="list-style-type: none"> <li>(i) Integrate considerations of children’s rights more clearly into the referral and assessment process under the EPBC Act by strengthening the principle of intergenerational equity to specifically include the climate consequences of actions. This may also include strengthening the principle as a relevant consideration in the context of projects and developments with significant Scope 3 emissions.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>(ii) Create an independent Environment Protection Agency. The EPA must be bound to apply the principle of intergenerational equity in its processes and decision making. Consideration should be given to how children’s and young person’s perspectives can be incorporated substantively into the new Agency. The EPA should be subject to a statutory duty to enforce the legislation.</li> <li>(iii) The objects of the legislation should explicitly address the impact of climate change on matters of national environmental significance (MNES) and the need to reduce emissions to protect MNES. These objects should be mandatory considerations for all aspects of the administration of the Act.</li> <li>(iv) Require full disclosure of all emissions through the life cycle of projects. This includes emissions emitted inside Australia and from fossil fuels exported from Australia.</li> <li>(v) Include a new Matter of Environmental Significance 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.</li> <li>(vi) Include in the legislation or the relevant national standard the need to identify and protect habitat necessary for species survival and recovery as global temperatures increase.</li> <li>(vii) Include in the legislation or the relevant national standard a stipulation that carbon offsetting cannot be considered in deciding whether to approve or refuse fossil fuel extraction and processing actions.</li> <li>(viii) Provide clear, up front protection for important environmental values such as threatened species and their habitat by using “no-go zones” and other measures to designate areas where development will not be permitted.</li> </ul>
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<sup>304</sup> See also an expression of the right to a healthy environment in the AHRC’s December 2022 paper, “Position paper: A Human Rights Act for Australia”, available at<[https://humanrights.gov.au/sites/default/files/free\\_equal\\_hra\\_2022\\_-\\_main\\_report\\_rgb\\_0\\_0.pdf](https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf)>.

<sup>305</sup> Australian Human Rights Commission, *Position Paper: A Human Rights Act for Australia* (7 March 2023), page 115, accessed at <https://humanrights.gov.au/human-rights-act-for-australia>.





- (ix) Implement through legislation or a national standard that a provision that ensures the relevant decision-maker may not approve an actions where that will have unacceptable impacts on MNES.
- (x) Implement a national standard that ends the destruction of primary, remnant, old-growth or high-conservation value forests and bushland.
- (xi) Create a national standard for offsetting biodiversity loss which ensures that offsets are a genuine last resort, are permanent, secure and additional.
- (xii) Retain the long standing and prudent national prohibition on nuclear power in Australia. Retain the current requirement for assessment and approval of the impact of other nuclear action on the environment under national environmental law.
- (xiii) Recognise 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.
- (xiv) Create a system for merits review of approval/refusal decisions allowing third parties to challenge decisions on the facts and policy rather than just administrative process.
- (xv) Create third party enforcement rights so members of the public have an accessible and low-cost jurisdiction to approach to enforce the law in the face of breaches of the legislation.
- (xvi) The objects of the legislation should be amended to recognise Aboriginal and Torres Strait Islander peoples' knowledge of Country, and stewardship of its landscapes, ecosystems, plants and animals; to foster the involvement of these First Nations Australians in land management; and expand the ongoing and consensual use of traditional ecological knowledge across Australia's landscapes.
- (xvii) The right to a clean, healthy and sustainable environment is best located in a standalone Ffederal 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 EPBC Act or equivalent.

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## 5. Australian children's education, engagement and participation in environmental affairs

### Australia has educational and procedural duties in relation to children's right to a healthy environment

- 5.1 Under article 29 of the CRC States Parties agree that the education of the child shall be directed to, among other matters, the development of respect for the natural environment. Articles 12 and 13 provide for children's views to be heard and taken seriously on all matters affecting them (including in any judicial and administrative proceedings). Article 15 provides for children's right to freedom of association and peaceful assembly.
- 5.2 In a resolution adopted by the HRC on 7 October 2020, the HRC called upon states to implement educational and procedural duties in relation to children's right to a healthy environment in order to fulfil their duties under the CRC.<sup>306</sup> In particular, this resolution urged the creation of *"opportunities for children's inclusive and meaningful participation, in accordance with their evolving capacities, in environmental decision-making processes that are likely to affect their development and survival, including by ensuring girls' meaningful participation in such processes on an equal basis with boys"*.<sup>307</sup> It proposes means for achieving this goal including strengthening environmental education which takes into account children's culture, language and environmental situation, and providing school teachers with training to allow them to more effectively teach on environmental issues and challenges.<sup>308</sup>
- 5.3 The 2020 HRC resolution also recommends that states adopt measures in relation to freedom of expression, association, and peaceful assembly,

consultative mechanisms, protection from intimidation and abuse, freedom of information and public awareness in order to foster children's right to participation in environmental matters.

- 5.4 Australia is not currently a signatory to the Declaration on Children, Youth and Climate Action, a pledge drafted by children and youth in 2019.
- 5.5 A 2021 report by the Human Rights Law Centre, Greenpeace Australia Pacific, and the Environmental Defenders Office highlighted the fact that there is currently no federal, government-funded body which has the role of providing public education and access to information regarding climate change following the abolition of the Climate Commission in 2013.<sup>309</sup>

### Examples of children and youth expressing their views on environmental affairs can be found across all of Australia

- 5.6 There are multiple examples of children and youth expressing their views on environmental affairs across Australia, through judicial, quasi-judicial and non-judicial forums, both domestically and internationally. The following section outlines some of the most notable recent examples that demonstrate the diverse range of strategies employed by children and young people to take action on climate change and environmental issues.

<sup>306</sup> Human Rights Council, *Rights of the child: realizing the rights of the child through a healthy environment*, 45<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/45/30 (13 October 2020).

<sup>307</sup> Human Rights Council, *Rights of the child: realizing the rights of the child through a healthy environment*, 45<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/45/30 (13 October 2020) 6 [9].

<sup>308</sup> Human Rights Council, *Rights of the child: realizing the rights of the child through a healthy environment*, 45<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/45/30 (13 October 2020) 6 [9(d)].

<sup>309</sup> Human Rights Law Centre, Greenpeace and Environmental Defenders Office, *Global Warning: the threat to climate defenders in Australia* (Report, 2021) 32<[https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/619b012442b6103b71bc6194/1637548344919/Global\\_Warning\\_report\\_HRLC\\_EDO\\_GP\\_2211.pdf](https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/619b012442b6103b71bc6194/1637548344919/Global_Warning_report_HRLC_EDO_GP_2211.pdf)>.



**Court challenge against Queensland Galilee Basin coal project**

- 5.7 A group of young environmentalists in Queensland called Youth Verdict challenged a proposed mega-coal mine in the Galilee Basin near the Central Queensland town of Alpha, more than 1,000km north-west of Brisbane. They argued that it infringes on a number of their rights under the state’s *Human Rights Act*, including the right to life, the protection of children and the right to culture.
- 5.8 The hearing in the case commenced in April 2022. On 25 November 2022, the Land Court of Queensland handed down a landmark judgment, recommending to the Minister for Natural Resources Mines and Energy and the Chief Executive of the Department of Environment and Science that the mining lease and environmental authority application for the coal mine be refused on several grounds. The Court’s reasons included that the limitation on the relevant human rights including the rights of children that would result from the project was not demonstrably justified, even taking into account the economic and social benefits of the project.<sup>310</sup> A decision to recommend approval of the mining lease and environmental authority applications would thus be incompatible with human rights, contrary to section 58(1)(a) *Human Rights Act*.

**Complaint to the United Nations Special Rapporteurs**

- 5.9 In October 2021, Environmental Justice Australia submitted a complaint to the United Nations Special Rapporteur on Human Rights and the Environment, Special Rapporteur on the rights of Indigenous peoples, and Special Rapporteur on the rights of persons with disabilities over the Australian Government’s inaction on climate change.<sup>311</sup> The complaint was submitted on behalf of five young Australians aged between 14 and 24 years old.

- 5.10 The complaint asks the Special Rapporteurs to seek explanation from Australia on how the country’s climate inaction is consistent with the human rights obligations, how the current conduct is compatible with human rights of young Australians and a 1.5°C pathway, and how the current Nationally Determined Contribution has involved young people in Australia and whether the State will establish a permanent forum to include young people from impacted communities. The complaint further asks the Special Rapporteurs to urge Australia to set a 2030 target that is consistent with its human rights obligations.

**Complaint about alleged greenwashing bank advertisement**

- 5.11 In September 2021, a 17-year-old student based in Queensland filed a complaint at Ad Standards (an Australian organisation that manages consumer and competitor complaints concerning the country’s self-regulatory advertising codes) against HSBC for a marketing campaign touting its support for protection of the Great Barrier Reef while funding fossil fuel operations.<sup>312</sup> The complaint has since been dismissed, having been found not to be in breach of the Environmental Claims Code.

**Youth climate networks and organisations**

- 5.12 There are a number of organisations and movements being established by and for young people in relation to climate justice. Foundations For Tomorrow<sup>313</sup> and Australian Youth Climate Coalition<sup>314</sup> are prominent examples. They organise events, campaigns and actions in relation to the promotion of climate justice. Another example is SEED an Aboriginal and Torres Strait Islander youth lead organisation, working for climate justice. It establishes a climate justice fund, provides volunteering and work experience opportunities, and promotes petitions against fracking and coal mining.<sup>315</sup>

**Climate protests and student strikes<sup>316</sup>**

- 5.13 There have been numerous examples of protests over the last few years primarily by young people in relation to climate change and environmental issues. ‘Schools Strike 4 Climate’ is a nationwide movement supported by the Australian Youth Climate Coalition, which has seen protests involving over 350,000 young Australians across 600 locations since 2018.
- 5.14 Notably, in May 2021, thousands of students across Australia and including in Queensland walked out of classrooms to take part in the ‘School Strike 4 Climate on Friday’, calling for greater government action on climate change.<sup>317</sup> Similar student protests with tens of thousands of students in attendance look place in March and September 2019.<sup>318</sup>
- 5.15 More recently, in March 2022 and following the serious flooding events along Australia’s eastern coastline, hundreds of school students protested outside the Prime Minister’s official Sydney residence as part of a global day demanding action on climate change.<sup>319</sup>

**Indigenous group complaint to Human Rights Committee**

- 5.16 In May 2019, a group of eight Torres Strait Islanders – acting in their own names and on behalf of six children - filed a complaint with the United Nations Human Rights Committee accusing Australia’s federal government of breaching their rights under articles 2 (the right to an effective remedy), 6 (the right to life), 17 (the right to be free from arbitrary interference with privacy, family and home), 24 (children’s rights), and 27 (the right to culture) of the ICCPR by failing to adequately address the climate emergency unfolding in their island homes.<sup>320</sup> While the complainants are adults, the complaint cites the safety and future of their children and future generations as a primary concern.<sup>321</sup>

- 5.17 The Commonwealth government responded in 2020 and 2021 arguing the complaint should be rejected as it is based upon future risks, and because Australia is not the main or only contributor to global warming, under human rights law, action on climate change is not a legal responsibility.<sup>322</sup>
- 5.18 On 22 September 2022, a landmark decision was handed down. The Committee found that Australia’s former government violated the human rights of Torres Strait Islanders by failing to adapt to and mitigate the impacts of climate change. In upholding the complaint, the Committee determined that Australia is obligated to provide the claimants with ‘an effective remedy’.<sup>323</sup> In the context of the right to a healthy environment, this case is significant because it has arguably created a pathway for other climate affected individuals – including children – to bring compensation actions against nations for inadequate climate change policy under international human rights law.

**Are children and youth trivialised, dismissed, or obstructed in their attempts to express their views on environmental affairs?**

- 5.19 Despite large-scale and high-profile actions by children on climate change and environmental issues, child and youth climate activists have experienced trivialisation, dismissal, and obstructions, as detailed below.
- 5.20 During the Brisbane ‘School Strike 4 Climate on Friday’ protest in September 2019, the Queensland government had the following response:

<sup>310</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21, at [1808]; *Human Rights Act* 2019 (Qld) s 8(b).

<sup>311</sup> See: [http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20211025\\_14762\\_complaint.pdf](http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20211025_14762_complaint.pdf).

<sup>312</sup> See: <https://www.smh.com.au/environment/climate-change/student-claims-hsbc-s-great-barrier-reef-ad-a-blatant-greenwash-20210917-p58skx.html>.

<sup>313</sup> See: <https://www.foundationsoftomorrow.org/>.

<sup>314</sup> See: <https://www.aycc.org.au/>.

<sup>315</sup> See: <https://www.seedmob.org.au/>.

<sup>316</sup> We note recent legislative amendments and proposed amendments to state anti-protest laws including the *Roads Act* 1993 (NSW), the *Crimes Act* 1900 (NSW) and the *Summary Offences (Obstruction of Public Places) Amendment Bill* 2023 (SA).

<sup>317</sup> See: <https://www.theguardian.com/environment/2021/may/21/school-strike-for-climate-thousands-take-to-streets-around-australia>.

<sup>318</sup> See: <https://www.brisbanetimes.com.au/national/queensland/brisbane-students-skip-class-in-their-thousands-for-climate-action-20190315-p514jd.html>; <https://www.brisbanetimes.com.au/national/queensland/brisbane-residents-young-and-old-fill-the-streets-for-climate-strike-20190920-p52tf4.html>.

<sup>319</sup> See: <https://www.abc.net.au/news/2022-03-25/nsw-floods-highlighted-school-strike-for-climate/100938942>.

<sup>320</sup> Human Rights Committee, *Views Communication No 3624/2019*, 135<sup>th</sup> sess, UN Doc CCPR/C/135/D/3624/2019 (22 September 2022) [3.1].

<sup>321</sup> See: <https://www.sbs.com.au/news/article/in-a-critical-year-for-climate-justice-these-torres-strait-islanders-are-leading-the-fight/uq5xxq4it>.

<sup>322</sup> See: <https://www.theguardian.com/australia-news/2020/aug/14/australia-asks-un-to-dismiss-torres-strait-islanders-claim-climate-change-affects-their-human-rights>.

<sup>323</sup> Human Rights Committee, *Views Communication No 3624/2019*, 135<sup>th</sup> sess, UN Doc CCPR/C/135/D/3624/2019 (22 September 2022) [12].



- (a) Queensland’s Education Department warned that all students who did not attend school would be marked as absent, and parents had to provide a legal reason for their child’s absence.<sup>324</sup>
- (b) Queensland’s Premier Anastacia Palaszczuk and Education Minister Grace Grace indicated they wanted students to stay in school, while the then Deputy Opposition Leader Tim Mander was quoted by media as saying: “*If they were fair dinkum, they’d stage these protests during the school holidays - let’s see how many would turn up then*”.<sup>325</sup>
- (c) A similar response was made to youth climate protests by the prime minister in November 2018.<sup>326</sup>
- 5.21 Finally, recent polling suggests that many young people in Australia have little confidence in business and political leaders taking effective action on climate change. Foundations For Tomorrow surveyed 10,000 Australians aged under 30 and found that young Australians did not feel heard about their concerns on climate matters. Of the respondents, 93% said the government was not doing enough to address climate change and the vast majority had little faith in the nation’s business and political leadership to address it.<sup>327</sup>
- What practices exist that promote child and youth engagement and participation in environmental affairs?**
- 5.22 At the Commonwealth level, there is no reference in the NAP for the Health of Children and Young People to practices that promote child and youth engagement in environmental affairs.<sup>328</sup>
- 5.23 At a state level, there are some notable state-based initiatives to encourage youth participation on environmental affairs. In Queensland, the Queensland Youth Environment Council is a group of young Queenslanders aged between 12 and 18 years old. The Council was formed for the purpose of providing advice to the Queensland government through the Minister for Environment and the Minister for Education in relation to key environmental and sustainability issues, including (but not limited to) climate change, renewable energy, waste and biodiversity conservation.<sup>329</sup>
- 5.24 Another example of state-based initiatives around Australia is the Youth Environment Council of South Australia, which aims to provide young South Australians a voice in key environmental issues and equip them with opportunities to take action to achieve a more environmentally sustainable future for South Australia.<sup>330</sup> There are plans to establish an equivalent program in New South Wales.<sup>331</sup>
- 5.25 In states where there is no established youth council, alternative methods of consultation are used. For example, when Tasmania was developing its climate action plan in 2021, ambassadors for the Commissioner for Children and Young People organised online and in-person workshops and attended Greening Australia’s Tasmanian Youth Climate Leaders’ Conference.<sup>332</sup>
- 5.26 A number of youth organisations also operate to specifically promote youth engagement in environmental affairs through a combination of campaigning and education. Examples include the Australian Youth Climate Coalition<sup>333</sup> and the SEED Indigenous Youth Climate Network.<sup>334</sup>

<sup>324</sup> See: <https://www.brisbanetimes.com.au/national/queensland/brisbane-residents-young-and-old-fill-the-streets-for-climate-strike-20190920-p52tf4.html>.

<sup>325</sup> See: <https://www.brisbanetimes.com.au/national/queensland/brisbane-residents-young-and-old-fill-the-streets-for-climate-strike-20190920-p52tf4.html>.

<sup>326</sup> See: <https://www.theguardian.com/environment/2018/nov/26/scott-morrison-tells-students-striking-over-climate-change-to-be-less-activist>.

<sup>327</sup> See: <https://www.foundationsfortomorrow.org/the-report>.

<sup>328</sup> Australian Government Department of Health, *National Action Plan for the Health of Children and Young People 2020–2030* <[https://www1.health.gov.au/internet/main/publishing.nsf/content/4815673E283EC1B6CA258400082EA7D/\\$File/FINAL%20National%20Action%20Plan%20for%20the%20Health%20of%20Children%20and%20Young%20People%202020-2030.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/content/4815673E283EC1B6CA258400082EA7D/$File/FINAL%20National%20Action%20Plan%20for%20the%20Health%20of%20Children%20and%20Young%20People%202020-2030.pdf)>.

<sup>329</sup> See: [https://www.facebook.com/QLDYEC/about/?ref=page\\_internal](https://www.facebook.com/QLDYEC/about/?ref=page_internal).

<sup>330</sup> See: <https://www.yecsa.net.au/>.

<sup>331</sup> See: <https://www.epa.nsw.gov.au/newsletters/epa-connect-newsletter/may-2022/advisory-council-to-engage-young-environmentalists>.

<sup>332</sup> See: [https://recfit.tas.gov.au/climate/climate\\_change\\_action\\_plan](https://recfit.tas.gov.au/climate/climate_change_action_plan).

<sup>333</sup> See: <https://www.aycc.org.au/>.

<sup>334</sup> See: <https://www.seedmob.org.au/>.

- 5.27 To assist such existing and future initiatives, there are also resources available online outlining best practices for promoting child and youth engagement. These policies have largely been published by leading not-for-profit organisations like Save the Children,<sup>335</sup> Oaktree<sup>336</sup> and Youth Affairs Council Victoria.<sup>337</sup> Broadly speaking, these organisations advocate for youth engagement that is meaningful, defined by realistic timelines, and fosters diverse youth perspectives.

## Does Australia recognise participatory rights of children and youth in environmental decision-making?

- 5.28 The EPBC Act and EPA contain general provisions regarding public consultation. However, despite the inclusion of intergenerational equity as a principle of ecologically sustainable development in these and other environmental laws, we have not identified any specific provisions regarding the participatory rights of children and youth.
- 5.29 Notably, the 2021 review of the EPBC Act carried out by Professor Graeme Samuel AC involved extensive consultation with public officials, industry and civil society organisations, but no children’s or youth organisations are listed as stakeholders that the Reviewer met with.<sup>338</sup>

## Despite a strong rule of law, the scope for reprisals against environmental human rights defenders in Australia remains concerning

- 5.30 While there have been few reports of extrajudicial violence against climate protestors in Australia,

some commentators have expressed concern that Queensland laws have been used to penalise climate protestors, many of whom are children or young people, arbitrarily or harshly. Some examples are set out below.

### The passage of the *dangerous devices act* in Queensland

- 5.31 The passage of the *Dangerous Devices Act* in Queensland banned the use of lock-on devices such as “dragon’s dens” or “sleeping dragons”, which were frequently used by climate protestors to fix themselves to each other or to buildings and are time-consuming to remove.<sup>339</sup> Protestors who use these devices may be penalised with up to 2 years imprisonment.<sup>340</sup> The *Dangerous Devices Act* also provides police with powers to search people and vehicles without a warrant if they suspect that they are in possession of a dangerous attachment device.<sup>341</sup>
- 5.32 It was claimed in the Second Reading Speech to the Act, and later stated by Premier Anastacia Palaszczuk and spokespersons for Queensland Police claimed – with little evidence – that protestors had embedded glass, wire or aerosol cans to injure emergency services workers removing these devices.<sup>342</sup> Equally, the Explanatory Note to the bill also emphasises the right to peaceful assembly as a key policy objective of the *Dangerous Devices Act*. The note recognises the significance of this right as a long standing principle of international human rights law through Article 21 of the ICCPR and as otherwise being enshrined in the *Peaceful Assembly Act 1992* (Qld) and *Human Rights Act*.<sup>343</sup>

<sup>335</sup> See: <https://resourcecentre.savethechildren.net/document/youth-participation-best-practices-toolkit-part-i/>.

<sup>336</sup> See: <https://www.oaktree.org/getasset/AG5A5S>.

<sup>337</sup> See: <https://www.yacvic.org.au/training-and-services/youth-participation/>.

<sup>338</sup> See <https://epbactreview.environment.gov.au/resources/final-report/appendix>.

<sup>339</sup> <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2019-035>.

<sup>340</sup> *Summary Offences Act 2005* (Qld), section 14C.

<sup>341</sup> *Police Powers and Responsibilities Act 2000* (Qld), sections 30 and 32.

<sup>342</sup> <https://www.sbs.com.au/news/the-feed/article/the-queensland-premier-says-environmental-protesters-are-using-devices-laced-with-traps-is-there-any-proof/iey25xtpi>; <https://documents.parliament.qld.gov.au/tableOffice/BillMaterial/190919/Summary.pdf>.

<sup>343</sup> *Summary Offences and Other Legislation Amendment Bill 2019*, Explanatory Notes.



- 5.33

A number of UN Special Rapporteurs (including the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a clean, healthy and sustainable environment) submitted a letter to the Queensland government expressing concern about ‘a number of provisions [in the Act] that unduly restrict the right to freedom of peaceful assembly and to freedom of expression.’<sup>344</sup>
- 5.34

These laws were tested in 2020 by the Queensland Courts: two young people (21 and 23 years old) attached themselves to a railway line providing access to the Abbott Point Port using a lock-on device.<sup>345</sup> They were charged with offences under the *Dangerous Devices Act*.<sup>346</sup> They were sentenced at first instance to three-months imprisonment, suspended.<sup>347</sup> On appeal, the Queensland District Court found that the sentences were manifestly excessive and resentenced the protestors to a fine of \$1,000 with no convictions recorded.<sup>348</sup>
- 5.35

The right to peaceful assembly was also tested recently in Queensland Courts in a proceeding alleging an illegal protest by Brisbane City Greens Councillor Jonathan Sri.<sup>349</sup> With three other people in attendance, Councillor Sri stood in Queen Street Mall in Brisbane City for 15 minutes on 25 September 2020 holding a sign protesting the Government’s cashless welfare card initiative. Councillor Sri was subsequently charged with conducting an unauthorised public activity and advertising material in Queen Street Mall without consent of the Brisbane City Council.
- 5.36

On 26 July 2022, Councillor Sri was found guilty of one count of undertaking a prohibited activity (not having obtained a permit to do so). Despite that finding, the Magistrate found Councillor Sri not guilty of the balance of the charges against him
- and placed particular emphasis on the fact that human rights limitations evidenced in the *Human Rights Act* had to be considered by the Brisbane City Council in their prosecution of Councillor Sri.
- Penalties and prosecution of climate change protestors**
- 5.37

A 2021 report by the Human Rights Law Centre, Greenpeace Australia Pacific, and the Environmental Defenders Office highlights how bail conditions and fines often impose harsh penalties on protestors involved in climate action.<sup>350</sup> This report also cites instances of excessive penalties and force used by police, including against First Nations protestors.<sup>351</sup>
- 5.38

In his 2016 mission report, the UN Special Rapporteur on the situation of human rights defenders stated that:
- ‘While Australia advocates globally for the Human Rights Council resolutions in support of national human rights institutions, the Australian Human Rights Commission and its president have been undermined and targeted by senior public officials. The Government supports resolutions on defenders considered by the General Assembly and Human Rights Council, yet activists in Australia complain about severe pressure and vilification from public officials and media outlets. Despite the Government’s pledged support for protecting freedoms such as freedom of expression and of peaceful assembly and association, its civil society and journalists have raised concerns about regressive legislation stifling those very freedoms.’<sup>352</sup>

- 5.39

In March 2022, two German students who participated in a climate change protest which disrupted traffic to Sydney’s port had their student visas cancelled and were deported.<sup>353</sup>
- Does Australia recognise rights to environmental education in legislation or policy?**
- 5.40

Currently, federal law contains few express provisions regarding children’s right to an environmental education. One example is the NEPC Act, which considers the value of protected areas for environmental education.<sup>354</sup>
- 5.41

Sustainability is, however, a priority identified in the current national curriculum.<sup>355</sup> A new national curriculum was approved in April 2022 and made available in Term 2, 2022, to be implemented by schools according to the timelines set by education authorities in states and territories.<sup>356</sup> In its ‘Shape of the Australian Curriculum’ report published in June 2020, the Australian Curriculum, Assessment and Reporting Authority<sup>357</sup> identified environmental sustainability as one of three ‘cross curriculum priorities’ supporting the curriculum review.
- 5.42

The 2022 revisions to the national curriculum in relation to sustainability aim to:

(a)

broaden references to environmental sustainability to include all Earth’s systems, not just the biosphere;

(b)

focus on the interdependence of sustainability of environmental, social and economic systems;

(c)

expand the focus on sustainable design of products, environments and services;
- (d)

broaden actions for sustainability to include the mitigation of human impacts and restoration of environments, in addition to preservation;
- (e)

provide clearer support to explore how individuals and communities can take action and effect positive change; and
- (f)

ensure that organising ideas fit naturally within learning areas and can be applied to content descriptions and elaborations.<sup>358</sup>
- 5.43

Children’s right to an environmental education may also be fostered by the Education and Care Services National Regulations, which include requirements for specification of the natural environment that will be provided for in childcare premises,<sup>359</sup> and requirements for outdoors spaces with natural features to be provided in such premises<sup>360</sup>, including in a way that supports children to become environmentally responsible.<sup>361</sup>
- 5.44

Queensland legislation contains more specific provisions on environmental education. The *Nature Conservation Act 1992* (Qld) states that its underlying object of nature conservation will be:

“achieved by an integrated and comprehensive conservation strategy for the whole of the State that involves, among other things, the ... gathering of information and community education’ and ‘encouraging the conservation of nature by the education ... of the community”.

5.45

Management principles for national parks, conservation parks and special wildlife reserves stated by the *Nature Conservation Act 1992* (Qld) include providing opportunities for education and recreational activities.<sup>363</sup>
- <sup>344</sup> <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5df088d34ba53f728440e587/1576044757116/Communication+to+Australia+03.12.2019.pdf>

<sup>345</sup> *EH v QPS; GS v QPS* [2020] QDC 205, [2].

<sup>346</sup> *Ibid*, [5].

<sup>347</sup> *Ibid*, [46].

<sup>348</sup> *EH v QPS; GS v QPS* [2020] QDC 205: <https://archive.sclqld.org.au/qjudgment/2020/QDC20-205.pdf>.

<sup>349</sup> <https://www.couriermail.com.au/truecrimeaustralia/police-courts-qld/councillor-jonathan-sri-found-guilty-of-prohibited-protest-but-other-charge-thrown-out/news-story/69c49adfc6f8eea501b22df81b60a2e>.

<sup>350</sup> See report by the EDO, Greenpeace and HRLC, *Global Warning: the threat to climate defenders in Australia*, [https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/619b012442b6103b71bc6194/1637548344919/Global\\_Warning\\_report\\_HRLC\\_EDO\\_GP\\_2211.pdf](https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/619b012442b6103b71bc6194/1637548344919/Global_Warning_report_HRLC_EDO_GP_2211.pdf).

<sup>351</sup> *Ibid*, pages 26-29.

<sup>352</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/322/21/PDF/G1832221.pdf?OpenElement>.
- <sup>353</sup> See: <https://www.abc.net.au/news/2022-03-24/port-botany-protesters-back-again-fourth-time-despite-gov-threat/100935094>.

<sup>354</sup> Schedule 9, Item 13.

<sup>355</sup> See [https://www.acara.edu.au/docs/default-source/curriculum/the\\_shape\\_of\\_the\\_australian\\_curriculum\\_version5\\_for-website.pdf?sfvrsn=2](https://www.acara.edu.au/docs/default-source/curriculum/the_shape_of_the_australian_curriculum_version5_for-website.pdf?sfvrsn=2).

<sup>356</sup> <https://www.acara.edu.au/docs/default-source/media-releases/endorsement-ac-media-release-2022.pdf>.

<sup>357</sup> Established under the *Australian Curriculum, Assessment and Reporting Authority Act 2008* (Cth).

<sup>358</sup> [https://www.australiancurriculum.edu.au/media/7018/ccp\\_sustainability\\_consultation.pdf](https://www.australiancurriculum.edu.au/media/7018/ccp_sustainability_consultation.pdf), page 2.

<sup>359</sup> Clause 25.

<sup>360</sup> Clause 113.

<sup>361</sup> Schedule 1.

<sup>362</sup> Section 5(a).

<sup>363</sup> Sections 17(1)(d), 21(1)(c), 21B(2)(b).
- 66

Children’s Right to a Healthy Environment

Children’s Right to a Healthy Environment

67



5.46 Queensland’s *Human Rights Act* provides for a right to education.<sup>364</sup> It also states that the functions of the Queensland Human Rights Commissioner include making information about human rights available to the community and providing education about human rights.<sup>365</sup> This would include the right to a healthy environment to the extent that it forms part of or impacts the enjoyment of the rights identified in Part 2, Divisions 2 and 3 of the Act.

5.47 Environmental education may also form part of First Nations peoples’ rights under those provisions of the *Human Rights Act* that protect the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to maintain their relationship with, and conserve and protect, their lands and waters.<sup>366</sup>

5.48 Section 14 of the *Education (General Provisions) Act 2006* (Qld) empowers the Minister of Education to establish ‘environmental education centres’. Currently, twenty-six ‘Outdoor and Environmental Education Centres’ exist in Queensland.<sup>367</sup> These centres aim to provide education for a sustainable future and teach students to value biodiversity and develop personal and social capability, as well as team building and leadership.<sup>368</sup> Some of these centres also provide specialised learning experiences in areas such as urban renewal, water watch programs and environmental investigations.<sup>369</sup>

Does Australia recognise public rights of access to environmental information and is this information practically accessible for children?

5.49 The *Framework Principles on Human Rights and the Environment* detail that the obligations of States in relation to the environment include duties concerning public access to environmental information.<sup>370</sup> As discussed in more detail in Appendix D, Federal and Queensland conservation and environmental protection legislation contains provisions requiring authorities to collect, update and disseminate environmental information publicly. Notably, however, these laws do not refer to specific rights of children to access such information.

5.50 The public right of access to environmental information is protected internationally under the Aarhus Convention. The Convention establishes a number of rights of the public in relation to the environment, including:

- (a) the right to receive environmental information that is held by public authorities;<sup>371</sup>
- (b) the right to participate in environmental decision-making;<sup>372</sup> and
- (c) the right to review procedures to challenge public decisions that have been made without respecting the above rights.<sup>373</sup>

5.51 To date, 39 States have ratified the Aarhus Convention, the majority of which are European or Central Asian countries.<sup>374</sup> While Australia is not a signatory to the Aarhus Convention,<sup>375</sup> its principles have been considered by Australian courts including the Land and Environment Court of New South Wales.<sup>376</sup>

5.52 Ultimately, in the absence of entrenched protection of this right, access to environmental information has often been curtailed. The 2008 Melbourne Declaration on Educational Goals for Young Australians<sup>377</sup> made by all the nation’s education ministers referred to climate change and the embedding of sustainability across the school curriculum. However, when the declaration was updated in 2019,<sup>378</sup> these references were removed.<sup>379</sup>

5.53 As a result, it has often been left to individual States and Territories to determine the extent to which they will prioritise environmental issues in their curriculums. Queensland has a restricted Sustainable Schools website which aims to support schools, their partners and the community in realising a positive environmental vision for their school.<sup>380</sup> This material is only available to school administrators who are invited to register and request a login and password for ongoing access to most of the online tools and resources.<sup>381</sup> However, there is some information available – generally targeted towards a more adult audience – about what steps can be taken in the classroom, in the school, and in the community.<sup>382</sup> This approach can be contrasted with the Victorian approach of publishing online an extensive library of curriculum-aligned, curated resources from respected educational content providers such as Clickview, Stile, ABC Education and others.<sup>383</sup> Although these resources were curated with schools in mind, it can also be easily accessed by children either by conducting a personal search or through their school curriculum.

Results from national survey and interviews with young Australians

Right to participation, information and education

5.54 The youth consultation underlying this report is set out in section 1 above. The consultation involved a survey of 1,650 young Australians and focused interviews with a small group of young people.

5.55 The young Australians who participated in the national survey reported that the top two most frequent challenges faced in having their voice heard is that their views are not being taken seriously by the government and they have a lack of trust in government. Only one in seven young Australians strongly agreed that the government is listening to their concerns about climate change action, and two thirds of young Australians reported that the federal government should pay more attention to their view on climate change.

5.56 We have provided examples of children and youth being trivialised, dismissed or obstructed by the government in their attempts to express their views on environmental affairs at [5.20] – [5.23]. Further, we note at [5.3] the recommendation contained in the 2020 HRC resolution that states adopt a number of measures in order to foster children’s right to participation in environmental matters. Anecdotal evidence obtained through interviews with young people also suggested that participation could be better supported if the government identified the biggest areas of concern in relation to climate change and environmental issues to enable the general population to understand how it can best contribute to change.

<sup>364</sup> Section 36.

<sup>365</sup> Section 61.

<sup>366</sup> Section 28.

<sup>367</sup> <https://education.qld.gov.au/schools-educators/other-education/OEEC>.

<sup>368</sup> <https://education.qld.gov.au/schools-educators/other-education/OEEC>.

<sup>369</sup> <https://education.qld.gov.au/schools-educators/other-education/OEEC>.

<sup>370</sup> Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, 37th sess, UN Doc A/HRC/37/59 (24 January 2018) annex, principle 7.

<sup>371</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters*, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) (*‘Aarhus Convention’*) art 4.

<sup>372</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters*, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) (*‘Aarhus Convention’*) arts 6-8.

<sup>373</sup> *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental matters*, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001) (*‘Aarhus Convention’*) art 9.

<sup>374</sup> See: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-13&chapter=27](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-13&chapter=27).

<sup>375</sup> See: <https://www.info.dfat.gov.au/Info/Treaties/treaties.nsf/AllDocIDs/1223ED508DA81D6ACA256B530009732D>.

<sup>376</sup> See: *Caroona Coal Action Group Inc v Coal Mines Australia Pty Ltd* (No 3) [2010] NSWLEC 59.

<sup>377</sup> See: [http://www.curriculum.edu.au/verve/\\_resources/National\\_Declaration\\_on\\_the\\_Educational\\_Goals\\_for\\_Young\\_Australians.pdf](http://www.curriculum.edu.au/verve/_resources/National_Declaration_on_the_Educational_Goals_for_Young_Australians.pdf).

<sup>378</sup> Alice Springs (Mparntwe) Education Declaration; see [https://uploadstorage.blob.core.windows.net/public-assets/education-au/melbdec/ED19-0230%20-%20SCH%20-%20Alice%20Springs%20\(Mparntwe\)%20Education%20Declaration\\_ACC.pdf](https://uploadstorage.blob.core.windows.net/public-assets/education-au/melbdec/ED19-0230%20-%20SCH%20-%20Alice%20Springs%20(Mparntwe)%20Education%20Declaration_ACC.pdf).

<sup>379</sup> See: <https://www.policyforum.net/educating-australia-on-the-climate-crisis/>.

<sup>380</sup> See: <https://www.sustainableschools.qld.edu.au/>.

<sup>381</sup> See: <https://www.sustainableschools.qld.edu.au/>.

<sup>382</sup> See: <http://www.sustainabilityinschools.edu.au/>.

<sup>383</sup> See: <https://fuse.education.vic.gov.au/Resource/LandingPage?ObjectId=410611b7-48cd-452c-87e8-623690f88702&SearchScope=All>.



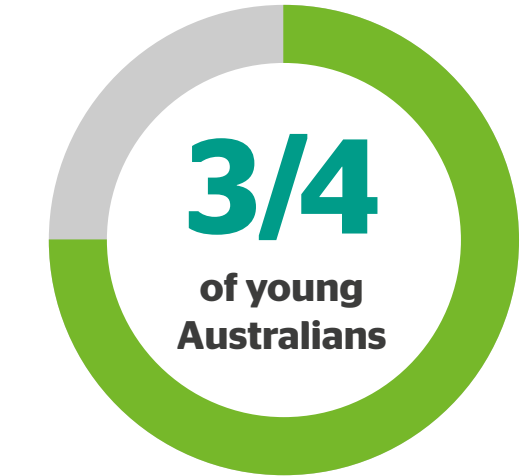
5.57 Through interviews with young people we also heard that there is a lack of information from the government on environmental affairs. Indeed, interviewees suggested increasing the availability and frequency of public information about climate change and environmental issues, to improve the general population’s understanding. The national survey results highlight that young Australians place a higher level of trust in the information received from community organisations and environmental groups than from the government. Some interviewees also said that they predominantly learn about climate change and environmental issues from volunteer community groups and documentaries. Further, we heard that there needs to be more in-depth education around environmental affairs embedded within school curriculums.

**Right to a healthy environment**

5.58 Despite the challenges faced by children and young people in not having their voices heard in relation to environmental affairs, nine in ten young Australians agreed that they have a right to a healthy environment. Anecdotally, as we flagged at [2.18], legal and political action by Australian children has demonstrated a high degree of environmental engagement and access to education for certain groups of children and youth.

5.59 Importantly, however, our analysis exposed a need for the clear articulation of the right to a healthy environment to ensure that implementation and enforcement is effective. Our analysis highlights the fact that Australian children are demanding greater climate action and are increasingly exercising their right to be heard politically and before Australian courts. This is reflected in the national survey results, which found that an equal proportion of teenagers and young adults say that climate and environmental issues should be the focus of the government over the next few years. Further, three quarters said that the federal government should do more to address climate change. Anecdotally, one interviewee said that the EPBC Act as it currently stands fails to protect the environment. Our analysis has included several recommendations around reforming the EPBC Act and implementing domestically the right to a healthy environment.

5.60 The national survey results also demonstrate that two thirds of young Australians are worried about plants and animals going extinct, which includes fears that animals and plants will go extinct during the lifetime of young Australians, and the belief that this needs to be acted on now. Three quarters of the young Australians surveyed said they believe that climate change will make life harder for them in the future. Interviewees said that their generation has to be more conscious when making day-to-day decisions that will have detrimental impacts on the environment, including limiting energy use to protect future generations.



Believe that climate change will **make life harder in the future**

5.61 Our analysis also recognises that climate change has serious implications for children’s physical and mental health, access to education, food security, adequate housing, safe drinking water, and safe sanitation. Many of the young Australians who participated in the national survey reported having already experienced the impact of adverse climate events either themselves, or said their community or family had experienced these impacts.

**Priority issues for further consideration**

5.62 Legal and political action by Australian children in recent years has demonstrated a high degree of environmental engagement and education, particularly in relation to climate change. The 2022 amendments to the national curriculum also recognise the importance of an environmental education. However, barriers to youth engagement and participation in environmental affairs persist and more could be done to make environmental information accessible to children and young people. This could be achieved through youth engagement and capacity building strategies, advocacy in domestic and international forums and domestic law reform.

**Youth engagement and capacity building strategies<sup>384</sup>**

5.63 The Australian and Queensland Governments could work with local NGOs to ensure that information about children’s environmental rights is readily available and accessible, for example, by:

- (a) developing toolkits and providing capacity-building and legal education to assist children and young people, particularly from First Nations communities, in overcoming barriers to participating in political and legal processes;
- (b) tailoring these activities to support children and young people to participate in consultations conducted by the CRC Committee and other UN treaty bodies, as well as consultations on legislative reform conducted by the federal and state governments; and
- (c) increasing government support to organisations working on climate change and environmental issues, particularly youth organisations.

**Advocacy in domestic and international forums**

5.64 NGOs and national human rights bodies could foster youth participation in environmental affairs through outreach to, and advocacy on behalf of, Australian children and young people through relevant domestic and international forums. Specific actions could include:

- (a) preparing and submitting parallel national reports to UN treaty bodies and related entities in respect of periodic reviews of Australia’s compliance with relevant international human rights treaties, to specifically address the impacts of Australia’s existing climate change and environmental protection laws and policies on the right to a clean, healthy

**Increasing youth engagement and building capacity**



**Assist participation through toolkits and capacity-building and legal education**



**Support children to participate in national and international consultations**



**Increase government support for climate and youth-focussed organisations**

<sup>384</sup> We also note cl 22(d), (e) and 23 of the *Maastricht Principles* which contain further examples of youth engagement and capacity building strategies.





# 6. Children’s right to a healthy environment and the Australian business sector

## The business sector does not yet have a clearly defined legal responsibility to respect children’s right to a healthy environment

and working conditions of children in fishing industry enterprises operated by Australian enterprises in Thailand.<sup>386</sup> Although the Committee acknowledged the voluntary code of conduct on a sustainable environment adopted by the Minerals Council of Australia,<sup>387</sup> it also noted the “*inadequacy of this in preventing direct and/or indirect human rights violations by Australian mining enterprises*”.<sup>388</sup>

- 6.1 As discussed above, there are laws and policies in place in Queensland and to a far lesser extent at the Commonwealth level which impose a legal responsibility on businesses to avoid environmental harm. However, corporate obligations to respect children’s rights are not yet clearly set out in legislation or policy. There is limited implementation of the Guiding Principles, the CRBP, or General Comment No. 16 of the CRC Committee on State Obligations regarding the Impact of the Business Sector on Children’s Rights (GC16) in Commonwealth or Queensland law.
- 6.2 The CRC Committee has previously expressed concerns regarding the activities of Australian mining companies overseas. In its concluding observations in response to Australia’s fourth periodic report to the Committee submitted on 25 June 2009, the Committee expressed its concerns about “*Australian mining companies’ participation and complicity in serious violations of human rights in countries such as the Democratic Republic of Congo, the Philippines, Indonesia and Fiji, where children have been victims of evictions, land dispossession and killings*”.<sup>385</sup> The Committee also expressed concerns regarding reports of child labour
- 6.3 In light of these concerns, the CRC Committee therefore recommended in its concluding observations to Australia’s fourth periodic report that Australia should:
  - (a) examine and adapt its legislative framework to ensure legal accountability of Australian companies and their subsidiaries regarding abuses of human rights, especially child rights, committed in the territory of Australia or overseas and establish monitoring mechanisms, investigation, and redress of such abuses, with a view to improving accountability, transparency and prevention of violations;<sup>389</sup>
  - (b) take measures to strengthen cooperation with countries in which Australian companies or their subsidiaries operate to ensure respect for child rights, prevention and protection against abuses and accountability;<sup>390</sup> and
  - (c) establish that human rights impact assessments, including child rights impact assessments, are conducted prior to Australia

<sup>385</sup> Concluding Observations in relation to Australia’s Fourth Periodic Report under Article 44 of the CRC (28 August 2012) at [27]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>386</sup> Concluding Observations in relation to Australia’s Fourth Periodic Report under Article 44 of the CRC (28 August 2012) at [27]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>387</sup> Following the adoption of 10 Principles for Sustainable Development by the International Council on Mining and Metals in 2003, the Minerals Council of Australia launched the “Enduring Value – the Australian minerals industry framework for sustainable development” in 2005. See: <https://www.minerals.org.au/sites/default/files/190503%20Enduring%20Value%20Principles.pdf> (at p.3).

<sup>388</sup> Concluding Observations in relation to Australia’s Fourth Periodic Report under Article 44 of the CRC (28 August 2012) at [27]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>389</sup> Concluding Observations in relation to Australia’s Fourth Periodic Report under Article 44 of the CRC (28 August 2012) at [28(a)]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>390</sup> Concluding Observations in relation to Australia’s Fourth Periodic Report under Article 44 of the CRC (28 August 2012) at [28(b)]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

- and sustainable environment, and to advocate for greater recognition of this right under Australian law (especially for children and young people). This could include direct engagement with children and / or collaborating with other interested civil society stakeholders like the ALRC, Law Council of Australia, and Human Rights Law Centre to prepare joint submissions. Acknowledging resourcing issues, NGOs could target their efforts towards Australia’s NHRI (the AHRC) and the National Children’s Commissioner;
- (b) participation in the following upcoming review processes:
- (i) the seventh periodic review of Australia under the ICCPR, commencing in 2023;
  - (ii) the seventh periodic review of Australia under the CRC, commencing in January 2024;
  - (iii) the fourth periodic review of Australia under the CRPD, commencing in August 2026; and
  - (iv) the fourth Universal Periodic Review of Australia, commencing in 2026;
- (c) Monitor the Australian Parliamentary Joint Committee on Human Rights’ Inquiry into Australia’s Human Rights Framework due to report by 31 March 2024; and
- (d) relevant NGOs and NHRIs undertaking relevant reviews of Australian legislation and policy regarding the recognition of children’s

right to a clean, healthy and sustainable environment, to propose avenues for specific law and policy reform to further entrench and protect these rights under Australian law. For example, the AHRC / National Children’s Commissioner could focus on children’s environmental rights as the topic of its next national Children’s Rights Report. Likewise, law reform organisations and legal professional bodies like the ALRC and Law Council of Australia, as well as state and territory law societies and bar associations, could independently or collaboratively review the status of children’s environmental rights under federal and state and territory laws, to propose specific reform pathways, including (for example) proposed amendments to relevant legislation and / or regulations.

### Domestic law reform

- 5.65 Certain laws in place at the federal and Queensland level may create barriers to children’s right to engagement and participation in environmental affairs.
- 5.66 As discussed at 4.54 above, consideration should be given to reviewing and, if necessary, revising criminal laws and sentencing guidelines related to or concerning non-violent protest activities. This includes offences introduced by the *Dangerous Devices Act*, noting the potentially deleterious or chilling effect of this law on children’s right to political expression on climate change.



- concluding trade agreements, with a view to ensuring that measures are taken to prevent child rights violations from occurring, and establish the mechanisms for the Export Credit Agency of Australia to deal with the risk of abuses of human rights before it provides insurance or guarantees to facilitate investments abroad.<sup>391</sup>
- 6.4 Australia has made few steps toward implementing the Guiding Principles. In 2016, a UN Universal Periodic Review of Australia’s business and human rights framework recommended that Australia:
- (a) adopt a NAP to implement the Guiding Principles;
  - (b) begin a consultative process towards adoption of a NAP on business and human rights; and
  - (c) strengthen the normative framework for the protection of human rights, including the monitoring, investigation and reparation for human rights violations committed by Australian enterprises in their territories and in third States.<sup>392</sup>
- 6.5 The Guiding Principles set out a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity and provide an internationally-accepted framework for enhancing standards and practices in relation to business and human rights.<sup>393</sup> Australia had previously committed to undertake a national consultation on the implementation. However, in October 2017, the Australian government announced that it would not be proceeding with a NAP.<sup>394</sup> Since then, the Australian government has not made any recent statements about introducing or the need for a NAP. However, some Australian NGOs, such as UNICEF Australia in 2019,<sup>395</sup> as well as the AHRC in 2021,<sup>396</sup> have made statements advocating for the introduction of a NAP.
- 6.6 Similarly, a 2016 submission from UNICEF to the Queensland government’s Human Rights Inquiry recommended that the Queensland government seek conformity with the Guiding Principles, the CRBP, and GC16.<sup>397</sup>
- 6.7 Following this review, steps were taken by the Department of Foreign Affairs, the Global Compact Network Australia and professional advisers to consult with the business community and prepare a stocktake on business and human rights in Australia.<sup>398</sup> In October 2017, however, the Foreign Minister advised that Australia would not proceed with a NAP at that time.<sup>399</sup>
- 6.8 In the years since 2017, Australia has made little progress on a NAP on business and human rights. It has, however, introduced legislation requiring businesses which have an annual consolidated revenue of more than \$100 million to report annually on risks of modern slavery (including the worst forms of child labour) and the actions they are taking to address these risks, including due diligence.<sup>400</sup> In May 2023, a statutory review of that legislation recommended incorporating a mandatory due diligence requirement in respect of human rights risks (as they relate to modern slavery).<sup>401</sup> Queensland, meanwhile, has passed the *Human Rights Act*, which:
- (a) allows businesses to “opt-in”, or choose to be subject, to its provisions (section 60); and
  - (b) makes it unlawful for a public entity to act or make decisions in ways that are not compatible with human rights (section 58).
- 6.9 While section 58 of the *Human Rights Act* binds the Queensland Government, it also indirectly affects businesses. For example, procurement

contracts between the Queensland government and businesses are informed by the Queensland government’s obligation under section 58.<sup>402</sup>

- 6.10 International bodies have continued to call for stronger implementation of corporate regulation in the context of children’s rights. In its concluding observations in response to Australia’s joint fifth and sixth periodic report to the CRC Committee submitted on 15 January 2018, the Committee recommended that Australia:
- (a) ensure the legal accountability of Australian companies and their subsidiaries for violations of children’s rights, including in relation to the environment and health, committed within Australian territory or overseas by businesses domiciled in Australia, and establish mechanisms for the investigation and redress of such abuses;<sup>403</sup>
  - (b) require companies to undertake assessments and consultations and to make full public disclosure of the environmental, health-related and children’s rights impacts of their business activities and their plans to address such impacts;<sup>404</sup>
  - (c) strengthen its support to the AHRC for the implementation of the Guiding Principles and make information available on the work of the Australian National Contact Point to implement the Guidelines for Multinational Enterprises of the Organisation for Economic Cooperation and Development;<sup>405</sup> and
  - (d) undertake campaigns to raise the awareness of those working in the tourism industry and the public at large on the harmful effects of the sexual exploitation of children in the context of travel and tourism and widely disseminate the Global Code of Ethics for Tourism of the World Tourism Organisation.<sup>406</sup>

6.11 A document published in 2020 by the AHRC ahead of the third Universal Periodic Review of the Guiding Principles recommended that:

- (a) the government develop a NAP on business and human rights; and
  - (b) legislate for large Australian companies and Australian companies operating in high risk sectors, including extraterritorially, to conduct human rights and environmental due diligence.<sup>407</sup>
- 6.12 In 2020, 202 NGOs across Australia endorsed – in whole or in part – the Joint NGO Submission on behalf of the Australian NGO Coalition to Australia’s third Universal Periodic Review (**Joint NGO Submission**). With respect to ‘Business and Human Rights’, the Joint NGO Submission called on Australia to:
- (a) renew its efforts to develop a NAP on Business and Human Rights and provide effective pathways to remedy for corporate human rights violations;
  - (b) introduce mandatory human rights and environmental due diligence obligations for companies to effectively combat forced labour and other human rights violations in corporate supply chains; and
  - (c) require companies emitting greater than 25,000 tCO<sub>2</sub>-e per annum to reduce their emissions consistent with the goals of the Paris Agreement, while respecting human rights in a swift, just transition to a net zero economy.<sup>408</sup>

6.13 The Report of the Working Group on Australia’s Third Universal Periodic Review, published on 24 March 2021, again contained recommendations that Australia finalise its NAP on business and human rights.<sup>409</sup>

<sup>391</sup> Concluding Observations in relation to Australia’s Fourth Periodic Report under Article 44 of the CRC (28 August 2012) at [28(c)]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>392</sup> See <https://uhri.ohchr.org/Document/File/97e985ae-aea5-4275-915f-623ae03966c8/e9bc45c0-775b-4dc3-95cf-2e976431c805>.

<sup>393</sup> See: <https://www.ohchr.org/en/business-and-human-rights>. The Human Rights Council unanimously endorsed the Guiding Principles in its resolution 17/4 dated 16 June 2011: see Human Rights Council, *Human rights and transnational corporations and other business enterprises*, 17<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/RES/17/4 (6 July 2011)<<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G11/144/71/PDF/G1114471.pdf?OpenElement>>.

<sup>394</sup> See: <https://www.hrlc.org.au/news/2017/10/17/government-ignores-advice-of-expert-group-on-business-and-human-rights>.

<sup>395</sup> See: <https://apo.org.au/node/242396>.

<sup>396</sup> See: [https://humanrights.gov.au/sites/default/files/2020-10/business\\_and\\_human\\_rights\\_-\\_australias\\_third\\_upr\\_2021.pdf](https://humanrights.gov.au/sites/default/files/2020-10/business_and_human_rights_-_australias_third_upr_2021.pdf).

<sup>397</sup> [https://www.unicef.org.au/Upload/UNICEF/Media/Our%20work/UA-submission-re-Human-Rights-Inquiry-Queensland-18-04-16-FINAL\\_1.pdf](https://www.unicef.org.au/Upload/UNICEF/Media/Our%20work/UA-submission-re-Human-Rights-Inquiry-Queensland-18-04-16-FINAL_1.pdf) at page 16.

<sup>398</sup> <https://www.dfat.gov.au/sites/default/files/stocktake-on-business-and-human-rights-in-australia.pdf>.

<sup>399</sup> <https://www.hrlc.org.au/news/2017/10/17/government-ignores-advice-of-expert-group-on-business-and-human-rights>.

<sup>400</sup> *Modern Slavery Act 2018* (Cth).

<sup>401</sup> Professor John McMillan AO, *Report of the statutory review of the Modern Slavery Act 2018 (Cth): The first three years* (25 May 2023).

<sup>402</sup> [https://www.forgov.qld.gov.au/\\_\\_data/assets/pdf\\_file/0019/203527/human-rights-procurement.pdf](https://www.forgov.qld.gov.au/__data/assets/pdf_file/0019/203527/human-rights-procurement.pdf).

<sup>403</sup> Concluding Observations in relation to Australia’s Fifth and Sixth Periodic Report under Article 44 of the CRC (1 November 2019) at [17(a)]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>404</sup> Concluding Observations in relation to Australia’s Fifth and Sixth Periodic Report under Article 44 of the CRC (1 November 2019) at [17(b)]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>405</sup> Concluding Observations in relation to Australia’s Fifth and Sixth Periodic Report under Article 44 of the CRC (1 November 2019) at [17(c)]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>406</sup> Concluding Observations in relation to Australia’s Fifth and Sixth Periodic Report under Article 44 of the CRC (1 November 2019) at [17(d)]. See: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>407</sup> See: [https://humanrights.gov.au/sites/default/files/2020-10/business\\_and\\_human\\_rights\\_-\\_australias\\_third\\_upr\\_2021.pdf](https://humanrights.gov.au/sites/default/files/2020-10/business_and_human_rights_-_australias_third_upr_2021.pdf).

<sup>408</sup> See: <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/602b2a925246cb1b62bc23a4/1613441688187/UPR+++Australian+NGO+Coalition+Submission+++domestic+publication+version+-July+2020+%28new%29.pdf> at page 14.

<sup>409</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement> at 146.120.



6.14 The measures which have been introduced at the Commonwealth and Queensland level since 2017 have not been considered a substitute for a NAP implementing the Guiding Principles or establishing a framework on business and human rights. Further, they do not substantially affect businesses’ legal obligations to protect the right of the child to a healthy environment.

Australia has not historically participated in negotiations on a draft treaty on business and human rights

6.15 Besides not introducing a NAP on the Guiding Principles, Australia has also played a limited role in international negotiations towards adopting a multilateral treaty on business activities and human rights. On 25 June 2014, the HRC adopted a resolution to establish an open-ended intergovernmental working group (IGWG) with a mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights (**Business and Human Rights Treaty**).<sup>410</sup> Since then, the IGWG has held eight sessions, in July 2015,<sup>411</sup> October 2016,<sup>412</sup>

October 2017,<sup>413</sup> October 2018,<sup>414</sup> October 2019,<sup>415</sup> October 2020,<sup>416</sup> October 2021,<sup>417</sup> and most recently in October 2022. <sup>418</sup> In that period, the IGWG has also developed and disseminated five drafts of the Business and Human Rights Treaty, including the zero draft in 2018,<sup>419</sup> a revised draft in 2019,<sup>420</sup> a second revised draft in 2020,<sup>421</sup> a third revised draft in 2021,<sup>422</sup> and the most recent updated draft, which was published in July 2023.<sup>423</sup>

6.16 The stated purpose of the draft Business and Human Rights Treaty is to, among other aims, “clarify and facilitate effective implementation of the obligation of States to respect, protect, fulfil and promote human rights in the context of business activities, particularly those of transnational character”.<sup>424</sup> In practice, it would do so by imposing obligations on State Parties to take steps to ensure businesses respect existing human rights, for example, through requiring these States to “regulate effectively” the activities of businesses within their territory, jurisdiction or otherwise under their control, including transnational enterprises.<sup>425</sup> These regulatory obligations likewise would extend to having State Parties require business enterprises to undertake human rights due diligence, including the publication of regular human rights, labour rights, environmental and climate change impact assessments through

each enterprise’s operations.<sup>426</sup> Similarly, the Business and Human Rights Treaty would oblige State Parties to provide their courts and domestic non-judicial mechanisms with necessary competence to enable victims to access adequate, timely and effective remedies and access to justice, and to overcome specific obstacles faced by women, vulnerable and marginalised people and groups in accessing such mechanisms and remedies.<sup>427</sup>

6.17 While Australia participated in the second and third sessions of the IGWG in October 2016<sup>428</sup> and October 2017<sup>429</sup> respectively, since then it has been absent from all subsequent working group sessions, until 2023. Likewise, Australia has not historically made submissions to the IGWG regarding any of the draft versions of the Business and Human Rights Treaty published by the working group, until 2023.<sup>430</sup> The next session of the IGWG is due to occur in October 2023.<sup>431</sup> It is unclear whether Australia will participate in the next session.

6.18 At the state level, while the Queensland government has not made any recent statements about the application of the *Human Rights Act* to businesses, it has previously indicated that the Act applies to businesses insofar as they are public entities carrying out public functions.<sup>432</sup>



Whether there is consistent implementation, monitoring and enforcement of national law and policy regarding the regulation of business activities impacting children’s right to a healthy environment

Mandatory environmental reporting in Australia

6.19 There is limited information available publicly regarding children’s rights in the business sector. However, there is some progress relating to the implementation, monitoring and enforcement of national law and policy in Australia to the extent that it relates to the impact of business activities on the environment more generally. Specifically, there are mechanisms in place to monitor the emissions and energy use of some corporations that meet minimum thresholds.

National Greenhouse and Energy Register

6.20 The *National Greenhouse and Energy Reporting Act 2007* (Cth) (**NGER Act**) established a single national framework for reporting and disseminating company information about greenhouse gas emissions, energy production and energy consumption. Controlling corporations are obliged to report where they meet either the:

- (a) facility threshold of:
  - (i) 25kt or more of greenhouse gasses; or
  - (ii) production or consumption of 100TJ or more of energy; or

<sup>410</sup> Human Rights Council, *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*, 26<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/26/L.22/Rev.1 (25 June 2014)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ LTD/ G14/ 064/ 48/ PDF/ G1406448.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/064/48/PDF/G1406448.pdf?OpenElement)>.

<sup>411</sup> Human Rights Council, *Report on the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, with the mandate of elaborating an international legally binding instrument*, 31<sup>st</sup> sess, Agenda Item 3, UN Doc A/HRC/31/50 (5 February 2016)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G16/ 018/ 22/ PDF/ G1601822.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/018/22/PDF/G1601822.pdf?OpenElement)>.

<sup>412</sup> Human Rights Council, *Report on the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 34<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/34/47 (4 January 2017)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G17/ 000/ 94/ PDF/ G1700094.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/000/94/PDF/G1700094.pdf?OpenElement)>.

<sup>413</sup> Human Rights Council, *Report on the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 37<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/37/67 (24 January 2018)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G18/ 017/ 50/ PDF/ G1801750.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/50/PDF/G1801750.pdf?OpenElement)>.

<sup>414</sup> Human Rights Council, *Report on the fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 40<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/40/48 (2 January 2019)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G19/ 000/ 37/ PDF/ G1900037.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/000/37/PDF/G1900037.pdf?OpenElement)>.

<sup>415</sup> Human Rights Council, *Report on the fifth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 43<sup>rd</sup> sess, Agenda Item 3, UN Doc A/HRC/43/55 (9 January 2020)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G20/ 003/ 88/ PDF/ G2000388.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/003/88/PDF/G2000388.pdf?OpenElement)>.

<sup>416</sup> Human Rights Council, *Report on the sixth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 46<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/46/73 (14 January 2021)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G21/ 009/ 83/ PDF/ G2100983.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/009/83/PDF/G2100983.pdf?OpenElement)>.

<sup>417</sup> Human Rights Council, *Report on the seventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 49<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/49/65 (29 December 2021)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G21/ 397/ 55/ PDF/ G2139755.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/397/55/PDF/G2139755.pdf?OpenElement)>.

<sup>418</sup> Human Rights Council, *Report on the eighth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 52<sup>nd</sup> sess, Agenda Item 3, UN Doc A/HRC/52/41 (30 December 2022)<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G22/ 616/ 26/ PDF/ G2261626.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/616/26/PDF/G2261626.pdf?OpenElement)>.

<sup>419</sup> See: [https:// media.business-humanrights.org/ media/ documents/ files/ documents/ DraftLBI.pdf](https://media.business-humanrights.org/media/documents/files/documents/DraftLBI.pdf).

<sup>420</sup> See: [https:// www.ohchr.org/ sites/ default/ files/ Documents/ HRBodies/ HRCouncil/ WGTransCorp/ OEIGWG\\_ RevisedDraft\\_ LBI.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf).

<sup>421</sup> See: [https:// www.ohchr.org/ sites/ default/ files/ Documents/ HRBodies/ HRCouncil/ WGTransCorp/ Session6/ OEIGWG\\_ Chair-Rapporteur\\_ second\\_ revised\\_ draft\\_ LBI\\_ on\\_ TNCs\\_ and\\_ OBEs\\_ with\\_ respect\\_ to\\_ Human\\_ Rights.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf).

<sup>422</sup> See: [https:// www.ohchr.org/ sites/ default/ files/ Documents/ HRBodies/ HRCouncil/ WGTransCorp/ Session6/ LBI3rdDRAFT.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf).

<sup>423</sup> See: [https:// www.ohchr.org/ sites/ default/ files/ documents/ hrbodies/ hrcouncil/ igwg-transcorp/ session9/ igwg-9th-updated-draft-lbi-clean.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf).

<sup>424</sup> See: Third Revised Draft art 2.1<[https:// www.ohchr.org/ sites/ default/ files/ Documents/ HRBodies/ HRCouncil/ WGTransCorp/ Session6/ LBI3rdDRAFT.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf)>.

<sup>425</sup> See: Third Revised Draft art 6.1<[https:// www.ohchr.org/ sites/ default/ files/ Documents/ HRBodies/ HRCouncil/ WGTransCorp/ Session6/ LBI3rdDRAFT.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf)>.

<sup>426</sup> See: Third Revised Draft 6.3 and 6.4a<[https:// www.ohchr.org/ sites/ default/ files/ Documents/ HRBodies/ HRCouncil/ WGTransCorp/ Session6/ LBI3rdDRAFT.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf)>.

<sup>427</sup> See: Third Revised Draft 7.1<[https:// www.ohchr.org/ sites/ default/ files/ Documents/ HRBodies/ HRCouncil/ WGTransCorp/ Session6/ LBI3rdDRAFT.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/LBI3rdDRAFT.pdf)>.

<sup>428</sup> Human Rights Council, *Report on the second session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 34<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/34/47 (4 January 2017) annex 1, p. 24<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G17/ 000/ 94/ PDF/ G1700094.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/000/94/PDF/G1700094.pdf?OpenElement)>.

<sup>429</sup> Human Rights Council, *Report on the third session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 37<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/37/67 (24 January 2018) annex 1, p. 23<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G18/ 017/ 50/ PDF/ G1801750.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/50/PDF/G1801750.pdf?OpenElement)>.

<sup>430</sup> See: [https:// www.ohchr.org/ en/ hr-bodies/ hrc/ wg-trans-corp/ session4/ session4](https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session4/session4); [https:// www.ohchr.org/ en/ hr-bodies/ hrc/ wg-trans-corp/ session5/ session5](https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session5/session5); [https:// www.ohchr.org/ en/ hr-bodies/ hrc/ wg-trans-corp/ session6/ session6](https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session6/session6); [https:// www.ohchr.org/ en/ hr-bodies/ hrc/ wg-trans-corp/ session7](https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session7); [https:// www.ohchr.org/ sites/ default/ files/ documents/ hrbodies/ hrcouncil/ igwg/ session8/ 2022-10-28/ igwg-8th-draft-report.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg/session8/2022-10-28/igwg-8th-draft-report.pdf).

<sup>431</sup> Human Rights Council, *Report on the eighth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, 52<sup>nd</sup> sess, Agenda Item 3, UN Doc A/HRC/52/41 (30 December 2022) 6 [25(h)]<[https:// documents-dds-ny.un.org/ doc/ UNDOC/ GEN/ G22/ 616/ 26/ PDF/ G2261626.pdf?OpenElement](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/616/26/PDF/G2261626.pdf?OpenElement)>.

<sup>432</sup> *Human Rights Act 2019* (QLD) section 9(1)(h); see also: [https:// www.qhrc.qld.gov.au/ \\_\\_data/ assets/ pdf\\_file/ 0020/ 36506/ Human-Rights-Annual-Report-2020-21.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0020/36506/Human-Rights-Annual-Report-2020-21.pdf).



- (b) corporate group threshold of:

(i) 50kt or more of greenhouse gases (scope 1 and scope 2 emissions); or

(ii) production or consumption of 200TJ or more of energy.<sup>433</sup>

6.21 This information is then made publicly available on the National Greenhouse and Energy Register.<sup>434</sup> A failure to meet this reporting obligation may expose a business, and in certain circumstances their executive officers, to civil penalties which may be enforced by the Clean Energy Regulator.<sup>435</sup>
- Australia’s largest industrial facilities, who were responsible for almost a third of national emissions during the 2021-22 reporting year.<sup>438</sup> Sectors covered include electricity generation, mining, oil and gas extraction, manufacturing, transport and waste.<sup>439</sup> The regulated entities have a total amount of scope 1 emissions of more than 100,000 tonnes carbon dioxide equivalent in a financial year.<sup>440</sup>
- 6.24 The newly legislated Safeguard Mechanism objectives include three emissions targets:

(a) **Net emissions budget** - the total net safeguard emissions for all financial years between 1 July 2020 and 30 June 2030 must not exceed 1,233 million tonnes of carbon dioxide equivalence;

(b) **Net emissions caps** - net safeguard emissions must decline to no more than 100 million tonnes of carbon dioxide equivalence for the financial year beginning on 1 July 2029, and zero for any financial year to begin after 30 June 2049; and

(c) **Gross limit on emissions** - the 5-year rolling average safeguard emissions for each financial year that begins after 30 June 2024 must be lower than the past 5-year rolling average safeguard emissions for that financial year.<sup>441</sup>

6.25 The core requirements imposed on Safeguard Mechanism facility operators are found in the NGER Act and corresponding rules.<sup>442</sup> At the end of a “monitoring period”, if a facility’s “net emissions number” exceeds the “baseline emissions number” an “excess emissions situation” exists unless an exemption applies.<sup>443</sup> If an excess emissions situation exists, the person that is or was the responsible emitter for the facility will be subject to a civil penalty.<sup>444</sup> Emissions from regulated entities are reported through the National Greenhouse and Energy Register.<sup>445</sup>

This information is publicly available and searchable through the NPI data website.<sup>436</sup>

### Safeguard Mechanism

6.23 The newly reformed Safeguard Mechanism is a key policy to ensure Australia meets its emissions reduction target of 43% below 2005 levels by 2030.<sup>437</sup> The scheme captures around 219 of

6.26 The baselines will decline by a rate of 4.9% each financial year to 2030 to reduce the net emissions of all regulated entities. From 2030, the “default decline rate” is set at 3.285%.<sup>446</sup> However, some flexibility is built into the Safeguard Mechanism (eg surrendering Australian Carbon Credit Units and Safeguard Mechanism Credit Units).<sup>447</sup>

6.27 Overseas, some organisations have also developed tools to assist businesses with monitoring the impact of their operations on children’s right to a healthy environment:

(a) The Children’s Rights and Business Atlas<sup>448</sup> helps businesses and industries to assess potential and actual impacts on the lives of children and guides the integration of children’s rights into due diligence practices and procedures. One of the issues considered by this tool is “Children’s Rights in the Community and Environment”, along with “Children’s Rights in the Workplace” and “Children’s Rights in the Marketplace”. The Atlas was jointly developed by UNICEF and the Global Child Forum, with the express goal of creating a business-friendly tool to enable businesses to make informed decisions in the best interests of children.

(b) UNICEF’s Guide for incorporating children’s rights into GRI-based reporting<sup>449</sup> also has a section specifically focused on how businesses can respect and support children’s rights in relation to the environment. It provides examples of company information to report, relating to whether the company’s environmental and resource-use policy

considers its impact on children and whether there are mechanisms in place for ongoing monitoring and grievance reporting.

(c) The CRBP<sup>450</sup> provide comprehensive guidance for businesses to understand, prevent and address any impact on the rights and well-being of children. The framework outlines ten key actions that businesses should take to respect and support children’s rights throughout their activities and business relationships, including in the workplace, the marketplace, the community and the environment. The CRBP are derived from internationally recognised human rights of children, in particular the CRC. The CRBP was jointly developed by UNICEF, Save the Children and the UN Global Compact.

6.28 However, these tools ultimately place most of the onus on businesses to implement, monitor and regulate the impact of their business activities impacting children’s right to a healthy environment.

### The emergence of human rights due diligence in the European Union

6.29 In recent years, there has also been growing momentum for mandatory human rights due diligence in the European Union. In February 2022, the EU Commission released its proposed Directive on Corporate Sustainability Due Diligence, which mandates human rights and environmental due diligence for large organisations.<sup>451</sup>

6.30 The Directive would require businesses to:

(a) integrate due diligence into corporate policies;<sup>452</sup>

(b) identify and prevent adverse human rights and environmental impacts;<sup>453</sup>

<sup>433</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) s 13.

<sup>434</sup> See: <http://www.cleanenergyregulator.gov.au/NGER/National%20greenhouse%20and%20energy%20reporting%20data/Extract-of-National-Greenhouse-and-Energy-Register-by-year>.

<sup>435</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) Part 5.

<sup>436</sup> See: <http://www.npi.gov.au/npi-data/search-npi-data>.

<sup>437</sup> *Climate Change Act 2022* (Cth). See: [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6957\\_ems\\_435f34d8-a0b8-4668-958f-4df146ac81fa/upload\\_pdf/Revised%20Explanatory%20Memorandum\\_22136.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6957_ems_435f34d8-a0b8-4668-958f-4df146ac81fa/upload_pdf/Revised%20Explanatory%20Memorandum_22136.pdf;fileType=application%2Fpdf).

<sup>438</sup> See: <https://www.cleanenergyregulator.gov.au/NGER/The-Safeguard-Mechanism/safeguard-data/safeguard-facility-reported-emissions/safeguard-facility-reported-emissions-2021-22>.

<sup>439</sup> See: <https://www.cleanenergyregulator.gov.au/NGER/The-Safeguard-Mechanism#:~:text=Covered%20emissions%20are%20defined%20as,covered%20by%20the%20Safeguard%20Mechanism>.

<sup>440</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XJ(1); *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (Cth) r 8.

<sup>441</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) ss 3(2)(b)-(d).

<sup>442</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) pt 3H.

<sup>443</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XE.

<sup>444</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) s 22XF.

<sup>445</sup> See: <https://www.cleanenergyregulator.gov.au/NGER/The-Safeguard-Mechanism/safeguard-data>.

<sup>446</sup> *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015* (Cth) r 32.

<sup>447</sup> *National Greenhouse and Energy Reporting Act 2007* (Cth) ss 22XN-22XNA. See: <https://www.cleanenergyregulator.gov.au/NGER/The-Safeguard-Mechanism#:~:text=Covered%20emissions%20are%20defined%20as,covered%20by%20the%20Safeguard%20Mechanism>.

<sup>448</sup> See: <https://www.childrensrightsatlas.org/>.

<sup>449</sup> See: [https://sites.unicef.org/csr/css/Childrens\\_Rights\\_in\\_Reporting\\_Second\\_Edition\\_HR.pdf](https://sites.unicef.org/csr/css/Childrens_Rights_in_Reporting_Second_Edition_HR.pdf) (page 27).

<sup>450</sup> See: <https://resourcecentre.savethechildren.net/document/childrens-rights-and-business-principles-crbp/>.

<sup>451</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145).

<sup>452</sup> See: draft Directive art 5 – [https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>453</sup> See: draft Directive arts 6 and 7 – [https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF).

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- (c) establish a procedure for handling complaints;<sup>454</sup>
  - (d) monitor due diligence implementation;<sup>455</sup>
  - (e) produce annual reports about their activities;<sup>456</sup> and
  - (f) adopt a plan to ensure their business model and strategy is compatible with transitioning to a sustainable economy and limiting global warming to 1.5°C.<sup>457</sup>
- 6.31 The Directive would also require directors to consider the consequences of their decisions for sustainability matters including human rights, climate change and environmental consequences over the short, medium and long-term, in order to discharge their duty to act in the best interests of the company.
- 6.32 EU Member States would also be required to ensure regulatory oversight under this regime.
- 6.33 The Directive has yet to be enacted. However, to the extent that it is adopted, Australian businesses will likely be on notice – especially insofar as they fall within the Directive’s thresholds, have existing relationships with large EU companies that are captured by the Directive, or otherwise form part of their supply chains. Beyond this, several countries including France and Germany have already adopted national human rights due diligence legislation.<sup>458</sup>
- 6.34 On 21 June 2022 the European Parliament and Council of the European Union also reached a provisional political agreement on the Corporate Sustainability Reporting Directive.<sup>459</sup> On 1 June 2023, the European Parliament adopted amendments on the proposal for the Corporate Sustainability Reporting Directive.<sup>460</sup>

- 6.35 Though still subject to approval, it is anticipated that the provisional agreement will introduce detailed reporting requirements, to ensure that large companies address environmental and human rights impacts, and introduce the requirement for those same companies to publish this information in a dedicated section of company management reports.<sup>461</sup>
- 6.36 This emerging trend towards human rights due diligence may offer a useful model for regulating business activities in Australia domestically.

Priority issues for further consideration

- 6.37 Despite a well-developed body of environmental protection legislation, children’s right to a healthy, clean and sustainable environment are not yet reflected in legal obligations on Australian businesses. This could be addressed by the implementation of a NAP on Business and Human Rights and Australian involvement in negotiations for a treaty on business and human rights, as well as domestic legal reform.

Domestic and international measures on business and human rights

- 6.38 Requirements for the Australian business sector to respect and consider children’s right to a healthy environment could be strengthened by measures including:
- (a) the implementation of a NAP on Human Rights; and
  - (b) in relation to the further development of a multilateral treaty on business and human rights:

- (i) attendance by Australian representatives at future sessions of the open-ended intergovernmental working group with a mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights; and
  - (ii) Australia’s participation in the negotiation of a draft Business and Human Rights Treaty, with a view to Australia ratifying this instrument in the future.
- (a) imposing obligations on businesses to comply with the:
    - (i) Guiding Principles;
    - (ii) CRBP; and
    - (iii) Recommendations of the CRC Committee in its General Comment No. 16;
  - (b) monitoring the development in the European Union of mandatory environmental and human rights due diligence requirements for large entities and consider implementing similar legal requirements; and
  - (c) introducing extraterritorial liability for violations of environmental and human rights (including children’s rights) committed by Australian companies overseas, and establishing mechanisms to monitor, investigate and redress these violations. This will also involve cooperation with those jurisdictions in which Australian companies operate.

Domestic legal reform

- 6.39 As proposed at 4.54 above, federal and Queensland legislation could also be reviewed with a view to:

<sup>454</sup> See: draft Directive art 9 – [https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>455</sup> See: draft Directive art 10 – [https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>456</sup> See: draft Directive art 11 – [https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>457</sup> See: draft Directive art 15 – [https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:bc4dcea4-9584-11ec-b4e4-01aa75ed71a1.0001.02/DOC_1&format=PDF).

<sup>458</sup> *Loi de vigilance* ('Law of vigilance') 2017 (France); *Lieferkettensorgfaltspflichtengesetz* ('Supply Chain Due Diligence Act') (Germany).

<sup>459</sup> See: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/21/new-rules-on-sustainability-disclosure-provisional-agreement-between-council-and-european-parliament/>.

<sup>460</sup> See: [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.pdf).

<sup>461</sup> See: <https://www.consilium.europa.eu/en/press/press-releases/2022/06/21/new-rules-on-sustainability-disclosure-provisional-agreement-between-council-and-european-parliament/>.





# 7. Conclusion and recommendations

7.1 On the basis of the study conducted for this report, the following avenues are recommended for advancing recognition of children’s right to a clean, healthy and sustainable environment under Commonwealth and Queensland law. The recommendations include actions that may be taken (as appropriate) by the Commonwealth Government, Queensland Government, AHRC and National Children’s Commissioner, and/or NGOs. To reflect the interrelated nature of international legal and normative developments, and domestic law reform and advocacy, the recommendations are categorised according to the following four categories:

- (a) Australia’s international commitments and engagement in international normative developments towards greater recognition of children’s right to a healthy environment;
- (b) domestic law reform, both at the federal and state level (in Queensland);
- (c) advocacy in international and domestic forums; and
- (d) youth engagement and capacity development strategies.

7.2 Each recommendation is provided with an indicative timeline for action, which is categorised into: (i) short-term actions; (ii) medium-term actions; and (iii) longer-term actions.

#	Recommendations	Responsible entity	Indicative timeline
(a) Australia’s international commitments and engagement in international normative developments			
1	Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure 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.	Commonwealth Government	Medium-term
2	Sign up to the Intergovernmental Declaration on Children, Youth and Climate Action and consistent with that Declaration, commit to (among other aims): <ul style="list-style-type: none"><li>Advocating for global recognition of children’s inalienable right to a healthy environment;</li><li>Enhancing efforts to respect, promote and consider the rights of children and young people in implementation of the Paris Agreement at all levels; and</li><li>Enhancing the meaningful participation of children and youth in climate change processes.</li></ul>	Commonwealth Government	Medium-term
3	In relation to the further development of a multilateral treaty on business and human rights: <ul style="list-style-type: none"><li>Attend the ninth session of the open-ended intergovernmental working group with a mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, to be held in 2023; and</li><li>Participate in the negotiation of a draft Business and Human Rights Treaty, with a view to Australia ratifying this instrument in the future.</li></ul>	Commonwealth Government	Medium-term
4	Integrate a climate change-based approach to periodic national reporting to UN treaty bodies and related entities including the CRC Committee, ICESCR Committee, CEDAW Committee, CRPD Committee, Human Rights Committee, through the Universal Periodic Review process to the Human Rights Council, and Voluntary National Reviews to the High-Level Political Forum on Sustainable Development.	Commonwealth Government	Longer-term
(b) Domestic law reform			
5	The right to a clean, healthy and sustainable environment is best located in a standalone federal human rights act.	Commonwealth Government	Medium-term

#	Recommendations	Responsible entity	Indicative timeline
6	Develop and implement a federal human rights act which addresses environmental and children’s rights (including a standalone right to a healthy environment <sup>462</sup> ) and expands the functions of the AHRC to receive, inquire into and conciliate in respect of complaints regarding alleged violations of rights set out in a federal human rights act.	Commonwealth Government	Medium-term
7	Any federal human rights act should include the rights enshrined in Article 9 of the <i>Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)</i> , which provides the following: <ol style="list-style-type: none"><li>“Each Party shall guarantee a safe and enabling environment for persons, groups and organisations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity.</li><li>Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.</li><li>Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.”</li></ol>		
8	Incorporate a requirement in the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth) for officers of the Commonwealth to act consistently with the federal human rights act right to a healthy environment and to consider the right when exercising their functions under federal legislation that affects human rights and environmental legislation.	Commonwealth Government	Medium-term
9	Include a standalone right to a healthy environment in the <i>Human Rights Act</i> .	Queensland Government	Medium-term
10	Strengthen state and federal legislative measures corresponding to the following aspects of children’s right to a healthy environment: <ul style="list-style-type: none"><li>Climate change</li><li>Children’s rights to an adequate standard of living</li><li>Children’s rights to play and recreation</li><li>Children’s rights to express views and have them considered</li><li>Participatory rights of children on environmental matters</li><li>Protection of children from reprisals for participating or expressing views on environmental matters</li><li>Effective remedies for children’s rights violations</li><li>State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects</li><li>State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed policies</li><li>Binding obligations on businesses to comply with the:<ul style="list-style-type: none"><li>Guiding Principles on Business and Human Rights;</li><li>Children’s Rights and Business Principles;</li><li>Recommendations of the Committee on the Rights of the Child in its general comment No. 16;</li><li>Recommendations of the General Comment on Children’s Rights and the Environment with a Special Focus on Climate Change (General Comment No. 26).</li></ul></li></ul>	Commonwealth Government Queensland Government	Medium-term

<sup>462</sup> See also an expression of the right to a healthy environment in the AHRC’s December 2022 paper, “Position paper: A Human Rights Act for Australia”, available at<[https://humanrights.gov.au/sites/default/files/free\\_equal\\_hra\\_2022\\_-\\_main\\_report\\_rgb\\_0\\_0.pdf](https://humanrights.gov.au/sites/default/files/free_equal_hra_2022_-_main_report_rgb_0_0.pdf)>.



#	Recommendations	Responsible entity	Indicative timeline
11	Develop and implement a National Action Plan on Business and Human Rights	Commonwealth Government	Medium-term
12	Review and, if necessary, revise criminal laws and sentencing guidelines related to or concerning non-violent protest activities, including offences introduced by the <i>Summary Offences and Other Legislation Amendment Act 2019</i> (Qld).	Commonwealth Government Queensland Government	Medium-term
13	Monitor the development in the European Union of mandatory environmental and human rights due diligence requirements for large entities and consider implementing similar legal requirements.	Commonwealth Government	Medium-term
14	Introduce extraterritorial liability for violations of environmental and human rights (including children's rights) committed by Australian companies overseas, and establish mechanisms to monitor, investigate and redress these violations. This will also involve cooperation with those jurisdictions in which Australian companies operate.	Commonwealth Government	Medium-term
15	<p>Amend the EPBC Act or equivalent (if by way of new legislation) to include or modify the following elements:</p> <p><i>Intergenerational Equity</i></p> <ul style="list-style-type: none"> <li>Integrate considerations of children's rights more clearly into the referral and assessment process under the EPBC Act by strengthening the principle of intergenerational equity to specifically include the climate consequences of actions. This may also include strengthening the principle as a relevant consideration in the context of projects and developments with significant Scope 3 emissions.</li> </ul> <p><i>Independent Authority</i></p> <ul style="list-style-type: none"> <li>Create an independent Environment Protection Agency. The EPA must be bound to apply the principle of intergenerational equity in its processes and decision making. Consideration should be given to how children's and young person's perspectives can be incorporated substantively into the new Agency.</li> <li>The EPA should be subject to a statutory duty to enforce the legislation.</li> </ul> <p><i>Climate</i></p> <ul style="list-style-type: none"> <li>The objects of the legislation should be amended to explicitly address the impact of climate change on matters of national environmental significance (MNES) and the need to reduce emissions to protect MNES. These objects should be mandatory considerations for all aspects of the administration of the Act.</li> <li>Require full disclosure of all emissions through the life cycle of projects. This includes emissions emitted inside Australia and from fossil fuels exported from Australia.</li> <li>Include a new Matter of Environmental Significance 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.</li> <li>Include in the legislation or the relevant national standard the need to identify and protect habitat necessary for species survival and recovery as global temperatures increase.</li> <li>Include in the legislation or the relevant national standard a stipulation that carbon offsetting cannot be considered in deciding whether to approve or refuse fossil fuel extraction and processing actions.</li> </ul> <p><i>Biodiversity</i></p> <ul style="list-style-type: none"> <li>Provide clear, up-front protection for important environmental values such as threatened species and their habitat by using "no-go zones" and other measures to designate areas where development will not be permitted.</li> </ul>	Commonwealth Government	Short-term

#	Recommendations	Responsible entity	Indicative timeline
	<ul style="list-style-type: none"> <li>Implement through legislation or a national standard a provision that ensures the relevant decision-maker may not approve an action that will have unacceptable impacts on MNES.</li> <li>Implement a national standard that ends the destruction of primary, remnant, old-growth or high-conservation value forests and bushland.</li> <li>Create a national standard for offsetting biodiversity loss which ensures that offsets are a genuine last resort, are permanent, secure and additional.</li> </ul> <p><i>Nuclear actions</i></p> <ul style="list-style-type: none"> <li>Retain the long standing and prudent national prohibition on nuclear power in Australia Retain the current requirement for assessment and approval of the impact of other nuclear action on the environment under national environmental law.</li> </ul> <p><i>Participation rights</i></p> <ul style="list-style-type: none"> <li>Recognise 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.</li> <li>Create a system for merits review of approval/refusal decisions allowing third parties to challenge decisions on the facts and policy rather than just administrative process.</li> <li>Create third party enforcement rights so members of the public have an accessible and low-cost jurisdiction to approach to enforce the law in the face of breaches of the legislation.</li> </ul> <p><i>First Nations</i></p> <ul style="list-style-type: none"> <li>The objects of the legislation should be amended to recognise Aboriginal and Torres Strait Islander peoples' knowledge of Country, and stewardship of its landscapes, ecosystems, plants and animals; to foster the involvement of First Nations in land management; and expand the ongoing and consensual use of traditional ecological knowledge across Australia's landscapes.</li> </ul> <p><i>Right to a Clean, Healthy and Sustainable Environment</i></p> <ul style="list-style-type: none"> <li>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 EPBC Act or equivalent.</li> </ul>		
<b>(c) Advocacy in domestic and international forums</b>			
16	<p>Prepare and submit parallel national reports to UN treaty bodies and related entities in respect of periodic reviews of Australia's compliance with relevant international human rights treaties, to specifically address the impacts of Australia's existing climate change and environmental protection laws and policies on the right to a clean, healthy and sustainable environment, and to advocate for greater recognition of this right under Australian law (especially for children and young people). Consider collaborating with other interested civil society stakeholders and NHRIs like the ALRC, Law Council of Australia, AHRC, and Human Rights Law Centre to prepare joint submissions.</p> <p>NGOs may consider participating in the following upcoming review processes:</p> <ul style="list-style-type: none"> <li>the ninth periodic review of Australia under the Convention on the Elimination of All Forms of Discrimination against Women (<b>CEDAW</b>),<sup>463</sup> commencing in July 2022;</li> <li>the seventh periodic review of Australia under the International Covenant on Civil and Political Rights (<b>ICCPR</b>)<sup>464</sup>, commencing in 2023;</li> <li>the seventh periodic review of Australia under the CRC, commencing in January 2024;</li> <li>the fourth periodic review of Australia under the Convention on the Rights of Persons with Disabilities (<b>CRPD</b>),<sup>465</sup> commencing in August 2026; and</li> <li>the fourth Universal Periodic Review of Australia, commencing in 2026.</li> </ul>	NGOs	Short-term

<sup>463</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981) ('CEDAW').

<sup>464</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').

<sup>465</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD').





## 8. Appendix A – Australia and the CRC

Table 1: Summary of Australia’s ratification of the CRC and related Optional Protocols.

CRC instrument	Ratification Status
<b>Convention on the Rights of the Child<sup>466</sup></b>	<ul style="list-style-type: none"> <li><b>Adopted:</b> 20 November 1989</li> <li><b>Entered into force:</b> 2 September 1990</li> <li><b>Total State Signatories:</b> 141</li> <li><b>Total State Parties:</b> 196</li> </ul>
<ul style="list-style-type: none"> <li>Australia’s ratification status</li> </ul>	<ul style="list-style-type: none"> <li><b>Signed:</b> 22 August 1990</li> <li><b>Ratified:</b> 17 December 1990</li> </ul>
<b>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>467</sup></b>	<ul style="list-style-type: none"> <li><b>Adopted:</b> 25 May 2000</li> <li><b>Entered into force:</b> 12 February 2002</li> <li><b>Total State Signatories:</b> 130</li> <li><b>Total State Parties:</b> 172</li> </ul>
<ul style="list-style-type: none"> <li>Australia’s ratification status</li> </ul>	<ul style="list-style-type: none"> <li><b>Signed:</b> 21 October 2002</li> <li><b>Ratified:</b> 26 September 2006</li> </ul>
<b>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography<sup>468</sup></b>	<ul style="list-style-type: none"> <li><b>Adopted:</b> 25 May 2000</li> <li><b>Entered into force:</b> 18 January 2002</li> <li><b>Total State Signatories:</b> 121</li> <li><b>Total State Parties:</b> 177</li> </ul>
<ul style="list-style-type: none"> <li>Australia’s ratification status</li> </ul>	<ul style="list-style-type: none"> <li><b>Signed:</b> 18 December 2001</li> <li><b>Ratified:</b> 8 January 2007</li> </ul>
<b>Optional Protocol to the Convention on the Rights of the Child on a communications procedure<sup>469</sup></b>	<ul style="list-style-type: none"> <li><b>Adopted:</b> 19 December 2011</li> <li><b>Entered into force:</b> 14 April 2014</li> <li><b>Total State Signatories:</b> 52</li> <li><b>Total State Parties:</b> 48</li> </ul>
<ul style="list-style-type: none"> <li>Australia’s ratification status</li> </ul>	<ul style="list-style-type: none"> <li><b>Signed:</b> N/A</li> <li><b>Ratified:</b> N/A</li> </ul>

#	Recommendations	Responsible entity	Indicative timeline
17	Monitor the Australian Parliamentary Joint Committee on Human Rights’ Inquiry into Australia’s Human Rights Framework due to report by 31 March 2024.	NGOs	Short-term
18	AHRC and National Children’s Commissioner to prepare a Children’s Rights Report that specifically addresses the topic of children’s right to a clean, healthy and sustainable environment; the extent to which these rights are protected under Australian law; and provide recommendations for how these rights can be further entrenched and protected under Australian law.	AHRC / National Children’s Commissioner NGOs	Medium-term
<b>(d) Youth engagement and capacity building strategies</b>			
19	Develop toolkits and provide capacity-building and legal education to assist children and young people, particularly from First Nations communities, in overcoming barriers to participating in political and legal processes.  Tailor these activities to support children and young people to participate in consultations conducted by the CRC Committee and other UN treaty bodies, as well as consultations on legislative reform conducted by the federal and state governments.	Commonwealth Government Queensland Government NGOs	Medium-term
20	Increase government support to organisations working on climate change and environmental issues, particularly youth organisations.	Commonwealth Government Queensland Government	Short- to medium-term

<sup>466</sup> See: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&clang=_en#EndDec).  
<sup>467</sup> See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-b&chapter=4&clang=\\_en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&clang=_en#EndDec).  
<sup>468</sup> See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-c&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&clang=_en).  
<sup>469</sup> See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11-d&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&clang=_en).



Table 2: Summary of the periodic reporting mechanism for State parties to the CRC.

Aspect of reporting process	Details
Reporting entity	Each State Party to the CRC. <sup>470</sup>
Frequency	<ul style="list-style-type: none"><li>Within 2 years of entry into force of the CRC for the State Party; and</li><li>Thereafter, every 5 years.<sup>471</sup></li></ul> However, in February 2022 the CRC Committee decided that reports submitted under the CRC will move to an 8-year review cycle with a mid-cycle follow up focusing on the six main areas. <sup>472</sup> Currently, there is no follow up process.
Scope of report	Each periodic State Party report should: <ul style="list-style-type: none"><li>indicate factors and difficulties affecting the degree of fulfilment of the State's obligations under the CRC and any relevant Optional Protocols that the State is a party to;</li><li>contain sufficient information to provide the CRC Committee with a comprehensive understanding of the implementation of the CRC and the Optional Protocols in the country concerned; and<sup>473</sup></li><li>States should consult with children and relevant civil society actors when preparing their reports.<sup>474</sup></li></ul>
Requests for further information	The CRC Committee may request a State Party to provide further information relevant to its implementation of the CRC and any relevant Optional Protocols to which it is party, in the form of a 'list of issues'. <sup>475</sup>
Participation of non-State actors	International, regional, national and local organisations, including individual NGOs or coalitions of NGOs, as well as NHRIs or Ombudspersons, may make written submissions to the CRC Committee in relation to the Committee's review of State Party reports.  Organisations that submit reports to the CRC Committee may request, or will be invited, to participate in the Committee's pre-sessional working group ( <b>PSWG</b> ). Three PSWGs are held each calendar year (in February, June and October) and are confidential, interactive meetings between the Committee and UN bodies and specialised agencies, NGOs, NHRIs and Ombudspersons, and children, to discuss implementation of the CRC and Optional Protocols by State parties. <sup>476</sup>
Participation of children	Children can participate in the Committee's review of each State Party's periodic reports by making submissions and giving oral presentations during PSWG meetings. They can also participate in private meetings with members of the Committee and observe the plenary sessions of the Committee. <sup>477</sup>
Outcome of reporting procedure	At the conclusion of each reporting cycle, the CRC Committee will issue its Concluding Observations on the State Party report, which can include suggestions and general recommendations regarding the reporting State's implementation of the CRC and any relevant Optional Protocols to which it is party.  These suggestions and general recommendations are then transmitted by the Committee to the State Party concerned and are reported to the UN General Assembly (together with any comments from State parties). <sup>478</sup>

<sup>470</sup> *Convention on the Rights of the Child* art 44(1).

<sup>471</sup> *Convention on the Rights of the Child* art 44(1).

<sup>472</sup> See: <https://www.ohchr.org/en/treaty-bodies/crc/decisions#no15>.

<sup>473</sup> *Convention on the Rights of the Child* art 44(2).

<sup>474</sup> See: <https://www.ohchr.org/en/treaty-bodies/crc/reporting-guidelines>.

<sup>475</sup> *Convention on the Rights of the Child* art 44(4).

<sup>476</sup> See: <https://www.ohchr.org/en/treaty-bodies/crc/information-civil-society-ngos-and-nhris>.

<sup>477</sup> See: <https://www.ohchr.org/en/treaty-bodies/crc/child-participation-work-committee>.

<sup>478</sup> *Convention on the Rights of the Child* art 45(d).

Aspect of reporting process	Details
Simplified reporting procedure	<p>Since February 2022 the simplified reporting procedure has been the default. However, State parties can opt out if they prefer to report under the standard reporting procedure (the traditional procedure).</p> <p>The simplified reporting procedure broadly follow the steps below:</p> <ul style="list-style-type: none"><li>CRC Committee presents a list of issues prior to reporting (LOIPR) to the State Party;</li><li>Replies to the LOIPR constitute the State Party report;</li><li>Dialogue between the Committee and State Party delegation during the session of the Committee;</li><li>Concluding Observations issued by the Committee on the State Party report, including recommendations; and</li><li>Follow-up and implementation of Committee recommendations.<sup>479</sup></li></ul> <p>The standard reporting procedure broadly follows the steps below:</p> <ul style="list-style-type: none"><li>State Party prepares and submits its periodic report;</li><li>CRC Committee presents a list of issues to the State Party;</li><li>State Party submits written responses to the list of issues;</li><li>Dialogue between the Committee and the State Party delegation during session of the Committee;</li><li>Concluding Observations issued by the Committee on the State Party report, including recommendations; and</li><li>Follow-up and implementation of Committee recommendations.<sup>480</sup></li></ul>

Table 3: Timeline of Australia's periodic reports to the CRC Committee in relation to its implementation of the CRC and Optional Protocols.

#	Submission date of Australia's national report	Instrument	Reporting cycle	Number of alternative reports submitted by non-State parties
1	8 January 1996	CRC	First	0
2	30 September 2003	CRC	Second and Third	0
3	25 June 2009	CRC	Fourth	13 <sup>481</sup>
4	25 June 2009	Second Optional Protocol	First	0
5	25 June 2009	First Optional Protocol	First	0
6	15 January 2018	CRC	Fifth and Sixth	15 <sup>482</sup>
7	15 January 2024 (TBC)	CRC	Seventh	N/A

<sup>479</sup> See: <https://www.ohchr.org/en/treaty-bodies/crc/reporting-guidelines>.

<sup>480</sup> See: <https://www.ohchr.org/en/treaty-bodies/crc/reporting-guidelines>.

<sup>481</sup> Alternative or 'shadow' reports were submitted by a range of international, domestic and local non-governmental organisations including the Castan Centre for Human Rights Law, Child Helpline International, Child Soldiers International, International Disability Alliance and the National Aboriginal and Torres Strait Islander Legal Services (NATSILS). For more information, see: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Countries.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx).

<sup>482</sup> Like the fourth reporting cycle, alternative or shadow reports were submitted by international, domestic and local non-governmental organisations including the Human Rights Law Centre, Human Rights Watch, the Law Council of Australia, the Global Initiative for Economic, Social and Cultural Rights, and the Australian Human Rights Commission. A report was also submitted by the Australian Child Rights Taskforce, which was convened by UNICEF Australia and compiled contributions from 93 NGOs and subject matter experts (see: [https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT\\_CRC\\_NGO\\_AUS\\_33215\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/AUS/INT_CRC_NGO_AUS_33215_E.pdf)).



9. Appendix B – Summary of Australia’s periodic reporting under relevant international human rights treaty mechanisms

#	Reporting process	Reviewing entity	Summary of periodic review mechanism	Scope of review	NGO participation	Frequency of review	Total reviews to date	Next review
1	UPR	UPR Working Group / Human Rights Council	<p>The UPR is a State-driven process conducted under the auspices of the HRC. Reviews are conducted through an interactive dialogue between the State subject to review and other UN Member States. While the review is led by the UPR Working Group, which consists of the 47 members of the HRC, any UN Member State may also participate in dialogue with the relevant State subject to periodic review.</p>	<p>Extent to which the reporting State complies with human rights obligations under:</p> <p>(a) UN Charter;</p> <p>(b) Universal Declaration of Human Rights;</p> <p>(c) human rights instruments ratified by Australia;</p> <p>(d) voluntary pledges and commitments (e.g. national human rights policies or programmes); and</p> <p>(e) applicable international humanitarian law.<sup>483</sup></p>	<p>Non-governmental organisations can participate in the UPR process by submitting “other stakeholder” reports to the Working Group, to be considered for each cycle of review of a given UN Member State. Non-State actors accredited as having consultative status with the United Nations Economic and Social Council (ECOSOC) can also attend the UPR Working Group sessions and make statements to the regular session of the HRC when the outcome of the State reviews are considered by the Council.</p>	Every 4 years	Australia has been the subject of three review cycles to date: in 2011; 2015; and 2021.	The next review cycle for Australia is scheduled to begin in 2026.



#	Reporting process	Reviewing entity	Summary of periodic review mechanism	Scope of review	NGO participation	Frequency of review	Total reviews to date	Next review
2	CRC	CRC Committee	<p>The periodic reporting process under Article 44 of the CRC offers important insights into a reporting State’s compliance with its obligations under the Convention. It also provides an opportunity for the CRC Committee to pose specific questions (through a ‘list of issues’) to each State Party regarding its compliance with the CRC.</p>	<p>Extent to which the reporting State complies with its human rights obligations under the CRC.</p>	<p>The CRC Committee encourages the participation of non-governmental organisations from an early stage and throughout the reporting process under the CRC, through both the submission of parallel reports as well as oral evidence.</p>	Every 5 years	Australia has been the subject of six review cycles to date: in 1997; 2005 (joint second and third report); 2012; and 2019 (joint fifth and sixth report).	The next review cycle for Australia is due to begin on 15 January 2024, when Australia’s next State Party report is due.

<sup>483</sup> See: <https://www.ohchr.org/en/hr-bodies/upr/basic-facts>.



#	Reporting process	Reviewing entity	Summary of periodic review mechanism	Scope of review	NGO participation	Frequency of review	Total reviews to date	Next review
3	ICCPR	Human Rights Committee	The Human Rights Committee is constituted under article 28 of the ICCPR to act as the independent body for monitoring States' compliance with the ICCPR. <sup>484</sup> States Parties to the ICCPR undertake to submit periodic reports to the Committee on the measures they have adopted to give effect to the rights recognised in the ICCPR and the progress they have made in enjoyment of those rights. <sup>485</sup>	Extent to which the reporting State complies with its human rights obligations under the ICCPR. Reports should focus on the most urgent problems that have arisen within the reporting period. States should address their compliance with each article of the ICCPR. <sup>486</sup>	The Human Rights Committee encourages the participation of non-governmental organisations from an early stage and throughout the reporting process under the ICCPR. For example, NGOs are encouraged to provide alternative reports to the Committee that contain information on a reporting State's compliance with the Covenant. <sup>487</sup>	Every 8 years <sup>488</sup>	Australia has been the subject of 6 review cycles to date: in 1982; 1988; 2000 (twice); 2008; 2009; 2012; and 2017.	The next review cycle for Australia is scheduled to begin in 2023

#	Reporting process	Reviewing entity	Summary of periodic review mechanism	Scope of review	NGO participation	Frequency of review	Total reviews to date	Next review
4	ICESCR	ICESCR Committee	The ICESCR is the primary international human rights treaty concerning economic, social and cultural rights. <sup>489</sup> The ICESCR is also supplemented by an Optional Protocol, which empowers the ICESCR Committee to receive and consider communications from individuals claiming that their rights under the ICESCR have been violated by a State Party. <sup>490</sup>	All State parties are required to submit periodic reports to the Committee regarding the implementation of the ICESCR. A reporting State must initially report within 2 years of ratifying the Covenant, and then every 5 years thereafter. <sup>491</sup>	The ICESCR Committee encourages the participation of non-governmental organisations from an early stage and throughout the reporting process under the ICCPR. For example, NGOs are encouraged to provide alternative reports to the Committee that contain information on a reporting State's compliance with the Covenant. <sup>492</sup>	Every 5 years	Australia has been the subject of 6 review cycles to date: in 1980-82; 1985-93; 2000; 2009; 2017; and 2022.	Australia is currently undergoing its sixth periodic review.



<sup>484</sup> *International Covenant on Civil and Political Rights*, opened for signature on 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('ICCPR').

<sup>485</sup> ICCPR art 40(1).

<sup>486</sup> <https://www.ohchr.org/sites/default/files/Documents/Publications/Reporting-ICCPR-Training-Guide.pdf> at 9.

<sup>487</sup> Human Rights Committee, *The relationship of the Human Rights Committee with non-governmental organizations*, 104<sup>th</sup> sess, UN Doc CCPR/C/104/3 (4 June 2012)<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/431/82/PDF/G1243182.pdf?OpenElement>>.

<sup>488</sup> Since 2020, the Human Rights Committee has commenced an eight-year reporting cycle under its predictable review cycle, which will apply unless the State has opted out of this procedure. Moreover, if there are exceptional developments in the human rights situation within a State party, the Committee may also request reports outside of the regular reporting cycle See:<https://www.ohchr.org/sites/default/files/Documents/Publications/Reporting-ICCPR-Training-Guide.pdf> at 9.

<sup>489</sup> Since it was first adopted in 1966, the ICCPR has now been ratified by 171 State parties, including Australia [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4).

<sup>490</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 63<sup>rd</sup> sess, UN Doc A/63/435 (10 December 2008)<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/477/81/PDF/N0847781.pdf?OpenElement>>.

<sup>491</sup> See: <https://www.ohchr.org/en/treaty-bodies/cescr/introduction-committee>.

<sup>492</sup> <https://www.ohchr.org/en/treaty-bodies/cescr/guidelines-civil-society-ngos-and-nhris>.



#	Reporting process	Reviewing entity	Summary of periodic review mechanism	Scope of review	NGO participation	Frequency of review	Total reviews to date	Next review
5	CRPD	CRPD Committee	<p>The CRPD is the primary international human rights instrument concerning the rights of persons with disabilities, including children with disabilities.<sup>493</sup> The CRPD is also supplemented by an Optional Protocol, which establishes a communications procedure to the CRPD Committee for the investigation of alleged violations of the Convention by a State Party.<sup>494</sup></p> <p>The CRPD Committee is a body of 18 independent experts, which examines State Party national reports and monitors the implementation of the CRPD by States Parties.<sup>495</sup></p>	Pursuant to article 35 of the CRPD, all States Parties are required to submit regular national reports to the CRPD Committee on measures taken to give effect to their obligations under the Convention and progress made in that regard. <sup>496</sup>	The CRPD Committee encourages the participation of non-governmental organisations from an early stage and throughout the reporting process under the ICCPR, through both the submission of parallel reports as well as oral evidence. <sup>497</sup>	Every 4 years	Australia has been the subject of 3 review cycles to date: in 2013; and 2017 to 2019 (joint second and third report).	Australia is due to submit its joint fourth and fifth State Party report to the CRPD Committee by 17 August 2026.

#	Reporting process	Reviewing entity	Summary of periodic review mechanism	Scope of review	NGO participation	Frequency of review	Total reviews to date	Next review
6	CEDAW	Committee on the Elimination of Discrimination against Women	<p>CEDAW is the primary international human rights instrument concerning the elimination of discrimination against women and girls.<sup>498</sup> CEDAW is also supplemented by an Optional Protocol, which establishes a communications procedure to the CEDAW Committee for the investigation of alleged violations of the Convention by a State Party.<sup>499</sup></p> <p>The CEDAW Committee is a body of 23 independent experts on women's rights from around the world that monitors State parties' compliance with CEDAW.<sup>500</sup></p>	Pursuant to article 18 of CEDAW, States that are a party to the Convention are required to submit regular national reports to the CEDAW Committee in relation to the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the Convention and to report on progress made in this respect. <sup>501</sup>	The CEDAW Committee encourages the participation of non-governmental organisations from an early stage and throughout the reporting process under the ICCPR, through both the submission of parallel reports as well as oral evidence. <sup>502</sup>	Every 4 years	Australia has been the subject of 8 review cycles to date: in 1988; 1994; 1997; 2006 (joint fourth and fifth report); 2010 (joint sixth and seventh report); 2018; and 2021.	Australia is due to submit its ninth State Party report to the CEDAW in 2024



<sup>493</sup> Since the Convention was first adopted by the UN General Assembly in 2006, 185 States have now ratified the CRPD, including Australia. See: <https://indicators.ohchr.org/>.

<sup>494</sup> *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2518 UNTS 283 (entered into force 3 May 2008) ('*CRPD Optional Protocol*'). Australia ratified the CRPD Optional Protocol on 21 August 2009. See: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&clang=_en).

<sup>495</sup> See: <https://www.ohchr.org/en/treaty-bodies/crpd/introduction-committee>.

<sup>496</sup> *Convention on the Rights of Persons with Disabilities*, opened for signature 13 December 2006, 2515 UNTS 3 (entered into force 3 May 2008) ('*CRPD*') art 35.

<sup>497</sup> See: <https://www.ohchr.org/en/treaty-bodies/crpd/information-and-guidelines-independent-monitoring-mechanisms-and-national-human-rights-institutions>; see also Committee on the Rights of Persons with Disabilities, *Report of the Committee on the Rights of Persons with Disabilities on its eleventh session (31 March-11 April 2014)*, UN Doc CRPD/C/11/2 (14 May 2014) annex II, 'Guidelines on the participation of disabled persons' organizations and civil society organizations in the work of the Committee'.

<sup>498</sup> Since the Convention was first adopted by the UN General Assembly in 1979, it has now been ratified by 189 States, including Australia. See: <https://indicators.ohchr.org/>.

<sup>499</sup> *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 6 October 1999, 2131 UNTS 83 (entered into force 22 December 2000) ('*CEDAW Optional Protocol*'). Australia ratified the CEDAW Optional Protocol on 4 December 2008. See: [https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8-b&chapter=4&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8-b&chapter=4&clang=_en).

<sup>500</sup> See: <https://www.ohchr.org/en/treaty-bodies/cedaw>.

<sup>501</sup> CEDAW art 18.

<sup>502</sup> See: <https://www.ohchr.org/en/treaty-bodies/cedaw/guidelines-civil-society-ngos-and-nhris>; <https://www.ohchr.org/en/treaty-bodies/cedaw/rules-procedure-and-working-methods>.



10. Appendix C – Review of Australia’s international human rights record by UN treaty bodies and related entities in the context of climate change

#	International human rights review process	Review / publication	Consideration of human rights and climate change and/or Australia’s human rights record in relation to climate change action
1	Human Rights Council Universal Periodic Review	Third periodic review of Australia (2021)	<p>Submission of Law Council of Australia to the OHCHR dated 8 July 2020:</p> <p>“Climate change is increasingly recognised as having profound, adverse impacts on human rights, including the right to life; the right to protection of the family as the fundamental unit of society; the right to an adequate standard of living including adequate food, clothing and housing; the right to the highest attainable standard of physical and mental health; the rights of children, cultural rights and many other fundamental human rights. <b>Australia must ensure that its climate change response takes full account of its international obligations to respect, to promote and to fulfil human rights</b>” (original emphasis).<sup>503</sup> and</p> <p>“The rights of Australians to take personal action in relation to climate change must also be protected, including the right to peaceful protest, which is an essential element of democracy” (original emphasis).<sup>504</sup></p> <p>In its own submission to the UPR Working Group, the World Alliance for Citizens Participation likewise raised concerns regarding the freedom of peaceful assembly and noted cases of environmental and climate change protesters being arrested in relation to protest activities, such as Extinction Rebellion actions in Brisbane in mid-2019.<sup>505</sup></p> <p>As recorded in the UPR Working Group’s report on its third periodic review of Australia, the impacts of climate change and environmental degradation on the rights of vulnerable groups in Australia (including children) was a key topic addressed by the recommendations provided to Australia by other UN Member State delegations. For example:</p> <ul style="list-style-type: none"><li>Switzerland’s delegation recommended that Australia: “[s]tep up its efforts to reach the emission reduction goal set by the Paris Agreement and to integrate a human rights-based approach in its efforts aimed at combating climate change”;<sup>506</sup></li><li>Uruguay’s delegation recommended that Australia: “[p]romote policies and measures to mitigate the impact of climate change on the human rights of persons belonging to vulnerable groups”;<sup>507</sup></li></ul>

<sup>503</sup> See: <https://www.lawcouncil.asn.au/publicassets/d847ece9-78c1-ea11-9434-005056be13b5/3843%20-%20UPR%20Australia%20%203rd%20Cycle.pdf> at [44].

<sup>504</sup> See: <https://www.lawcouncil.asn.au/publicassets/d847ece9-78c1-ea11-9434-005056be13b5/3843%20-%20UPR%20Australia%20%203rd%20Cycle.pdf> at [45].

<sup>505</sup> See: <https://www.civicus.org/documents/AustraliaUPRSubmission.EN.2020.pdf> at 6-7 [5.1] – [5.4].

<sup>506</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (24 March 2021) 14 [146.111] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement>>.

<sup>507</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (24 March 2021) 14 [146.112] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement>>.



#	International human rights review process	Review / publication	Consideration of human rights and climate change and/or Australia’s human rights record in relation to climate change action
			<ul style="list-style-type: none"><li>Vanuatu’s delegation recommended that Australia: “[i]mplement more effective climate change policies based on a long-term plan on lowering fossil fuel use, and reducing pollution, which are contributing to adverse effects on the right to life and the right to health of people due to global warming, as well as toxic emissions”;<sup>508</sup></li><li>Botswana’s delegation recommended that Australia: “[e]nsure the full and meaningful participation of affected communities in the preparation of environmental impact assessments prior to the approval of major projects”;<sup>509</sup></li><li>Fiji’s delegation recommended that Australia: “[i]ntensify efforts to develop and strengthen necessary legislative frameworks that address cross-sectoral environmental challenges, including climate change and disaster risk reduction frameworks, and ensure the full and meaningful participation of wide diverse groups, including but not limited to women, children, persons with disabilities, elderly persons and Aboriginal and Torres Strait Islander communities, in their implementation”;<sup>510</sup></li><li>France’s delegation recommended that Australia: “[i]mplement concrete and immediate measures to fight against the effects of climate change on human rights and fundamental freedoms”;<sup>511</sup> and</li><li>Thailand’s delegation recommended that Australia: “[f]inalize its national action plan on business and human rights”;<sup>512</sup></li></ul> <p>In total, 10 States recommended specific actions for Australia to take to further protect human rights in the context of climate change, environmental protection and assessment, or the adoption of a NAP on business and human rights.</p>

<sup>508</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (24 March 2021) 14 [146.113] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement>>.

<sup>509</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (24 March 2021) 14 [146.114] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement>>.

<sup>510</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (24 March 2021) 14 [146.115] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement>>.

<sup>511</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (24 March 2021) 15 [146.116] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement>>.

<sup>512</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia*, 47<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/47/8 (24 March 2021) 15 [146.120] <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/070/43/PDF/G2107043.pdf?OpenElement>>.



#	International human rights review process	Review / publication	Consideration of human rights and climate change and/or Australia's human rights record in relation to climate change action
2	Human Rights Committee review under the ICCPR	General Comment No.36 on the Right to Life	<p>In its General Comment No. 36 on the Right to Life adopted during the 124<sup>th</sup> session of the Committee in October-November 2018, the Human Rights Committee commented that:</p> <p><i>“26. The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include [...] degradation of the environment [...]</i></p> <p><i>62. Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach”</i><sup>513</sup></p> <p>While Australia has not been subject to periodic review by the Committee since General Comment No. 36 was adopted by the Human Rights Committee, the Committee's express recognition of the relationship between the right to life and environmental degradation and climate change may mean that environmental rights will feature more prominently as part of the Committee's next periodic review of Australia's compliance with the ICCPR, which is due to commence in 2023. Alternative reports by NGOs which directly address Australia's compliance with the ICCPR in the context of climate change and environmental rights, may also assist in drawing the Committee's attention directly to this issue.</p>

<sup>513</sup> Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, 124<sup>th</sup> sess, UN Doc CCPR/C/GC/36 (3 September 2019) [26], [62]<[https:// www.refworld.org/ docid/ 5e5e75e04.html](https://www.refworld.org/docid/5e5e75e04.html)>.

#	International human rights review process	Review / publication	Consideration of human rights and climate change and/or Australia's human rights record in relation to climate change action
3	ICESCR Committee review under the ICESCR	ICESCR Committee's General Comment No. 14 regarding the right to the highest attainable standard of health	One aspect of the ICESCR that has received attention for its potential environmental dimensions is the right to the enjoyment of the highest attainable standard of physical and mental health under article 12 of the Covenant. In the ICESCR Committee's General Comment No. 14 regarding the right to the highest attainable standard of health, the Committee explained that the drafting history and express wording of article 12(2) of the Covenant acknowledge that: <i>“the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as... a healthy environment”</i> . <sup>514</sup>
		Fourth periodic national review of Australia (2009)	In its Concluding Observations published in June 2009 in relation to Australia's fourth periodic report, the Committee noted its concerns <i>“at the negative impact of climate change on the right to an adequate standard of living, including on the right to food and the right to water, affecting in particular indigenous peoples”</i> . <sup>515</sup> The ICESCR Committee recommended that, among other actions, Australia <i>“intensify its efforts to address issues of climate change”</i> and <i>“take all necessary and adequate measures to mitigate the adverse consequences of climate change, impacting the right to food and the right to water for indigenous peoples”</i> . <sup>516</sup>
		Fifth periodic national review of Australia (2017)	In its Concluding Observations, the Committee expressed its concerns that <i>“environmental protection has decreased in recent years as shown by the repeal of the emissions trading scheme in 2013, and the State party's ongoing support to new coal mines and coal-fired power stations”</i> . <sup>517</sup> The Committee also noted its concerns regarding the impact of climate change on the rights of indigenous peoples in Australia, recommending that Australia <i>“addresses the impact of climate change on indigenous people more effectively, while fully engaging indigenous peoples in related policy and programme design and implementation”</i> . <sup>518</sup>



<sup>514</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) – The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights)*, 22<sup>nd</sup> sess, Agenda Item 3, Un Doc E/C.12/2000/4 (11 August 2000) 2 [4].

<sup>515</sup> Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights – Australia*, 42<sup>nd</sup> sess, UN Doc E/C.12/AUS/CO/4 (12 June 2009) 7 [27].

<sup>516</sup> Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights – Australia*, 42<sup>nd</sup> sess, UN Doc E/C.12/AUS/CO/4 (12 June 2009) 7 [27].

<sup>517</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Australia*, UN Doc E/C.12/AUS/CO/5 (11 July 2017) 2 [11].

<sup>518</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Australia*, UN Doc E/C.12/AUS/CO/5 (11 July 2017) 3 [12].



#	International human rights review process	Review / publication	Consideration of human rights and climate change and/or Australia's human rights record in relation to climate change action
		Sixth periodic national review of Australia (2022)	<p>In the ongoing sixth periodic review of Australia, the ICESCR Committee has again specifically directed Australia to report on the measures taken to:</p> <ul style="list-style-type: none"><li>“reconsider its climate change and energy policies and commitments, especially its emission reduction target, to make them compatible with the requirements of the Paris Agreement”;<sup>519</sup></li><li>“limit the use of fossil fuels and to replace them with renewable energy and the efforts made to reconcile its continuing support of coal mines and coal exports and its obligations under the Covenant, both in the State party and extraterritorially”;<sup>520</sup></li><li>“address the adverse effects of climate change on the enjoyment of economic, social and cultural rights, particularly by indigenous peoples, people living in disaster-prone areas and other disadvantaged and marginalized individuals and groups”;<sup>521</sup> and</li><li>contribute to the Green Climate Fund.<sup>522</sup></li></ul>
4	<b>CEDAW Committee review under the CEDAW</b>	Eighth periodic national review of Australia (2016)	<p>In response to Australia's eighth national report to the CEDAW Committee submitted on 8 December 2016, the Global Initiative for Economic, Social and Cultural Rights, Oxfam Australia and the Centre for International Environmental Law submitted a joint Parallel Report concerning the particular vulnerability of women and girls to the impacts of climate change and noting that Australia has obligations under CEDAW to take steps to avoid contributing to climate change and its disproportionate impact on women both in Australia and abroad.<sup>523</sup></p> <p>In its concluding observations on Australia's eighth national report, the CEDAW Committee noted its concerns regarding:</p> <p><i>“(a) The gendered social and environmental impact of the State party's projects in extractive industries, owing to displacement and the loss of livelihood opportunities and social services among local women, resulting in discrimination against them and their exclusion and marginalization, as well as fuelling conflict and conflict-related gender-based violence against women; [and] [...]</i></p> <p><i>(c) The lack of a human rights-based perspective on climate change that takes into consideration the most vulnerable women, including those in the State party; the State party's greenhouse gas emissions of 1.4 per cent of global emissions, without accounting for the emissions embedded in exports; the high level of those emissions in relation to the State party's population of 0.3 per cent of the world population, in part owing to the continued dependency on coal for domestic use and exports; and the limited impact of the State party's humanitarian assistance on surrounding small island States”.</i><sup>524</sup></p>

<sup>519</sup> Committee on Economic, Social and Cultural Rights, *List of issues prior to submission of the sixth periodic report of Australia*, UN Doc E/C.12/AUS/QPR/6 (7 April 2022) 1 [4].

<sup>520</sup> Committee on Economic, Social and Cultural Rights, *List of issues prior to submission of the sixth periodic report of Australia*, UN Doc E/C.12/AUS/QPR/6 (7 April 2022) 1 [4].

<sup>521</sup> Committee on Economic, Social and Cultural Rights, *List of issues prior to submission of the sixth periodic report of Australia*, UN Doc E/C.12/AUS/QPR/6 (7 April 2022) 1 [4].

<sup>522</sup> Committee on Economic, Social and Cultural Rights, *List of issues prior to submission of the sixth periodic report of Australia*, UN Doc E/C.12/AUS/QPR/6 (7 April 2022) 1 [4].

<sup>523</sup> See: [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT\\_CEDAW\\_NGO\\_AUS\\_31400\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/AUS/INT_CEDAW_NGO_AUS_31400_E.pdf).

<sup>524</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the eighth periodic report of Australia*, UN Doc CEDAW/C/AUS/CO/8 (25 July 2018) 8 [29].

#	International human rights review process	Review / publication	Consideration of human rights and climate change and/or Australia's human rights record in relation to climate change action
		CEDAW Committee General Recommendation No. 37	<p>In 2018, the Committee released its General Recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change.<sup>525</sup> In the General Recommendation, the CEDAW Committee acknowledges the disproportionate impact of climate change on women and girls, noting that: “Women, girls, men and boys are affected differently by climate change and disasters, with many women and girls experiencing greater risks, burdens and impacts. Situations of crisis exacerbate pre-existing gender inequalities and compound the intersecting forms of discrimination against, among others, [...] adolescents [...] who are often disproportionately affected compared with men or other women”.<sup>526</sup></p> <p>The CEDAW Committee further recommended that State parties ensure that all policies, legislation, plans, programmes, budgets and other activities relating to disaster risk reduction and climate change are gender-responsive and grounded in human-rights based principles, including: (i) equality and non-discrimination, with priority to the most marginalised groups of women and girls, such as those from indigenous, racial, ethnic and sexual minority groups; (ii) participation and empowerment; and (iii) accountability and access to justice.<sup>527</sup> Specific areas of concern noted by the CEDAW Committee in relation to climate change and disasters, and their effects on the rights enshrined in CEDAW include:</p> <ul style="list-style-type: none"><li>the right to live free from gender-based violence against women and girls;<sup>528</sup></li><li>rights to education and information;<sup>529</sup></li><li>rights to work and social protection;<sup>530</sup></li><li>the right to health;<sup>531</sup></li><li>the right to an adequate standard of living;<sup>532</sup> and</li><li>the right to freedom of movement.<sup>533</sup></li></ul>

<sup>525</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’).

<sup>526</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 2 [2].

<sup>527</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 7 [26].

<sup>528</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 16 [55].

<sup>529</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 17 [58].

<sup>530</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 18 [61].

<sup>531</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 19 [65].

<sup>532</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 21 [69].

<sup>533</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc CEDAW/C/GC/37 (13 March 2018) (‘CEDAW GR37’) 22 [73].





# 11. Appendix D – Analysis of relevant Commonwealth and Queensland Legislation

## 1. Air pollution

Laws are in place at both the federal and Queensland level which regulate to a greater or lesser extent air pollution, including from greenhouse gases and fuel emissions.

While children’s right to clean air is not explicitly articulated within Australian law, provisions do exist which could be used to protect this right. Legislation regulating environmental matters including air pollution (the EPBC and NEPC Acts and EPA) also contain provisions regarding intergenerational equity. The National Clean Air Agreement also recognises the particular vulnerability of children to harm from air pollution.

#	International human rights review process	Review / publication	Consideration of human rights and climate change and/or Australia’s human rights record in relation to climate change action
5	CRPD Committee review under the Convention on the Rights of Persons with Disabilities	Third periodic national review of Australia (2017-2019)	<p>In Australia’s most recent cycle of national reporting in 2017-2019, the CRPD Committee recognised the specific vulnerabilities of persons with disabilities in the context of climate change and Australia’s emergency management standards and disaster risk reduction strategies.<sup>534</sup> As the committee noted in its concluding observations on Australia’s national report:</p> <p>“21. The Committee, recognizing effects of climate change contribute to exacerbating inequality and vulnerability among persons with disabilities, remains concerned about the lack of:</p> <p>(a) Nationally consistent emergency management standards that ensure access to disability-specific and disability-responsive support during emergencies;</p> <p>(b) A mechanism for engagement with organizations of persons with disabilities in the implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 at the national level and in its reporting process”;<sup>535</sup></p>
		Joint Statement on Human Rights and Climate Change	<p>More generally, along with other UN treaty bodies, the CRPD Committee has also increasingly addressed the human rights implications of climate change in the context of the rights of persons with disabilities.</p> <p>In the Joint Statement, these human rights treaty bodies noted in particular that:</p> <ul style="list-style-type: none"><li>▪ “[w]hen reducing emissions and adapting to climate impacts, States must seek to address all forms of discrimination and inequality, including advancing substantive gender equality, protecting the rights of indigenous peoples and of persons with disabilities, and taking into consideration the best interests of the child”;<sup>536</sup> and</li><li>▪ the risk of harm arising from the adverse impacts of climate change is “particularly high for those sectors of the population that are already marginalized or in vulnerable situations or that, owing to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, indigenous peoples and persons living in rural areas”.<sup>537</sup></li></ul>

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act	Contains few provisions regulating air pollution, although it does provide for regulations to be made in relation to air pollution in Commonwealth reserves <sup>538</sup> or conservation zones. <sup>539</sup>
2	Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth) and associated legislation	Implements Australia’s obligations under the Vienna Convention for the Protection of the Ozone Layer, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the United Nations Framework Convention on Climate Change (UNFCCC).
3	Product Emissions Standards Act 2017 (Cth) Fuel Quality Standards Act 2000 (Cth)	Provide for emissions and fuel quality standards to be set to address air pollution and emissions. <sup>540</sup>
4	NEPC Act National Environment Protection Council (Queensland) Act 1994 (Qld) National Environment Protection (Ambient Air Quality) Measure	<p>The NEPC Act and mirror state and territory legislation (including the <i>National Environment Protection Council (Queensland) Act 1994</i> (Qld)) provide for the establishment of National Environment Protection Council (<b>NEPC</b>) to make National Environment Protection Measures regulating (among other matters) air pollution.</p> <p>Measures have been established by the NEPC in relation to ambient air quality and a national pollutant inventory.<sup>541</sup> The NEPC Act contains the Intergovernmental Agreement on the Environment between the Commonwealth and each State and Territory governments (as well as the Australian Local Government Association), which recognises that “the concept of ecologically sustainable development including proper resource accounting provides potential for the integration of environmental and economic considerations in decision making and for balancing the interests of current and future generations”.<sup>542</sup> It also identifies generational equity as a principle of environmental policy that should guide the development and implementation of environmental policy and programs by all levels of Government.<sup>543</sup></p> <p>The National Environment Protection (Ambient Air Quality) Measure states that sensitive land uses include education and childcare facilities and outdoor recreation sites. These uses are classified as “high risk” and may be subject to additional performance monitoring stations.</p>

<sup>534</sup> Article 11 of the CRPD concerns the rights of persons with disabilities in situations of risk and humanitarian emergencies. This article specifically provides that: “States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.”

<sup>535</sup> Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) 6 [21].

<sup>536</sup> Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, UN Doc HRI/2019/1 (14 May 2020) 3[13].

<sup>537</sup> Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities, *Statement on human rights and climate change*, UN Doc HRI/2019/1 (14 May 2020) 1[3].

<sup>538</sup> Section 356.

<sup>539</sup> Section 390E.

<sup>540</sup> See, eg, *Product Emissions Standards Act 2017* (Cth) s 4; *Fuel Quality Standards Act 2000* (Cth) s 3.

<sup>541</sup> See: <https://www.awe.gov.au/environment/protection/air-quality>.

<sup>542</sup> *National Environment Protection Council Act 1994* (Cth) sch 1.

<sup>543</sup> *National Environment Protection Council Act 1994* (Cth) sch 1 s 3.5.2.



#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
5	Clean Air Agreement <sup>544</sup>	In December 2015, Australia's Federal, State and Territory Environment Ministers established the Clean Air Agreement to respond to the impacts of air pollution on human and environmental health. This agreement recognises children as “sensitive individuals” who are particularly susceptible to air pollution. <sup>545</sup>
6	Environmental Protection Act 1994 (Qld)	The EPA and its subordinate legislation also provide for offences in relation to air contamination and fuel standards. <sup>546</sup>

## 2. Water pollution

Regulation is in place at both the federal and Queensland level which regulates the health of water resources and penalises water pollution as an activity causing environmental harm.

While this legislation does not explicitly articulate children’s right to clean and safe water, provisions do exist in this legislation which could be used to protect this right. Legislation regulating environmental matters including water pollution (the EPBC Act, Water Act, EPA) also contains provisions regarding intergenerational equity.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	<i>Water Act 2007</i> (Cth)	Provides for the management of the Murray-Darling Basin water resources (covering NSW, Queensland, Victoria, South Australia and the ACT) in the national interest. Recognises principles of intergenerational equity but does not otherwise provide for children's rights. <sup>547</sup>
2	EPA (Qld)	Imposes offences relating to water contamination. <sup>548</sup> The Environmental Protection (Water and Wetland Biodiversity) Policy 2019, made under the EPA, recognises the cultural and spiritual values of water as “its scientific, social or other significance to the present generation or past or future generations”. <sup>549</sup>
3	<i>Transport Operations (Marine Pollution) Act 1995</i> (Qld)	Aims to protect Queensland's marine and coastal environment by minimising deliberate and negligent discharges of ship-sourced pollutants into coastal waters, thereby giving effect to Annexes I-V of the International Convention for the Prevention of Pollution from Ships 1973. <sup>550</sup>
4	<i>Torres Strait Fisheries Act 1984</i> (Qld), <i>Aboriginal Cultural Heritage Act 2003</i> (Qld) <i>Torres Strait Islander Cultural Heritage Act 2003</i> (Qld)	The rights and interests of First Nations users in relation to the health of waterways and fisheries are also protected by Queensland legislation.

<sup>544</sup> See <https://www.awe.gov.au/sites/default/files/documents/national-clean-air-agreement.pdf>.

<sup>545</sup> <https://www.awe.gov.au/sites/default/files/documents/national-clean-air-agreement.pdf>, page 5.

<sup>546</sup> Chapter 8, Pt 3E and 3F.

<sup>547</sup> Section 4(2)(c).

<sup>548</sup> Part 3C.

<sup>549</sup> Section 6(3).

<sup>550</sup> Sections 23, 31, 39, 52; Part 7.

## 3. Climate change

Historically, Australia has performed poorly against international targets for climate action, and its lack of legislative and political action on climate change has been criticised internationally,<sup>551</sup> including in the context of reporting to international human rights treaty bodies discussed at paragraphs 3.40 to 3.51 above.

The recently enacted *Climate Change Act 2022* (Cth) enshrines into law Australia’s emissions reduction targets of 43% from 2005 levels by 2030, and net zero emissions by 2050.<sup>552</sup> Despite the “meaningful increase” from the previous government’s 2030 target of 26-28%, organisations such as the ACF have called for a more ambitious target.<sup>553</sup> The Climate Council of Australia recommends that the 2030 target should be 75% and that net zero should be reached by 2035.<sup>554</sup> To increase accountability, the Act commits the Minister for Climate Change and Energy to provide an annual climate change statement to parliament.<sup>555</sup> Importantly, the Act has returned Australia’s Climate Change Authority as a source of independent policy advice,<sup>556</sup> and provides for mandatory public consultation.<sup>557</sup>

There is currently no legislation in place at a federal level that establishes carbon taxes or an emissions trading regime. A carbon trading scheme was mooted by the Rudd Government in 2010 and subsequently shelved.<sup>558</sup> A carbon tax was introduced by the Gillard Government in 2011 and repealed by the Abbott Government in 2013.<sup>559</sup>

Queensland has set a state target to reach zero net emissions by 2050<sup>560</sup> but does not currently have legislation in place which mandates carbon emissions targets or provides for climate adaptation or mitigation.<sup>561</sup>

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	<i>Climate Change Act 2022</i> (Cth)	There is no explicit reference to children's rights or the right to a healthy environment in the Act or the explanatory memorandum to the Climate Change 2022 Bill. However, the Statement of Compatibility with Human Rights in the explanatory memorandum does note that: “[t]he Australian Government recognises that climate change can impact upon the enjoyment of human rights. This Bill is consistent with the relevant human rights set out in those treaties to which Australia is a party”. <sup>562</sup>
2	<i>National Greenhouse and Energy Reporting Act 2007</i> (Cth)	The NGER Act establishes a framework for greenhouse gas reporting and regulation, but does not contain any reference to children, future generations etc. The NGER Act does not explicitly recognise the impact of climate change on children or provide specifically for children's rights. Other legislation establishing a national framework or national bodies related to emissions reduction <sup>563</sup> are similarly silent on the impact of climate change on children's rights.
3	<i>Water Act 2007</i> (Cth)	As stated above, the Water Act recognises the principle of intergenerational equity. It also states as one of its objects to give effect to international agreements including the UNFCCC.

<sup>551</sup> See, e.g., <https://reneweconomy.com.au/australia-ranked-dead-last-in-world-for-climate-action-in-latest-un-report/#:~:text=Australia%20received%20the%20lowest%20score%20awarded%2C%20just%2010%20out%20of,effective%20price%20on%20greenhouse%20gas>; <https://www.sbs.com.au/news/article/australia-a-holdout-on-climate-un-chief/jzfkwmqgw>.

<sup>552</sup> *Climate Change Act 2022* (Cth) s 10(1).

<sup>553</sup> See: <https://www.acf.org.au/new-2030-target-a-meaningful-boost-to-climate-action>.

<sup>554</sup> See: <https://www.climatecouncil.org.au/resources/labors-2030-emissions-targets-must-aim-higher/>.

<sup>555</sup> *Climate Change Act 2022* (Cth) s 12(1).

<sup>556</sup> Ibid ss 14-15.

<sup>557</sup> Ibid ss 14(3A), 15(3), 17(2).

<sup>558</sup> Carbon Pollution Reduction Scheme Bill 2010 (see [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bId=r4281](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r4281)).

<sup>559</sup> Clean Energy Act 2011 (repealed). See also <https://www.centreforpublicimpact.org/case-study/carbon-tax-australia>.

<sup>560</sup> See: <https://www.qld.gov.au/environment/climate/climate-change/response/greenhouse-emissions>.

<sup>561</sup> See, e.g. <https://www.edo.org.au/wp-content/uploads/2020/10/CAQ-PDF.pdf> page 7.

<sup>562</sup> Climate Change (Consequential Amendments) Bill 2022 (see [https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6886\\_ems\\_2f42245d-c463-4098-b00a-b460c7f5f2c7/upload\\_pdf/Revised%20EM\\_JC007350.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r6886_ems_2f42245d-c463-4098-b00a-b460c7f5f2c7/upload_pdf/Revised%20EM_JC007350.pdf;fileType=application%2Fpdf)).

<sup>563</sup> *Greenhouse and Energy Minimum Standards Act 2012*; *Building Energy Efficiency Disclosure Act 2010*; *Renewable Energy (Electricity) Act 2000*; *Carbon Credits (Carbon Farming Initiative) Act 2011*; *Australian National Registry of Emissions Units Act 2011*; *Climate Change Authority Act 2011*; *Australian Renewable Energy Agency Act 2011*; and the *Clean Energy Finance Corporation Act 2012*.



#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
4	Greenhouse Gas Storage Act 2009 (Qld)	Aims to help reduce the impact of greenhouse gas emissions on the environment principally by facilitating greenhouse gas geological storage. <sup>564</sup> It does not address the impact of emissions or climate change on future generations, children or ecologically sustainable development.
5	Planning Act 2016 (Qld)	Considers both the rights of future generations and climate change. Its purpose includes both “achieving diverse, efficient, resilient and strong economies, including local, regional and State economies, that allow communities to meet their needs but do not compromise the ability of future generations to meet their needs” <sup>565</sup> and “accounting for potential adverse impacts of development on climate change, and seeking to address the impacts through sustainable development”. <sup>566</sup>
6	Vegetation Management Act 1999 (Qld)	States that its purpose is to regulate the clearing of vegetation in a way that (among other aims) reduces greenhouse gas emissions and allows for sustainable land use. <sup>567</sup> However, the Act does not refer to the rights or interests of children or future generations.
7	EPBC Act	The EPBC Act does not specifically address climate change. It is contested and subject to ongoing litigation the degree to the consequences of climate change are to be considered “impact” under the EPBC Act.

4. Chemicals, toxic substances and waste

Chemicals, toxic substances and waste are addressed at the federal level by legislation covering the following topics:

- (a) Radiation, nuclear weapons and chemical weapons;<sup>568</sup>
- (b) Protection of the sea (including fisheries and the Great Barrier Reef);<sup>569</sup>
- (c) Ozone protection;<sup>570</sup>
- (d) Industrial chemicals;<sup>571</sup>
- (e) Export, import and transit of hazardous waste;<sup>572</sup> and
- (f) Recycling and waste reduction.<sup>573</sup>

Federal legislation does not, however, address these matters specifically in relation to children’s right to a healthy environment.

Chemicals, waste and biosecurity are also regulated at the state level under Queensland law. The EPA, *Biosecurity Act 2014* (Qld) and *Water Act 2000* (Qld) regulate uses of the environment that may release pollution and contaminants and contain penalty provisions for improper disposal of chemicals, waste and toxic substances.<sup>574</sup> The *Waste Reduction and*

*Recycling Act 2011* (Qld) addresses waste disposal generally and imposes penalties of up to \$200,000 for illegal dumping resulting in environmental harm.<sup>575</sup> This Act also establishes the ‘polluter pays’ principle, and notes that the waste management strategy is intended to “[reduce] the climate change impacts of waste management and disposal”.<sup>576</sup>

Queensland legislation also regulates chemicals and toxins from a public health perspective. The *Public Health Act 2005* (Qld) defines hazards caused by waste or hazardous substances as a “public health risk”,<sup>577</sup> and the *Public Safety Preservation Act 1986* (Qld) defines an “emergency situation” as one that causes (among other impacts) “pollution to the environment”.<sup>578</sup> Part 3 of the *Public Safety Preservation Act 1986* specifically regulates chemical, biological and radiological emergencies.

Other laws in place at the Queensland level address pollution and waste from particular sources or in specific contexts, such as agricultural and veterinary chemicals;<sup>579</sup> fuel and petroleum;<sup>580</sup> radiation;<sup>581</sup> fisheries and marine pollution;<sup>582</sup> state forests; and recreational areas. However, there are few provisions which link regulation of chemicals, toxic substances and waste to children. One exception is the *Public Health Act 2005* (Qld) which provides that lead in buildings must not be accessible to children.<sup>583</sup>

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	National Radioactive Waste Management Act 2012 (Cth); South Pacific Nuclear Free Zone Treaty Act 1986 (Cth); Australian Radiation Protection and Nuclear Safety Act 1998 (Cth); Chemical Weapons (Prohibition) Act 1994 (Cth) Radiation Safety Act 1999 (Qld)	Regulates radiation, nuclear weapons and chemical weapons.
2	Environment Protection (Sea Dumping) Act 1981 (Cth); Protection of the Sea (Civil Liability) Act 1981 (Cth); Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008 (Cth); Protection of the Sea (Oil Pollution Compensation Funds) Act 1993 (Cth); Protection of the Sea (Powers of Intervention) Act 1981 (Cth); Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth) Fisheries Act 1994 (Qld) section 125; Marine Parks Act 2004 (Qld), section 50; Transport Operations (Marine Pollution) Act 1995 (Qld); Water Supply (Safety and Reliability) Act 2008 (Qld), sections 193-4.	Regulates protection of the sea (including fisheries and the Great Barrier Reef).
3	Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth)	Regulates ozone protection.
4	Industrial Chemicals Act 2019 (Cth); Industrial Chemicals Environmental Management (Register) Act 2021 (Cth); National Residue Survey Administration Act 1992 (Cth) Liquid Fuel Supply Act 1984 (Qld), section 33; Petroleum (Submerged Lands) Act 1982 (Qld), section 97; Petroleum Act 1923 (Qld), section 84.	Regulates fuel and industrial chemicals.

<sup>564</sup> Section 3.

<sup>565</sup> Section 3(3)(b).

<sup>566</sup> Section 3(3)(c)(iv).

<sup>567</sup> Section 3(g).

<sup>568</sup> National Radioactive Waste Management Act 2012 (Cth); South Pacific Nuclear Free Zone Treaty Act 1986 (Cth); Australian Radiation Protection and Nuclear Safety Act 1998 (Cth); Chemical Weapons (Prohibition) Act 1994 (Cth).

<sup>569</sup> Environment Protection (Sea Dumping) Act 1981 (Cth); Protection of the Sea (Civil Liability) Act 1981 (Cth); Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008 (Cth); Protection of the Sea (Oil Pollution Compensation Funds) Act 1993 (Cth); Protection of the Sea (Powers of Intervention) Act 1981 (Cth); Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth).

<sup>570</sup> Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth).

<sup>571</sup> Industrial Chemicals Act 2019 (Cth); Industrial Chemicals Environmental Management (Register) Act 2021 (Cth); National Residue Survey Administration Act 1992 (Cth).

<sup>572</sup> Hazardous Waste (Regulation of Exports and Imports) Act 1989 (Cth).

<sup>573</sup> Recycling and Waste Reduction Act 2020 (Cth).

<sup>574</sup> EPA, Part 3C, section 440ZG; Biosecurity Act 2014, section 24; Water Supply (Safety and Reliability) Act 2008 (Qld), section 194.

<sup>575</sup> Chapter 5.

<sup>576</sup> Sections 10 and 14.

<sup>577</sup> Section 11.

<sup>578</sup> Public Safety Preservation Act 1986 (Qld) s 4, sch 1.

<sup>579</sup> Chemical Usage (Agricultural and Veterinary) Control Act 1988.

<sup>580</sup> Liquid Fuel Supply Act 1984, section 33; Petroleum (Submerged Lands) Act 1982, section 97; Petroleum Act 1923, section 84.

<sup>581</sup> Radiation Safety Act 1999, section 4.

<sup>582</sup> Fisheries Act 1994, section 125; Marine Parks Act 2004, section 50; Transport Operations (Marine Pollution) Act 1995; Water Supply (Safety and Reliability) Act 2008, sections 193-4.

<sup>583</sup> Section 58.



#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
5	<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> (Cth)	Regulates export, import and transit of hazardous waste.
6	<i>Recycling and Waste Reduction Act 2020</i> (Cth)	Regulates recycling and waste reduction.
7	EPA, <i>Biosecurity Act 2014</i> (Qld) <i>Water Act 2000</i> (Qld)	Regulate uses of the environment that may release pollution and contaminants and contain penalty provisions for improper disposal of chemicals, waste and toxic substances. <sup>584</sup>
8	<i>Waste Reduction and Recycling Act 2011</i> (Qld)	Addresses waste disposal generally and imposes penalties of up to \$200,000 for illegal dumping resulting in environmental harm. <sup>585</sup> This Act also establishes the ‘polluter pays’ principle, and notes that the waste management strategy is intended to “[reduce] the climate change impacts of waste management and disposal”. <sup>586</sup>
9	<i>Public Health Act 2005</i> (Qld) <i>Public Safety Preservation Act 1986</i> (Qld)	<i>The Public Health Act 2005</i> (Qld) defines hazards caused by waste or hazardous substances as a “public health risk”, <sup>587</sup> and the <i>Public Safety Preservation Act 1986</i> (Qld) defines an “emergency situation” as one that causes (among other impacts) “pollution to the environment”. <sup>588</sup> Part 3 of the <i>Public Safety Preservation Act 1986</i> specifically regulates chemical, biological and radiological emergencies. The Public Health Act also provides that lead in buildings must not be accessible to children. <sup>589</sup>



<sup>584</sup> EPA and Environmental Protection Regulation 2019; *Biosecurity Act 2014*, section 24; *Water Act 2000*, section 1065.

<sup>585</sup> Chapter 5.

<sup>586</sup> Section 14.

<sup>587</sup> Section 11.

<sup>588</sup> *Public Safety Preservation Act 1986* (Qld) s 4, sch 1.

<sup>589</sup> Section 58.

Kids Climate Strike *Photo: Jim McFarlane / MAPgroup*

### 5. Loss of biodiversity and access to nature

Legislation at both the Commonwealth and Queensland level incorporates safeguards for biodiversity and access to nature in the context of regulating and ensuring the sustainability of commercial uses of the environment and protecting native title rights.

The EPBC Act, *Fisheries Management Act 1991* (Cth), and the *Natural Heritage Trust of Australia Act 1997* (Cth) refer to both intergenerational equity and the conservation of biological diversity and ecological integrity as a fundamental consideration in decision-making as principles of “ecologically sustainable development”.<sup>590</sup> The *Great Barrier Reef Marine Park Act 1975* (Cth) identifies these as principles of “ecologically sustainable use”.

Queensland has numerous acts in place which provide for protection of biodiversity and access to nature in the context of environmental and natural heritage protection and management. Some of this legislation states intergenerational equity as an underlying objective.<sup>591</sup>

However, the right of the child to biodiversity and access to nature is not expressly articulated either at the Queensland or federal level.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act (Cth) <i>Fisheries Management Act 1991</i> (Cth) <i>Natural Heritage Trust of Australia Act 1997</i> (Cth)	Refer to both intergenerational equity and the conservation of biological diversity and ecological integrity as a fundamental consideration in decision-making as principles of “ecologically sustainable development”. <sup>592</sup>
2	<i>Great Barrier Reef Marine Park Act 1975</i> (Cth)	States intergenerational equity and the conservation of biological diversity as principles of “ecologically sustainable use”. <sup>593</sup> It defines ecologically sustainable use as use that is within the capacity of the Region and its natural resources to sustain natural processes while maintaining the life-support systems of nature and ensuring that the benefit of the use to the present generation does not diminish the potential to meet the needs and aspirations of future generations. <sup>594</sup>
3	<i>Water Act 2007</i> (Cth)	Provides that the plan for administering the Murray-Darling Basin (the <b>Basin Plan</b> ) should be prepared having regard to the fact that the use of the Basin water resources has had, and is likely to have, significant adverse impacts on the conservation and sustainable use of biodiversity and that Basin water resources require special measures to manage their use to conserve biodiversity. <sup>595</sup> The Basin Plan must also promote sustainable use of the Basin resources to protect and restore the ecosystems, natural habitats and species that are reliant on the Basin water resources and to conserve biodiversity. <sup>596</sup>
4	NEPC Act (World Heritage)	Schedule 8 states that: “ <i>The States recognise that the Commonwealth has an international obligation as a party to the World Heritage Convention to ensure the identification, protection, conservation, presentation and transmission to future generations of Australia’s natural and cultural heritage of ‘outstanding universal value’.</i> ”

<sup>590</sup> EPBC Act, section 3A; *Fisheries Management Act 1991* (Cth), section 3A; *Natural Heritage Trust of Australia Act 1997* (Cth), section 21.

<sup>591</sup> *Environmental Protection Act 1994*, Schedule 4 (definition of “standard criteria”); *Planning Act 2016*, section 3(3); *Queensland Heritage Act 1992*, section 2(1); *Fisheries Act 1994*, section 3(5) (a)-(b); *Marine Parks Act 2004*, Schedule (definitions of “ecologically sustainable use” and “use and non-use values”; *Water Act 2000*, section 7(c); *Wet Tropics World Heritage Protection and Management Act 1993*, preamble and Schedule 1 (Primary Goal).

<sup>592</sup> EPBC Act, section 3A; *Fisheries Management Act 1991* (Cth), section 3A; *Natural Heritage Trust of Australia Act 1997* (Cth), section 21.

<sup>593</sup> Section 3A.

<sup>594</sup> Section 3AA.

<sup>595</sup> Section 21(2)(a).

<sup>596</sup> Section 21(2)(b).



#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
5	<i>Great Barrier Reef Marine Park Act 1975 (Cth), Lake Eyre Basin Intergovernmental Agreement Act 2001 (Cth), Wet Tropics of Queensland World Heritage Area Conservation Act 1994 (Cth), Antarctic Marine Living Resources Conservation Act 1981 (Cth); Antarctic Treaty (Environment Protection) Act 1980 (Cth).</i>	Govern and protect specific areas of particular environmental and/or heritage value.
6	<i>Queensland legislation relevant to biodiversity and access to nature:</i> <i>Aboriginal Cultural Heritage Act 2003 (Qld); Biodiscovery Act 2004 (Qld); Biological Control Act 1987 (Qld); Biosecurity Act 2014 (Qld); Coastal Protection and Management Act 1995 (Qld); Environmental Offsets Act 2014 (Qld); Environmental Protection Act 1994 (Qld); Exhibited Animals Act 2015 (Qld); Fisheries Act 1994 (Qld); Forestry Act 1959 (Qld); Human Rights Act 2019 (Qld), section 27(e); Marine Parks Act 2004 (Qld); Nature Conservation Act 1992 (Qld); North Stradbroke Island Protection and Sustainability Act 2011 (Qld); Queensland Heritage Act 1992 (Qld); Sustainable Ports Development Act 2015 (Qld); Torres Strait Fisheries Act 1984 (Qld); Torres Strait Islander Cultural Heritage Act 2003 (Qld); Torres Strait Islander Land Act 1991 (Qld); Vegetation Management Act 1999 (Qld); Water Act 2000 (Qld); Wet Tropics World Heritage Protection and Management Act 1993 (Qld).</i>	Provide for protection of biodiversity and access to nature in the context of environmental and natural heritage protection and management. <sup>597</sup> The following Acts include intergenerational equity as an underlying objective: <ul style="list-style-type: none"> <li>• <i>Environmental Protection Act 1994</i>, Schedule 4 (definition of “standard criteria”);</li> <li>• <i>Planning Act 2016</i>, section 3(3);</li> <li>• <i>Queensland Heritage Act 1992</i>, section 2(1);</li> <li>• <i>Fisheries Act 1994</i>, section 3(5)(a)-(b);</li> <li>• <i>Marine Parks Act 2004</i>, Schedule (definitions of “ecologically sustainable use” and “use and non-use values”;</li> <li>• <i>Water Act 2000</i>, section 7(c); and</li> <li>• <i>Wet Tropics World Heritage Protection and Management Act 1993</i>, preamble and Schedule 1 (Primary Goal).</li> </ul>



<sup>597</sup> *Aboriginal Cultural Heritage Act 2003; Biodiscovery Act 2004; Biological Control Act 1987; Biosecurity Act 2014; Coastal Protection and Management Act 1995; Environmental Offsets Act 2014; Environmental Protection Act 1994; Exhibited Animals Act 2015; Fisheries Act 1994; Forestry Act 1959; Human Rights Act 2019, section 27(e); Marine Parks Act 2004; Nature Conservation Act 1992; North Stradbroke Island Protection and Sustainability Act 2011; Queensland Heritage Act 1992; Sustainable Ports Development Act 2015; Torres Strait Fisheries Act 1984; Torres Strait Islander Cultural Heritage Act 2003; Torres Strait Islander Land Act 1991; Vegetation Management Act 1999; Water Act 2000; Wet Tropics World Heritage Protection and Management Act 1993.*

Melbourne Strike Photo: Ryan Chenoweth

### 6. Mining

Legislation at the federal level, including the EPBC Act, regulates mining and its environmental impact.<sup>598</sup> However, Commonwealth legislation regarding mining does not specifically consider the rights of children. The exception is the integration of the principle of intergenerational equity into the EPBC Act.<sup>599</sup>

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act (Cth), sections 130 and 133 (as applied in <i>Sharma</i> case)	The Federal Court claim brought by eight Australian children in <i>Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment</i> [2021] FCA 560 demonstrates an attempt to use the framework of the EPBC Act to assert a children's right to a healthy environment. This case involved a claim that the Minister had a duty to, in exercising her powers under sections 130 and 133 of the EPBC Act to approve an extension to Whitehaven Coal Pty Ltd's Vickery coal mine, take reasonable care to avoid risks of harm to Australian children resulting from climate change and greenhouse gas emissions. The plaintiff's claim was successful at first instance by the Federal Court, though subsequently overturned by the Full Federal Court on appeal. <sup>600</sup>
2	<i>Human Rights Act 2019 (Qld)</i> , section 26 (as applied in <i>Youth Verdict v Waratah Coal</i> case)	Queensland legislation has been used by youth plaintiffs to challenge mining permits. Youth Verdict (an organisation of young people in Queensland) and another environmental association objected to an application by Waratah Coal Pty Ltd for a mining lease and an environmental authority to mine thermal coal in the Galilee Basin in Queensland. <sup>601</sup> They brought this objection on the grounds that granting Waratah Coal's application is incompatible with the <i>Human Rights Act</i> and would limit human rights – including the right of every child, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child (section 26) - beyond the extent that is reasonable or demonstrably justifiable. <sup>602</sup> In a decision in September 2020, the Land Court refused Waratah Coal's application to strike out this objection and ruled that it had jurisdiction to consider objections made under the <i>Human Rights Act</i> . <sup>603</sup> The hearing for the matter commenced in April 2022, and on 25 November 2022, the Land Court of Queensland handed down its judgment, recommending to the Minister for Natural Resources Mines and Energy and the Chief Executive of the Department of Environment and Science to refuse the mining lease and environmental authority application.
3	<i>Coal Mining Safety and Health Act 1999 (Qld)</i> , s 272, 272A.	Legislation regulating mining in Queensland does not explicitly consider children's right to a healthy environment (aside from provisions prohibiting the employment of children under 16). <sup>604</sup>

<sup>598</sup> E.g. *Offshore Minerals Act 1994 (Cth), Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth); Native Title Act 1993 (Cth)*, Part 2, Div. 3; *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, Chapter 2, Part 3, Subdivision FB, section 131AB.

<sup>599</sup> *Environmental Protection Act 1994*, Schedule 4 (definition of “standard criteria”).

<sup>600</sup> *Minister for the Environment v Sharma* [2022] FCAFC 35. See above at [4.2]-[4.3] for more detail.

<sup>601</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33.

<sup>602</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33.

<sup>603</sup> *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* [2020] QLC 33.

<sup>604</sup> *Coal Mining Safety and Health Act 1999*, s 272, 272A.

7. Children’s rights to life, health and development

A wide range of healthcare, family law, youth justice and child protection legislation at both the federal and Queensland level has the effect of protecting children’s rights to life, health and development.<sup>605</sup> However, these acts have limited application to the right to a healthy environment. Conversely, environmental legislation which seeks to protect against risks to life, health and development resulting from pollution, disease or the effects of climate change does not (other than as discussed above) address the position of children.<sup>606</sup>

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	AHRC Act (Cth) <i>Australian Human Rights Commission Amendment (National Children’s Commissioner) Act 2012</i> (Cth)	Establishes the National Children’s Commissioner.
2	National Action Plan for the Health of Children and Young People 2020-2030 (Commonwealth)	Acknowledges that “environmental conditions” are among key risk factors for child development and health outcomes. <sup>607</sup> It also states that a key action will be to work with partners to advocate for and optimise environments and communities for wellbeing. <sup>608</sup> However, it is not clear that this reference to “environment” is specifically to the natural environment, as opposed to a general reference to prevailing social and physical conditions.
3	<i>Human Rights Act 2019</i> (Qld), sections 26 and 37	Recognises that every person (including children) has the right to access health services without discrimination. <sup>609</sup>  Also recognises every child has the right, without discrimination, to the protection that is needed by the child, and is in the child’s best interests, because of being a child. <sup>610</sup>
4	<i>Child Employment Act 2006</i> (Qld); <i>Child Protection Act 1999</i> (Qld); <i>Family and Child Commission Act 2014</i> (Qld); <i>Working with Children (Risk Management and Screening) Act 2000</i> (Qld); <i>Public Health Act 2005</i> (Qld); <i>Status of Children Act 1978</i> (Qld); <i>Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020</i> (Qld); <i>Child Protection (International Measures) Act 2003</i> (Qld); <i>Commonwealth Powers (Family Law—Children) Act 1990</i> (Qld); <i>National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Act 2018</i> (Qld); <i>Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004</i> (Qld); <i>Director of Child Protection Litigation Act 2016</i> (Qld); <i>Adoption Act 2009</i> (Qld); <i>Domestic and Family Violence Protection Act 2012</i> (Qld); <i>Family Responsibilities Commission Act 2008</i> (Qld); <i>Guardianship and Administration Act 2000</i> (Qld); <i>Public Guardian Act 2014</i> (Qld); <i>Youth Justice Act 1992</i> (Qld); <i>Childrens Court Act 1992</i> (Qld).	Queensland legislation relating to family law, youth justice and child protection provides protection of the child’s right to life, health and development in these specific contexts, but has limited applicability to the right to a healthy environment.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
5	Children’s Health Strategic Plan 2020-2024 (Queensland)	Links children’s right to health with environmental protection. The Plan states the commitment of Children’s Health Queensland to “ <i>becoming a leader in sustainable practices by delivering economic, environmental and social benefits for a healthier tomorrow</i> ”, <sup>611</sup> and identifies improving environmental sustainability as an indicator of success. <sup>612</sup>

8. Children’s right to an adequate standard of living

There are relatively few laws at either the federal or Queensland level that explicitly provide for children’s right to an adequate standard of living. Laws relating to child support, family and accommodation consider children’s right to an adequate standard of living, but not in the context of a healthy environment.<sup>613</sup> Similarly, laws with the objectives of environmental protection or conservation have the effect of promoting an adequate standard of living, but do not specifically articulate this right or link it to the rights of the child.

Queensland environmental and human rights legislation, including the EPA, provides more explicitly for the right to an adequate standard of living.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	NEPC Act (Cth)	Describes the purpose of establishing the Council as ensuring that people enjoy the benefit of equivalent protection from air, water or soil pollution and that major environment protection measures are implemented uniformly across Australia. <sup>614</sup>
2	<i>World Health Organization Act 1947</i> (Cth)	Approves Australia’s membership of the World Health Organization and provides for regulations to be made to give effect to the Constitution of the World Health Organization. <sup>615</sup> A fundamental principle of that Constitution is that “ <i>Healthy development of the child is of basic importance; the ability to live harmoniously in a changing total environment is essential to such development</i> ”. <sup>616</sup>
3	EPA (Qld)	States its purpose as: “ <i>to protect Queensland’s environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends</i> ”. <sup>617</sup>  As discussed above, the EPA - like the Queensland Planning Act 2016 and the Water Act 2007 - specifically considers intergenerational equity as an element of ecologically sustainable development. Likewise, natural heritage legislation considers the preservation of the natural environment for future generations. <sup>618</sup>

<sup>605</sup> Criminal Code Act 1995 (Cth); Human Services (Medicare) Act 1973 (Cth); Human Services (Centrelink) Act 1997 (Cth); National Health Act 1953 (Cth); Social Security Act 1991 (Cth); Social Security (Administration) Act 1999; Online Safety Act 2021 (Cth); Enhancing Online Safety Act 2015 (Cth); Enhancing Online Safety for Children (Consequential Amendments) Act 2015 (Cth); Broadcasting Services Act 1992 (Cth); Child Care Act 1972 (Cth); National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Cth); Family Law Act 1975 (Cth); A New Tax System (Family Assistance) Act 1999 (Cth); A New Tax System (Family Assistance) (Administration) Act 1999 (Cth); Crimes Act 1914 (Cth); Immigration (Guardianship of Children) Act 1946 (Cth); Health Insurance Act 1973 (Cth); Sex Discrimination Act 1984 (Cth); Age Discrimination Act 2004 (Cth); Disability Discrimination Act 1992 (Cth); Dental Benefits Act 2008 (Cth).

<sup>606</sup> Biosecurity Act 2015 (Cth); Water Act 2007 (Cth); Water Efficiency Labelling and Standards Act 2005 (Cth); Climate Change Authority Act 2011 (Cth); Clean Energy Regulator Act 2011 (Cth); Carbon Credits (Carbon Farming initiative) Act 2011 (Cth); National Greenhouse and Energy Reporting Act 2007 (Cth); Greenhouse and Energy Minimum Standards Act 2012 (Cth); Protection of the Sea (Prevention of Pollution from Ships) Act 1983 (Cth); Ozone Protection and Synthetic Greenhouse Gas Management Act 1989 (Cth); Product Emissions Standards Act 2017 (Cth); Environment Protection and Biodiversity Conservation Act 1999 (Cth); National Environment Protection Measures (Implementation) Act 1998 (Cth).

<sup>607</sup> Australian Government Department of Health, *National Action Plan for the Health of Children and Young People 2020–2030* <[https://www1.health.gov.au/internet/main/publishing.nsf/content/4815673E283EC1B6CA258400082EA7D/\\$File/FINAL%20National%20Action%20Plan%20for%20the%20Health%20of%20Children%20and%20Young%20People%202020-2030.pdf](https://www1.health.gov.au/internet/main/publishing.nsf/content/4815673E283EC1B6CA258400082EA7D/$File/FINAL%20National%20Action%20Plan%20for%20the%20Health%20of%20Children%20and%20Young%20People%202020-2030.pdf)>, page 4.

<sup>608</sup> Ibid, page 25.

<sup>609</sup> Section 37.

<sup>610</sup> Section 26.

<sup>611</sup> <https://www.childrens.health.qld.gov.au/wp-content/uploads/PDF/our-strategies/chq-strategic-plan.pdf>, page 1.

<sup>612</sup> Ibid, page 2.

<sup>613</sup> Child Support (Registration and Collection) Act 1972 (Cth); Child Support (Assessment) Act 1989 (Cth); Child Support Legislation Amendment (Reform of the Child Support Scheme—Initial Measures) Act 2006 (Cth); Child Support and Family Assistance Legislation Amendment (Budget and Other Measures) Act 2010 (Cth); Child Support Legislation Amendment (Reform of the Child Support Scheme—New Formula and Other Measures) Act 2006 (Cth); Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Act 2010 (Cth); Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further 2008 Budget and Other Measures) Act 2008 (Cth); Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Further Election Commitments and other Measures) Act 2011 (Cth); Veteran’s Children Education Scheme (Cth); Australian Education Act 2013 (Cth); National Housing Finance and Investment Corporation Act 2018 (Cth); Supported Accommodation Assistance Act 1994 (Cth); Education and Care Services Act 2013 (Qld); Education and Care Services National Law (Queensland) Act 2011 (Qld); Education (General Provisions) Act 2006 (Qld); Education (Capital Assistance) Act 1993 (Qld); Education (Overseas Students) Act 2018 (Qld); Education (Queensland Curriculum and Assessment Authority) Act 2014 (Qld); Education (Queensland College of Teachers) Act 2005 (Qld); Housing Act 2003 (Qld).

<sup>614</sup> Section 3.

<sup>615</sup> Sections 5, 6.

<sup>616</sup> Constitution of the World Health Organization, Preamble, supported by the functions under Chapter 2, Article 2.

<sup>617</sup> Section 3.

<sup>618</sup> Natural Heritage Trust of Australia Act 1997 (Cth), Underwater Cultural Heritage Act 2018 (Cth), Wet Tropics of Queensland World Heritage Area Conservation Act 1994 (Cth), Great Barrier Reef Marine Park Act 1975 (Cth).



#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
4	<i>Human Rights Act 2019</i> (Qld)	Contains a number of protections which cover the right to an adequate standard of living including the right to life, to property rights, <sup>619</sup> to liberty and security of person, <sup>620</sup> and to access health services without discrimination. <sup>621</sup> In relation to First Nations peoples specifically, the <i>Human Rights Act</i> protects the right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom, and to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources. <sup>622</sup> These rights are not specific to children. It also protects children's right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child. <sup>623</sup>

### 9. Children's right to play and recreation

Through our review, no Commonwealth legislation was identified which expressly provides for this right.

The new Australian curriculum approved in April 2022 includes as a key change “*strengthening the focus on students being physically active and content with a focus on activity in natural and outdoor settings*”.<sup>624</sup> The Queensland government issues guidelines regarding physical activity in schools,<sup>625</sup> based on physical activity guidelines issued by the Commonwealth Department of Health.<sup>626</sup> It also provides guidelines for managing excessive heat in schools which address the impact of high temperatures on play and recreation activities.<sup>627</sup>

Queensland education and child protection legislation, however, does recognise children's right to recreation.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	<i>Child Protection Act 1999</i> (Qld)	Explicitly requires the Chief Executive to take reasonable steps to ensure a child, who is placed under certain care, to have rights to recreation or recreational activities. <sup>628</sup>
2	<i>Education and Care Services Act 2013</i> (Qld)	States as one of its guiding principles that education and care should be provided to a child in a way that stimulates and develops the child's creative, emotional, intellectual, lingual, physical, <i>recreational</i> , and social potential.
3	<i>Planning Act 2016</i> (Qld)	States as one of its objects maintaining the cultural, economic, physical and social wellbeing of people and communities, which includes providing for integrated networks of pleasant and safe public areas for aesthetic enjoyment and cultural, recreational or social interaction. <sup>629</sup>
4	<i>Recreation Areas Management Act 2006</i> (Qld)	Provides specifically for the planning, establishment, maintenance and use of recreational areas, although it does not provide for children's right to recreation. <sup>630</sup>

<sup>619</sup> Section 24.

<sup>620</sup> Section 29.

<sup>621</sup> Section 37.

<sup>622</sup> Section 28.

<sup>623</sup> Section 26(2).

<sup>624</sup> <https://www.acara.edu.au/docs/default-source/media-releases/endorsement-ac-media-release-2022.pdf>.

<sup>625</sup> <https://education.qld.gov.au/students/student-health-safety-wellbeing/student-health/physical-activity-ss>.

<sup>626</sup> <https://www.health.gov.au/health-topics/physical-activity-and-exercise/physical-activity-and-exercise-guidelines-for-all-australians/for-children-and-young-people-5-to-17-years>.

<sup>627</sup> <https://education.qld.gov.au/students/student-health-safety-wellbeing/student-health/managing-excessive-heat-schools>.

<sup>628</sup> Section 122.

<sup>629</sup> Section 3.

<sup>630</sup> Section 4.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
5	<i>Nature Conservation Act 1992</i> (Qld)	Recognises recreational use of water. <sup>631</sup>  States that one of the management principles of national parks, conservation parks, wildlife reserves etc. is to ‘provide opportunities for educational and recreational activities in a way consistent with the area's natural and cultural resources and values’. <sup>632</sup>
6	<i>Environmental Protection (Water and Wetland Biodiversity) Policy 2019</i> (Qld)	Recognises recreational use of water. <sup>633</sup>

### 10. Children's rights to an environmental education

Currently, federal law contains few express provisions regarding children's right to an environmental education.

Sustainability is, however, a priority identified in the current national curriculum.<sup>634</sup> A new national curriculum was approved in April 2022. In its ‘Shape of the Australian Curriculum’ report published in June 2020, the Australian Curriculum, Assessment and Reporting Authority<sup>635</sup> identified environmental sustainability as one of three ‘cross curriculum priorities’ supporting the curriculum review.

The 2022 revisions to the national curriculum in relation to sustainability aim to:

- (a) broaden references to environmental sustainability to include all Earth's systems, not just the biosphere;
- (b) focus on the interdependence of sustainability of environmental, social and economic systems;
- (c) expand the focus on sustainable design of products, environments and services;
- (d) broaden actions for sustainability to include the mitigation of human impacts and restoration of environments, in addition to preservation;
- (e) provide clearer support to explore how individuals and communities can take action and effect positive change; and
- (f) ensure that organising ideas fit naturally within learning areas and can be applied to content descriptions and elaborations.<sup>636</sup>

Queensland legislation contains more specific provisions on environmental education, including provisions for the establishment of environmental education centres.



<sup>631</sup> Sections 6(2)(h), 6(3), 8(3)(a)(v).

<sup>632</sup> Sections 17(d), 21(c), 21B(b), 23(b) 73(b)(ii), .

<sup>633</sup> Section 6.

<sup>634</sup> See [https://www.acara.edu.au/docs/default-source/curriculum/the\\_shape\\_of\\_the\\_australian\\_curriculum\\_version5\\_for-website.pdf?sfvrsn=2](https://www.acara.edu.au/docs/default-source/curriculum/the_shape_of_the_australian_curriculum_version5_for-website.pdf?sfvrsn=2).

<sup>635</sup> Established under the *Australian Curriculum, Assessment and Reporting Authority Act 2008* (Cth).

<sup>636</sup> [https://www.australiancurriculum.edu.au/media/7018/ccp\\_sustainability\\_consultation.pdf](https://www.australiancurriculum.edu.au/media/7018/ccp_sustainability_consultation.pdf), page 2.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	Education and Care Services National Regulations (Cth)	Include requirements for specification of the natural environment that will be provided for in childcare premises, <sup>637</sup> and requirements for outdoors spaces with natural features to be provided in such premises <sup>638</sup> , including in a way that supports children to become environmentally responsible. <sup>639</sup>
2	<i>Nature Conservation Act 1992</i> (Qld)	States that the underlying object of nature conservation will be “ <i>achieved by an integrated and comprehensive conservation strategy for the whole of the State that involves, among other things, the ... gathering of information and community education</i> ’ and ‘ <i>encouraging the conservation of nature by the education ... of the community</i> ”. <sup>640</sup>  Management principles for national parks stated by the Act include providing opportunities for education and recreational activities. <sup>641</sup>
3	<i>Human Rights Act 2019</i> (Qld)	Provides for a right to education. <sup>642</sup>  It also states that the functions of the Queensland Human Rights Commissioner include to make information about human rights available to the community and to provide education about human rights. <sup>643</sup> This would include the right to a healthy environment to the extent that it forms part of or impacts the enjoyment of the rights identified in Part 2, Divisions 2 and 3 of the Act.  Environmental education may also form part of First Nations peoples’ rights under those provisions of the <i>Human Rights Act</i> that protect the cultural rights of Aboriginal peoples and Torres Strait Islander peoples to maintain their relationship with, and conserve and protect, their lands and waters may also imply a right to educate children in these communities about the significance of the land. <sup>644</sup> Note that, similarly, the Commonwealth <i>Family Law Act 1975</i> provides for Aboriginal and Torres Strait Islander children to have the support, opportunity and encouragement necessary to explore the full extent of their culture, consistent with the child’s age and developmental level and the child’s views. <sup>645</sup>
4	<i>Education (General Provisions) Act 2006</i> (Qld), section 14	Empowers the Minister of Education to establish ‘environmental education centres’. Currently, twenty-six ‘Outdoor and Environmental Education Centres’ exist in Queensland. <sup>646</sup> These centres aim to provide education for a sustainable future and teach students to value biodiversity and develop personal and social capability, as well as team building and leadership. <sup>647</sup> Some of these centres also provide specialised learning experiences in areas such as urban renewal, water watch programs and environmental investigations. <sup>648</sup>
5	<i>Queensland Plan Act 2014</i> (Qld)	Requires the Premier to facilitate the development of a plan to provide a long-term vision for key areas affecting the future growth and prosperity of Queensland. <sup>649</sup> Two key areas are ‘education’ and the environment. <sup>650</sup> Section 5(3) requires that the plan be developed in accordance with the principles in Schedule 1, one such principle being the positioning of the State to respond effectively and strategically to existing and “ <i>future ... environmental ... issues</i> ”.

<sup>637</sup> Clause 25.

<sup>638</sup> Clause 113.

<sup>639</sup> Schedule 1.

<sup>640</sup> Section 5(a).

<sup>641</sup> Sections 17(1)(d), 21(1)(c), 21B(1)(b).

<sup>642</sup> Section 36.

<sup>643</sup> Section 61.

<sup>644</sup> Section 28.

<sup>645</sup> Section 60CC(6)(b)(i).

<sup>646</sup> <https://education.qld.gov.au/schools-educators/other-education/OEEC>.

<sup>647</sup> <https://education.qld.gov.au/schools-educators/other-education/OEEC>.

<sup>648</sup> <https://education.qld.gov.au/schools-educators/other-education/OEEC>.

<sup>649</sup> Section 5(1).

<sup>650</sup> Section 5(2).

11. Children’s right to an environmental education and public access to environmental information

A number of federal conservation and environmental protection laws contain provisions requiring authorities to collect, update and disseminate environmental information publicly.<sup>651</sup> The *Freedom of Information Act 1982* (Cth) also gives the public the right to request access to government-held information, including environmental information.<sup>652</sup>

Several Queensland instruments regarding environmental conservation provide that the State or relevant authority has an obligation to gather, research and disseminate information.<sup>653</sup>

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	Climate Change Act 2022 (Cth), section 12	As discussed above (see Appendix D Part 3), to increase accountability, the Act commits the Minister for Climate Change and Energy to provide an annual climate change statement that relates to: (1) Australia’s progress towards achieving its targets; (2) relevant international developments; (3) climate change policy; (4) the effectiveness of the Commonwealth’s climate change policies; (5) the impact of the Commonwealth’s climate change policies on rural and regional Australia; and (6) risks to Australia from climate change impacts. A copy of the statement must be tabled in each House of Parliament.
2	NEPC Act, Schedule 1 <i>Australian National Registry of Emissions Units Act 2011</i> (Cth), Part 5 <i>Clean Energy Regulator Act 2011</i> (Cth), Part 3 (especially sections 44 and 53) EPBC Act (Cth), Part 8, Divs. 5 and 7 <i>Water Act 2007</i> (Cth), section 3(h) NEGR Act, section 3(1) <i>National Environment Protection Measures (Implementation) Act 1998</i> (Cth), sections 3(c), 40.	Provisions in Commonwealth legislation requiring authorities to collect, update and disseminate environmental information publicly
3	<i>The Right to Information Act 2009</i> (Qld)	States in its Preamble that it is Parliament’s intention to provide a right of access to information in the government’s possession or under its control unless, on balance, it is contrary to the public interest to provide the information. A factor favouring disclosure in the public interest is whether disclosure “could reasonably be expected to contribute to the protection of the environment” <sup>654</sup> and a factor favouring non-disclosure is that it could impede the protection of the environment. <sup>655</sup>
4	<i>Public Records Act 2002</i> (Qld)	Provides that access to a public record may be restricted if its disclosure could reasonably be expected to prejudice a system or procedure for the protection of the environment. <sup>656</sup> These laws do not, however, specifically provide for a preference in favour of disclosure where this would advance aims of environmental protection.  States its objective as ensuring public records are made, managed, kept and preserved for the benefit of present and future generations. <sup>657</sup>

<sup>651</sup> *National Environment Protection Council Act 1994*, Schedule 1; *Australian National Registry of Emissions Units Act 2011*, Part 5; *Clean Energy Regulator Act 2011*, Part 3 (especially sections 44 and 53); *Environment Protection and Biodiversity Conservation Act 1999*, Part 8, Divs. 5 and 7; *Water Act 2007*, section 3(h); *National Greenhouse and Energy Reporting Act 2007*, section 3(1); *National Environment Protection Measures (Implementation) Act 1998*, sections 3(c), 40.

<sup>652</sup> Section 3.

<sup>653</sup> For other examples, see e.g. the *Soil Conservation Act 1986*, section 7(a); *Nature Conservation Act 1992*, section 5(a); *Fisheries Act 1994*, section 117(5); *Wet Tropics World Heritage Protection and Management Act 1993*, section 10(1)(h); *Water Act 2000*, section 38(b); *National Environment Protection Council (Queensland) Act 1994*, Schedule 1; and *Environmental Protection Act 1994*, section 4(7)(c) and 40(c).

<sup>654</sup> Item 13 of Pt 2 of Sch 4.

<sup>655</sup> Item 11 of Pt 3 of Sch 4.

<sup>656</sup> Section 18(5).

<sup>657</sup> Section 3.



#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
5	<i>Water Act 2000</i> (Qld)	Provides that the Chief Executive must provide information for planning purposes by regularly measuring and keeping publicly available records of the volume and quality of water in Queensland. <sup>658</sup> The Office of Groundwater Impact Assessment is also required to keep and maintain a database of information about underground water <sup>659</sup> and may make it available to the public. <sup>660</sup>
6	<i>Soil Conservation Act 1986</i> , section 7(a) <i>Nature Conservation Act 1992</i> , section 5(a) <i>Fisheries Act 1994</i> , section 117(5) <i>Wet Tropics World Heritage Protection and Management Act 1993</i> , section 10(1)(h) <i>Water Act 2000</i> , section 38(b) <i>National Environment Protection Council (Queensland) Act 1994</i> , Schedule 1 <i>Environmental Protection Act 1994</i> , section 4(7)(c) and 40(c).	Other Queensland instruments regarding environmental conservation which provide that the State or relevant authority has an obligation to gather, research and disseminate information.
7	<i>Human Rights Act 2019</i> (Qld)	The functions of the QHRC include making information about human rights available to the community. The QHRC's Strategic Plan for 2020-24 includes the goal to “promote public discussion about how climate change impacts human rights.” <sup>661</sup>



<sup>658</sup> Section 38(a).  
<sup>659</sup> Section 456(1)(b).  
<sup>660</sup> Section 483(1).  
<sup>661</sup> [https://www.qhrc.qld.gov.au/\\_\\_data/assets/pdf\\_file/0010/24949/QHRC\\_StrategicPlan\\_2020-24.pdf](https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0010/24949/QHRC_StrategicPlan_2020-24.pdf).

Stop Adani *Photo: James Thomas*

**12. Children’s right to express views and have them considered, and participatory rights of children on environmental matters**

Neither Queensland nor Commonwealth law provides for an express right for children to express views and have them considered on environmental matters. However, separate protections exist for freedom of expression, participatory rights on environmental matters, and children’s right to express their views. Australian courts have also held that a right of political communication is implied in sections 7 and 24 of the Constitution.<sup>662</sup>

Children may participate and express views through public consultation processes on environmental matters. Both federal<sup>663</sup> and Queensland<sup>664</sup> environmental laws contain general obligations to consult with the public or the local community. The EPBC Act provides for limited general right of public comment.<sup>665</sup> These laws do not contain consultation rights specific to children.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act (Cth)	Provides for limited general right of public comment. <sup>666</sup>
2	NEPC Act, sections 18 and 31; <i>Environment Protection (Alligator Rivers Region) Act 1978</i> (Cth), section 17; NEGR Act, section 76A; <i>Climate Change Authority Act 2011</i> (Cth), section 59(3); and <i>Carbon Credits (Carbon Farming initiative) Act 2011</i> (Cth), section 255. <i>Nature Conservation Act 1992</i> (Qld), section 6; <i>Biodiversity Act 2004</i> (Qld), section 12; <i>Coastal Protection and Management Act 1995</i> (Qld), section 4; <i>Environmental Protection Act 1994</i> (Qld), section 6 and 21(2)(c); <i>Fisheries Act 1994</i> (Qld), section 3(A) (2); <i>Geothermal Energy Act 2010</i> (Qld), section 3(3); <i>Greenhouse Gas Storage Act 2009</i> (Qld), section 3(4); <i>Land Act 1994</i> (Qld), section 4; <i>National Environment Protection Council (Queensland) Act 1994</i> (Qld), section 18; <i>Waste Reduction and Recycling Act 2011</i> (Qld), section 99GC(3) and section 125; <i>Water Act 2000</i> (Qld), sections 2(2)(h), 7(f), 44; <i>Wet Tropics World Heritage Protection and Management Act 1993</i> (Qld), section 40.	General obligations in environmental laws to consult with the public or local community.
3	AHRC Act (Cth), section 46PV	A special-purpose Commissioner has the function of assisting the Federal Court and the Federal Circuit and Family Court of Australia, as <i>amicus curiae</i> , in certain proceedings (including proceedings in which the orders sought may affect to a significant extent the human rights of persons who are not parties to the proceedings). The rules of the Hight Court, Federal Court and state and territory courts also provide for minors to be represented in a proceeding by a guardian appointed for that purpose. This occurred in the <i>Sharma</i> proceedings, where the child applicants were represented by Sister Brigid Arthur. <sup>667</sup>

<sup>662</sup> *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 at 143; *Theophanous v Herald & Weekly Times Ltd* (1994) 182 CLR 104 at 124.  
<sup>663</sup> *National Environment Protection Council Act 1994* (Cth), sections 18 and 31; *Environment Protection (Alligator Rivers Region) Act 1978* (Cth), section 17; *National Greenhouse and Energy Reporting Act 2007* (Cth), section 76A; *Climate Change Authority Act 2011* (Cth), section 59(3); and *Carbon Credits (Carbon Farming initiative) Act 2011* (Cth), section 255.  
<sup>664</sup> *Nature Conservation Act 1992* (Qld), section 6; *Biodiversity Act 2004* (Qld), section 12; *Coastal Protection and Management Act 1995* (Qld), section 4; *Environmental Protection Act 1994* (Qld), section 6 and 21(2)(c); *Fisheries Act 1994* (Qld), section 3(A)(2); *Geothermal Energy Act 2010* (Qld), section 3(3); *Greenhouse Gas Storage Act 2009* (Qld), section 3(4); *Land Act 1994* (Qld), section 4; *National Environment Protection Council (Queensland) Act 1994* (Qld), section 18; *Waste Reduction and Recycling Act 2011* (Qld), section 99GC(3) and section 125; *Water Act 2000* (Qld), sections 2(2)(h), 7(f), 44; *Wet Tropics World Heritage Protection and Management Act 1993* (Qld), section 40.  
<sup>665</sup> Sections 3(1)(d), 3(2)(g), 74(3), 176.  
<sup>666</sup> Sections 3(1)(d), 3(2)(g), 74(3), 176.  
<sup>667</sup> *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560. See above at [4.2]-[4.3] for more detail.

13. Protection of children from reprisals for participating or expressing views on environmental matters

While children’s right to freedom from reprisals would in practice generally be protected by Australian criminal law, there is no Commonwealth or Queensland legislation that specifically protects protestors from reprisals. In terms of protection from reprisals for expressing views on environmental matters, defamation law will generally offer some protections.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	<i>Defamation Act 2005</i> (Qld)	Provides a defence for publication of defamatory matter where it is reasonably believed to be in the public interest. <sup>668</sup>

14. Effective remedies for children’s rights violations

A 2019 report by the AHRC found that “[t]he legal protections of children’s rights in Australia are not comprehensive and do not provide an effective remedy for violations”.<sup>669</sup> The EPBC Act and EPA both impose obligations to remedy environmental damage<sup>670</sup> as well as enforcement / penalty provisions,<sup>671</sup> but these provisions are not specific to children’s rights.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act (Cth)	Provides some protection for Matters of National Environmental Significance and gives the Environment Minister limited powers to require environmental damage to be remedied.
2	EPA (Qld), section 274 and Chapter 8	Imposes obligations to remedy environmental damage as well as enforcement / penalty provisions.
3	<i>Criminal Code Act 1995</i> , <sup>672</sup> <i>Victims of Crime Assistance Act 2009</i> <sup>673</sup> <i>Personal Injuries Proceedings Act 2002</i> . <sup>674</sup>	Remedies for breaches of children’s rights – unlikely to be applicable to children’s right to a healthy environment.
4	<i>Human Rights Act 2019</i> (Qld)	Allows persons whose rights have been breached (including children) to bring claims in court. These claims may be stand-alone or may “piggy-back” onto another cause of action. <sup>675</sup>

<sup>668</sup> *Defamation Act 2005* (Qld), section 29A.

<sup>669</sup> AHRC, *Children’s Rights Report 2019*, <https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>, page 41.

<sup>670</sup> EPBC Act, Part 18; EPA section 274.

<sup>671</sup> See, e.g. EPBC Act, Chapter 6, Division 15 for civil penalty provisions; EPA, Chapter 8 for environmental offences.

<sup>672</sup> Section 286.

<sup>673</sup> Section 3.

<sup>674</sup> Section 9(4).

<sup>675</sup> See <https://www.crownlaw.qld.gov.au/resources/publications/the-human-rights-act-2019-legal-proceedings-and-human-rights-complaints>.

15. Non-discrimination in children’s equal enjoyment of rights relating to a clean, healthy and sustainable environment

Anti-discrimination legislation in place at the federal and state level prohibits discrimination on the basis of factors including age, sex and race. While these laws do not specifically consider children’s environmental rights, they provide a basis for protecting non-discrimination in children’s enjoyment of rights relating to a clean, healthy and sustainable environment.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	<i>Age Discrimination Act 2004</i> (Cth) <i>Sex Discrimination Act 1984</i> (Cth). <i>Disability Discrimination Act 1992</i> (Cth). <i>Racial Discrimination Act 1975</i> (Cth).	<i>The Age Discrimination Act 2004</i> (Cth) states that its objects include eliminating, as far as possible, discrimination against persons on the ground of age in work, education, access to premises, the provision of goods, services and facilities, accommodation, the disposal of land, the administration of Commonwealth laws and programs and requests for information. <sup>676</sup> By doing so, the Act expressly seeks to give effect to the Convention on the Rights of the Child. <sup>677</sup> Legislation also exists at the Commonwealth level which provides protections against sex, <sup>678</sup> disability <sup>679</sup> and racial discrimination. <sup>680</sup>  Discrimination on the basis of religion alone is not unlawful under federal anti-discrimination law. However, a proposed religious discrimination bill has been criticised for concerns it may be used to increase stigmatisation of the LGBTQ+ community. <sup>681</sup>
2	<i>Anti-Discrimination Act 1991</i> (Qld)	Prohibits discrimination on the basis of a number of attributes, including age, sex, race, religious belief or activity, gender identity or political belief or activity. <sup>682</sup>
3	<i>Human Rights Act 2019</i> (Qld), section 28	Provides for the cultural rights of Aboriginal and Torres Strait Islander peoples, including the right to maintain and strengthen their distinctive spiritual, material and economic relationship with the land, territories, waters, coastal seas and other resources with which they have a connection under Aboriginal tradition or Island custom and to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.  The QHRC has noted that these rights may create opportunities to challenge government projects that harm the land and environment and damage sacred sites and places of important cultural heritage. <sup>683</sup>

<sup>676</sup> Section 3.

<sup>677</sup> Section 10(7).

<sup>678</sup> *Sex Discrimination Act 1984* (Cth).

<sup>679</sup> *Disability Discrimination Act 1992* (Cth).

<sup>680</sup> *Racial Discrimination Act 1975* (Cth).

<sup>681</sup> See, e.g., <https://www.abc.net.au/news/2022-02-10/religious-discrimination-bill-lgbtqia-advocates/100819394>.

<sup>682</sup> Section 7.

<sup>683</sup> [https://www.qhrc.qld.gov.au/\\_\\_data/assets/word\\_doc/0014/31433/2021.02.17-QHRC-submission-to-UNDRIP-study.docx](https://www.qhrc.qld.gov.au/__data/assets/word_doc/0014/31433/2021.02.17-QHRC-submission-to-UNDRIP-study.docx) at [22].



16. State obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects and policies

There is not a cohesive obligation at either the federal or Queensland level to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects or policies.

However, the role of the National Children’s Commissioner under the AHRC Act includes examining existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia.

Environmental legislation in Queensland also requires public interest evaluations to be carried out for certain projects, although these are not specific to children’s rights. The Queensland *Human Rights Act* has provisions which require statutory provisions to be interpreted consistently with human rights (including children’s rights) and requires public entities to act consistently with human rights. Private entities can also opt to impose this requirement on themselves.

The case of *Sharma v Minister for the Environment*, summarised above, sought to establish that the Minister had a duty to consider the harm to children resulting from climate change when approving an extension to a coal mine.<sup>684</sup> This case was successful at first instance, but overturned on appeal.<sup>685</sup>

Australia’s High Court has considered whether decision-makers are required by Australia’s ratification of the CRC to consider children’s interests, despite a lack of implementing legislation. In *Minister of State for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, the Court found that Australia’s ratification of the CRC could give rise to a legitimate expectation that public officials whose decisions concerned children would act in conformity with the Article 3 of the Convention by ensuring that their best interests are a primary consideration (in the context of procedural fairness).<sup>686</sup> This decision was, however, strongly criticised in a later decision in *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1 and there is some debate as to whether it remains good law.<sup>687</sup> It is therefore doubtful whether Teoh’s case would form a basis for asserting that the state has an obligation to conduct a ‘child-rights impact assessment’ for environmental impact of proposed projects or policies.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	AHRC Act (Cth), sections 46MA-46MB	The role of National Children's Commissioner under the <i>AHRC Act</i> includes examining existing and proposed Commonwealth enactments for the purpose of ascertaining whether they recognise and protect the human rights of children in Australia, and reporting to the Minister the results of any such examination. <sup>688</sup>
2	<i>EPA</i> (Qld), sections 49(5A), 136A	The EPA requires public interest evaluations to be carried out in relation to certain projects, which must include consideration of impacts on the community or the environment, though not specifically children.
3	Regulations to the Education and Care Services National Law (Qld)	Include requirements for specification of the natural environment that will be provides for a childcare premises, <sup>689</sup> and requirements for outdoors spaces with natural features to be provided <sup>690</sup> – including in a way that supports children to become environmentally responsible. <sup>691</sup>

<sup>684</sup> *Sharma v Minister for the Environment* (No 2) [2021] FCA 774. See above at [4.2]-[4.3] for more detail.

<sup>685</sup> *Minister for the Environment v Sharma* [2022] FCAFC 35. See above at [4.2]-[4.3] for more detail.

<sup>686</sup> At pp. 420 and 438.

<sup>687</sup> See, e.g., M Groves (2007) ‘Is Teoh’s case still good law?’ *Australian Journal of Administrative Law*, Vol. 14, pp 126-144; H Burmester AO QC (2003) *Teoh Revisited After Lam* (Paper presented at an AIAL seminar, Canberra, 17 June 2003), <http://www5.austlii.edu.au/au/journals/AIALAdminLawF/2004/4.pdf>.

<sup>688</sup> Sections 46MA-46MB.

<sup>689</sup> Reg. 25.

<sup>690</sup> Reg. 113.

<sup>691</sup> Schedule 1.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
4	<i>Mineral and Energy Resources (Common Provisions) Act 2014</i> (Qld)	Includes restrictions on mineral development projects within certain proximity of a school or childcare centre without consent. <sup>692</sup>
5	Environmental Protection (Noise) Policy 2019	The list of acoustic quality objectives in the Environmental Protection (Noise) Policy 2019 educational institutions, childcare centres, schools and playgrounds, and notes the environmental value of health and wellbeing. <sup>693</sup>
6	<i>Human Rights Act 2019</i> (Qld)	Requires that statutory provisions must, to the extent possible that is consistent with their purpose, be interpreted in a way that is compatible with human rights. <sup>694</sup> It provides a mechanism for referring questions of law that arise in the interpretation of the <i>Human Rights Act</i> , or possible inconsistencies between the Act and other legislation, to the Supreme Court. <sup>695</sup> Moreover, it also provides that it is unlawful for a public entity to act or make a decision in a way that is not compatible with human rights, or to fail to give proper consideration to a human right relevant to the decision. <sup>696</sup> While this does not necessarily entail a ‘child-rights impact assessment’, it may provide a means for relevant legislation to be tested, or judicial review of administrative decisions, for consistency with children’s right to a healthy environment.

17. Regulation of businesses (including State-owned) to protect children from environmental harm. Includes obligation for businesses to conduct ‘child-rights due diligence’ for actual and proposed actions on the rights of children through environmental harm

Businesses are subject to legislation at both the federal and Queensland level to protect citizens from environmental harm. The EPBC Act, EPA and laws regarding pollution and waste impose penalties on businesses for creating environmental damage and obligations to remedy this damage. This analysis does not encompass the efficacy of that legislation (including compliance and enforcement action). An obligation also exists under the EPA to warn of environmental harm.<sup>697</sup> However, these provisions are silent on harm to children specifically.

There are also no specific requirements for businesses to undertake “child rights due diligence”. The closest parallel is section 60 of Queensland’s *Human Rights Act*, which provides that an entity may “opt in” to the obligations imposed by the Act on public entities. Opting in would make it unlawful for the entity to act or make decisions in a way that is incompatible with human rights, or to fail to give proper consideration to a human right relevant to the decision.<sup>698</sup>

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act (Cth) EPA (Qld)	Provides some protection for Matters of National Environmental Significance and gives the Environment Minister limited powers to require environmental damage to be remedied. <sup>699</sup>  An obligation also exists under the EPA to warn of environmental harm. <sup>700</sup>
2	<i>Human Rights Act 2019</i> (Qld), section 60	Provides that an entity may “opt in” to the obligations imposed by the Act on public entities. Opting in under section 60 would make it unlawful for the entity to act or make decisions in a way that is incompatible with human rights, or to fail to give proper consideration to a human right relevant to the decision. <sup>701</sup>

<sup>692</sup> Section 68.

<sup>693</sup> Schedule 1.

<sup>694</sup> Section 48.

<sup>695</sup> Section 49.

<sup>696</sup> Section 58(1).

<sup>697</sup> Chapter 7, Part 1, Div. 2.

<sup>698</sup> Section 58(1).

<sup>699</sup> See, e.g. EPBC Act, Chapter 6, Division 15 for civil penalty provisions, Part 18 for remediation; EPA, Chapter 8 for environmental offences, section 274 for rehabilitation.

<sup>700</sup> Chapter 7, Part 1, Div. 2.

<sup>701</sup> Section 58(1).

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
3	<i>Modern Slavery Act 2018</i> (Cth)	Introduced obligations for businesses to report on risks of modern slavery in their operations and supply chain, as well as actions (including due diligence and remediation) taken to mitigate these risks. <sup>702</sup> This legislation does not specifically consider children's rights, other than in the context of the worst forms of child labour as a form of modern slavery. It also does not consider environmental harm. However, a recent statutory review has recommended that this legislation be updated to require mandatory human rights due diligence (to the extent that it relates to modern slavery). Accordingly, it may be a model for future reporting and transparency laws which cover environmental and social governance more broadly. For example, the European Commission recently proposed mandatory human rights and environmental due diligence legislation which incorporates obligations for businesses to identify actual and potential adverse human rights and environmental impacts arising from their operations (as discussed further at paragraphs 6.28 to 6.33 above). This proposal could be a model for future reforms.

**18. State obligation to adopt / implement environmental standards consistent with the best available science and international health and safety standards, or on the basis of the precautionary principle**

Environmental legislation at both the federal and Queensland level incorporates the precautionary principle as a guide for ecologically sustainable use and to guide decision-making.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act (Cth)	Provides that, ‘if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation’. <sup>703</sup> It also requires the Minister to, when making certain decisions under the Act, consider the precautionary principle. <sup>704</sup>
2	<i>Great Barrier Reef Marine Park Act 1975</i> (Cth)	Refers to it as one of the “principles of ecologically sustainable use”. <sup>705</sup>
3	<i>Fisheries Management Act 1991</i> (Cth)	Requires the Minister and administering authority to pursue the objective of ‘ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle)’. <sup>706</sup>
4	<i>Recycling and Waste Reduction Act 2020</i> (Cth)	Requires the Minister to take a precautionary approach in relation to protecting human and environmental health. <sup>707</sup>

<sup>702</sup> Section 16.

<sup>703</sup> Section 3A(b).

<sup>704</sup> Section 391.

<sup>705</sup> Section 3AB(b).

<sup>706</sup> Section 3(1)(b).

<sup>707</sup> Section 4.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
5	EPA (Qld)	Identifies the precautionary principle (as defined in the Intergovernmental Agreement on the Environment) <sup>708</sup> as one of the “standard criteria” which must be considered in making decisions under the Act. <sup>709</sup> It also imposes a general environmental duty, which provides that ‘a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm’ <sup>710</sup> as well as a duty to notify of environmental harm. <sup>711</sup>
6	<i>Fisheries Act 1994</i> (Qld)	Identifies it as a principle of ecologically sustainable development. <sup>712</sup>  Definition of the precautionary principle is meaningfully identical to that used in the EPA / Intergovernmental Agreement on the Environment and the ECBC Act.
7	<i>Marine Parks Act 2004</i> (Qld)	States that its purpose (the conservation of the marine environment) <sup>713</sup> is to be achieved by a strategy involving the application of the precautionary principle in decision-making processes. <sup>714</sup>  Definition of the precautionary principle is meaningfully identical to that used in the EPA / Intergovernmental Agreement on the Environment and the ECBC Act.
8	Nature Conservation (Animals) Regulation 2020 (Qld)  Nature Conservation (Plants) Regulation 2020  Nature Conservation (Protected Areas Management) Regulation 2017  Nature Conservation (Macropod) Conservation Plan 2017	Requires the Chief Executive to have regard to the precautionary principle in considering applications under the Regulations. <sup>715</sup>  Definition of the precautionary principle is meaningfully identical to that used in the EPA / Intergovernmental Agreement on the Environment and the ECBC Act.
9	<i>Planning Act 2016</i> (Qld)	Specifies that advancing the purposes of the Act includes following ethical decision-making processes that apply the precautionary principle. <sup>716</sup> An entity that performs a function under the Act is required to perform their function in a way that advances the purposes of the Act. <sup>717</sup>  Definition of the precautionary principle is meaningfully identical to that used in the EPA / Intergovernmental Agreement on the Environment and the ECBC Act.
10	<i>Vegetation Management Act 1999</i> (Qld)	States that the purpose of the Act is achieved by providing for a framework for decision making that, in achieving the Act’s purpose, applies the precautionary principle. <sup>718</sup>  Definition of the precautionary principle is meaningfully identical to that used in the EPA / Intergovernmental Agreement on the Environment and the ECBC Act.
11	Wet Tropics Management Plan 1998 (Qld)	Provides that a decision-maker must decide the application under the precautionary principle. <sup>719</sup>  Definition of the precautionary principle is meaningfully identical to that used in the EPA / Intergovernmental Agreement on the Environment and the ECBC Act.

<sup>708</sup> This document defines the precautionary principle (at 3.5.1) as: “Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by: 1. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and 2. an assessment of the risk-weighted consequences of various options”.

<sup>709</sup> Schedule 4 (Dictionary), definition of “standard criteria”.

<sup>710</sup> Section 319.

<sup>711</sup> Chapter 7, Division 2.

<sup>712</sup> Section 3(5)(i).

<sup>713</sup> Section 5(1).

<sup>714</sup> Section 5(2)(h).

<sup>715</sup> Section 241(1)(g).

<sup>716</sup> Section 5(2).

<sup>717</sup> Section 5(1).

<sup>718</sup> Section 3(2)(d).

<sup>719</sup> Section 57.



19. State obligation to cooperate with other States to address global / transboundary harm

Obligations for transboundary cooperation on environmental matters are contained in federal laws which implement Australia’s treaty obligations.

Queensland’s *Torres Strait Fisheries Act 1984* implements the Torres Strait Treaty, which requires cooperation in the conservation, management and optimum utilisation and regulation / prevention of harm of the identified protected zone within those boundaries.<sup>720</sup> The EPA<sup>721</sup> and *Wet Tropics World Heritage Protection and Management Act 1993* also provide for protection of world heritage sites (Queensland’s wet tropics and the Great Barrier Reef) in accordance with the Convention for the Protection of the World Cultural and Natural Heritage.

However, these cooperation provisions do not address children’s rights specifically.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	<i>Climate Change Act 2022</i> (Cth)	Australia’s greenhouse gas emissions reduction targets are interpreted in a manner consistent with the Paris Agreement and Australia’s nationally determined contribution in accordance with Article 4 of the Paris Agreement. <sup>722</sup>
2	EPBC Act (Cth)	Obligations for transboundary cooperation included in provisions which implement the Biodiversity Convention. <sup>723</sup>
3	<i>Environment Protection (Sea Dumping) Act 1981</i> (Cth)	Implements the Convention on the Prevention of Marine Pollution by Dumping of Wastes. <sup>724</sup>
4	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth)	Gives effect to the Vienna Convention for the Protection of the Ozone Layer. <sup>725</sup>
5	<i>Chemical Weapons (Prohibition) Act 1994</i> (Cth)	Implements the Chemical Weapons Convention. <sup>726</sup>
6	<i>Comprehensive Nuclear-Test Ban Act 1998</i> (Cth)	Implements the Comprehensive Nuclear Test-Ban Treaty. <sup>727</sup>
7	<i>Fisheries Management Act 1991</i> (Cth)	Implements the Treaty on fisheries between the Governments of certain Pacific Island States and the United States of America, <sup>728</sup> the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, <sup>729</sup> and the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. <sup>730</sup>
8	<i>Torres Strait Fisheries Act 1984</i> (Cth)	Implements the Torres Strait Treaty, which requires cooperation in the conservation, management and optimum utilisation and regulation/prevention of harm of the identified protected zone within those boundaries. <sup>731</sup>
9	EPA (Qld), sections 17 and 504 <i>Wet Tropics World Heritage Protection and Management Act 1993</i> (Cth)	Provide for protection of world heritage sites (Queensland’s wet tropics and the Great Barrier Reef) in accordance with the Convention for the Protection of the World Cultural and Natural Heritage.

<sup>720</sup> Articles 2, 26 and 28.

<sup>721</sup> Sections 17 and 504.

<sup>722</sup> Section 10(2).

<sup>723</sup> Section 528, ss 49A(c), 53(1)(a), 139, 146K.

<sup>724</sup> Section 19(8A).

<sup>725</sup> Section 3.

<sup>726</sup> Section 3.

<sup>727</sup> Schedule 1.

<sup>728</sup> Schedule 1.

<sup>729</sup> Schedule 2.

<sup>730</sup> Schedule 3.

<sup>731</sup> Articles 2, 26 and 28.

20. State obligation to provide access to court remedies for environmental harm by businesses in their State of incorporation as well as where the harm is alleged to occur

At both the federal<sup>732</sup> and Queensland<sup>733</sup> level, legislation covering human rights, environmental protection, pollution and waste contains penalty provisions and offences for breach. However, with the exception of the *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008*,<sup>734</sup> these laws do not have extraterritorial application.

Some Commonwealth and Queensland laws provide recourse for individuals to bring court proceedings against businesses for environmental harm.

#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
1	EPBC Act (Cth)	Grants a right of injunction to interested persons to restrain someone from engaging in offending conduct <sup>735</sup> and creates a cause of action to claim damages from wrongdoer for loss or damage. <sup>736</sup>  Administrative decisions to approve potentially harmful projects under the EPBC Act are also subject to judicial review. <sup>737</sup>
2	<i>Environment Protection (Sea Dumping) Act 1981</i> (Cth), <sup>738</sup> <i>Great Barrier Reef Marine Park Act 1975</i> (Cth), <sup>739</sup> <i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> (Cth), <sup>740</sup> and <i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i> (Cth) <sup>741</sup>	Grants a right of injunction to interested persons to restrain a person from engaging in offending conduct
3	<i>Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008</i> (Cth)	Grants a cause of action to individuals for pollution damage. <sup>742</sup>
4	<i>Protection of the Sea (Civil Liability) Act 1981</i> (Cth) <sup>743</sup> <i>Protection of the Sea (Oil Pollution Compensation Funds) Act 1993</i> (Cth) <sup>744</sup>	Allow claims to be brought for compensation for damage.
5	<i>Human Rights Act 2019</i> (Qld), sections 58, 64, 65	Allows a complainant to make a human rights complaint against <i>Human Rights Act</i> a public entity

<sup>732</sup> *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth), sections 9, 10; *Australian Radiation Protection and Nuclear Safety Act 1998*, section 12; *Chemical Weapons (Prohibition) Act 1994*, Part 2; *Environment Protection (Sea Dumping) Act 1981* (Cth), sections 10F, 37; EPBC Act, sections 15A, 15C, 17B, 18A, 20A, 22A, 24A, 24C, 24E, 27A, 27C, 74AA, 142A, 142B, 207B, Pt 13 Div 1 Subdiv B, 207B, Pt 13 Div 2 Subdiv B, Pt 13 Div 3 Subdiv C and E, Pt 13 Div 4 Subdiv B, Pt 13A Div 2 Subdiv B, Pt 13A Div 3 Subdiv B, Pt 13A Div 4 Subdiv C, 254A, 355A, 390SB, 402, 436, 437, 470, Chap 6 Part 17 and 18; *Great Barrier Reef Marine Park Act 1975* (Cth), Part 8; *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (Cth), Part 5AA; *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (Cth), Part 8; *Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008* (Cth), Part 2; *Protection of the Sea (Civil Liability) Act 1981* (Cth), Parts 2, 4 and 4A; *Protection of the Sea (Oil Pollution Compensation Funds) Act 1993* (Cth), section 46F; *Protection of the Sea (Powers of Intervention) Act 1981* (Cth), sections 17A and 17B; *Recycling and Waste Reduction Act 2020* (Cth), Chapter 4 Part 2; *South Pacific Nuclear Free Zone Treaty Act 1986* (Cth), Parts 2, 3 and 5; *Torres Strait Fisheries Act 1984* (Cth), Part 6.

<sup>733</sup> *Clean Air Act 1963*, section 46; *Clean Water Act 1971*, section 48; *Noise Abatement Act 1978*, section 55; *Recreation Areas Management Act 2006*, Part 7; *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, sections 28, 30-34; *Forestry Act 1959*, section 88; *Liquid Fuel Supply Act 1984*, Part 6; *Marine Parks Act 2004*, Part 4; *Radiation Safety Act 1999*, Part 11; *Transport Operations (Marine Pollution) Act 1995*, Part 13A; *Waste Reduction and Recycling Act 2011*, Chapter 5; *Water Supply (Safety and Reliability) Act 2008*, Chapter 6.

<sup>734</sup> Section 6.

<sup>735</sup> Section 475.

<sup>736</sup> Section 500.

<sup>737</sup> EPBC Act, sections 78A, 487, 488; *Administrative Decisions (Judicial Review) Act 1977* (Cth), section 2; *Judiciary Act 1903* (Cth), section 39B.

<sup>738</sup> Section 33.

<sup>739</sup> Section 61AGA.

<sup>740</sup> Section 41.

<sup>741</sup> Section 56.

<sup>742</sup> Section 11.

<sup>743</sup> Section 9.

<sup>744</sup> Section 32 and 46F.



#	Legislation and associated policies addressing this aspect of the right	Explanation and comments
6	<i>Liquid Fuel Supply Act 1984</i> (Qld)	Grants a right of injunction to interested persons to restrain someone from engaging in offending conduct. <sup>745</sup>
7	<i>Marine Parks Act 2004</i> (Qld)	Allows individuals to bring proceedings for enforcement orders <sup>746</sup> , compensation <sup>747</sup> and judicial review; <sup>748</sup>
8	<i>Radiation Safety Act 1999</i> (Qld)	Grants a right to compensation for damage; <sup>749</sup>
9	<i>Transport Operations (Marine Pollution) Act 1995</i> (Qld)	Provides a right to recover compensation, <sup>750</sup> damages, <sup>751</sup> remedy for reprisal <sup>752</sup> and enforcement orders; <sup>753</sup>
10	<i>Waste Reduction and Recycling Act 2011</i> (Qld)	Grants a right to compensation for damage <sup>754</sup> and actions for restraining contraventions of the Act; <sup>755</sup>
11	<i>Water Supply (Safety and Reliability) Act 2008</i> (Qld)	Includes a right to seek compensation for damages <sup>756</sup> and bring proceedings for enforcement orders, <sup>757</sup> including in a representative capacity. <sup>758</sup>



<sup>745</sup> Section 4.  
<sup>746</sup> Section 111.  
<sup>747</sup> Section 88.  
<sup>748</sup> Section 140.  
<sup>749</sup> Section 151.  
<sup>750</sup> Section 110.  
<sup>751</sup> Section 132F.  
<sup>752</sup> Section 128F.  
<sup>753</sup> Section 117B.  
<sup>754</sup> Section 241.  
<sup>755</sup> Section 261.  
<sup>756</sup> Section 39.  
<sup>757</sup> Section 475.  
<sup>758</sup> Section 476.

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