



**SENATE STANDING
COMMITTEES ON
ENVIRONMENT AND
COMMUNICATIONS**

**INQUIRY INTO THE CLIMATE
CHANGE AMENDMENT
(DUTY OF CARE AND
INTERGENERATIONAL
CLIMATE EQUITY) BILL 2023
(BILL).**

17 November 2023

Acknowledgement of Country

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

About NSW Council for Civil Liberties

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) is grateful for the opportunity to make a submission to the Committee's Inquiry into the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (Bill).

Introduction

1. NSWCCL supports laws that strengthen Australia's mitigation efforts as a crucial step towards protecting human rights from the impacts of climate change. We consider the Bill would go towards Australia's obligation to uphold the rights of children and young people to live within a safe climate.
2. We believe the Bill fills an important gap in Australia's climate change framework which currently leaves the Commonwealth unable to properly manage the development of emissions intensive activities.
3. While we welcome the Bill as an improvement on the current state of affairs, this submission contains suggested improvements which we believe will further its aims.

The Rights of Children and Young People

4. Australia is party to the *Convention on the Rights of the Child*¹ and has an obligation to take into account as a primary consideration the best interests of children in all administrative decisions.² This requires the carrying out of vigorous children's rights impact assessments.³
5. Climate Change has disproportionate impacts on children whose unique vulnerabilities place them at higher risk of climate harms including the impacts of extreme weather and natural disasters, water scarcity and food insecurity, air pollution and vector-borne diseases and resulting psychological trauma.⁴ These impacts will be felt by future generations of children who will be exposed to climate harms for generations to come.
6. Climate change harms have the potential to hamper the realisation of all other human rights contained in the *Convention on the Rights of the Child* including the right to life, survival and development, the right to the highest attainable standard of health and the rights of indigenous children to name a few.⁵
7. The Committee on the Rights of the Child has made clear that in order to uphold the rights of children, all states must urgently act to intensify their mitigation measures with the goal of keeping the global temperature increase to below 1.5°C above pre-industrial levels.⁶
8. This is consistent with the views of other human rights treaty bodies on the need under international human rights law to take additional steps to mitigate emissions.⁷

¹ opened for signature 20 November 1989, 1577 UNTS 3 (entry into force 2 September 1990).

² *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entry into force 2 September 1990) art 3.

³ Committee on the rights of the child, *General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*, 93rd sess, U.N Doc. CRC/C/GC/26 (22 August 2023) [75].

⁴ Office of the United Nations High Commissioner for Human Rights, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child* U.N Doc. A/HRC/35/13 (4 May 2017) [6].

⁵ Committee on the rights of the child, *General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*, 93rd sess, U.N Doc. CRC/C/GC/26 (22 August 2023) [13]-[62].

⁶ Committee on the rights of the child, *General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change*, 93rd sess, U.N Doc. CRC/C/GC/26 (22 August 2023) [95] - [99].

⁷ See for example: Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of Norway*, 30th sess, UN Doc E/C.12/NOR/CO/6 (6 March 2020) [11]; Committee on Economic, Social and Cultural Rights, *Concluding observations on the fifth periodic report of Belgium*, 30th sess, UN Doc E/C.12/BEL/CO/5 (6 March 2020); CRC/C/CHE/CO/5-6 (24 September 2021) [37].

9. Australia's climate policies are inconsistent with limiting warming to 1.5°C,⁸ a level of warming that may limit the worst impacts of climate change on human rights. In particular, Australia continues to expand fossil fuel production through the approval of new and expanded mines. According to the International Energy Agency, the path to limiting warming to 1.5°C requires that governments do not approve any new oil, gas or coal mines (including coal mine extensions).⁹
10. As such, Australia has obligations to intensify its mitigation efforts, not only under the *Paris Agreement*,¹⁰ but also under the *Convention on the Rights of the Child*. This includes a duty to consider the rights of children when making decisions that could cause material harm to them through the impacts of climate change.

Why the Bill is necessary

11. The Bill provides a much needed mechanism to ensure decisions made by the Australian government are consistent with the rights of current and future children, including regarding the development of emitting projects.
12. Currently, there is no requirement under Commonwealth law for administrative decisions to consider the rights of children. As found by the Full Federal Court in *Minister for the Environment v Sharma* [2022] FCAFC 3, the Australian government does not currently owe a common law duty to Australian children take reasonable care to protect them from the harms of climate change.
13. Further, the current legislative framework for greenhouse gas mitigation lacks a coordinating mechanism to ensure that decisions of the Australian Government are made consistent with Australia's climate target legislated under the *Climate Change Act 2022*.
14. As was recently confirmed by the decision of the Federal Court in *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)*¹¹ there is currently no requirement under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act) for the Minister to consider climate impacts when assessing large emitting projects. This means that decisions to approve emitting projects can, and are, made by the Minister for the Environment without any regard for the impacts of those emissions, let alone how the resultant climate harms will impact current and future generations of children.
15. We note that if approved, emissions from planned fossil fuel projects have the capacity to negate the reductions achieved by current climate policies and make achieving the target impossible.¹² Since May 2022, the Federal Environment Minister has approved 4 new coal mines or expansions under the EPBC Act, with 147 million tonnes of lifetime emissions.¹³
16. NSWCCCL considers the Bill provides a much needed mechanism to ensure administrative decisions are made consistently with Australia's human rights obligations. Crucially, this includes providing that the development of emitting projects occurs in a way that is consistent with the rights of children. Further, the Bill provides a much needed mechanism to ensure future development of emitting projects occurs in a way that is consistent with Australia's emission reduction target.

⁸ Climate Action Tracker, 'Australia' (2 August 2022) <<https://climateactiontracker.org/countries/australia/targets/>>.

⁹ International Energy Agency, Net Zero Roadmap - 2023 Update - Executive Summary (September 2023) 6.

¹⁰ opened for signature 22 April 2016 (entered into force 4 November 2016).

¹¹ [2023] FCA 1208 .

¹² The Australia Institute '116 New Fossil Fuel Projects = 4.8b Tonnes of Pollution, 24x Safeguard Cuts' (Media Release, 21 March 2023) <<https://australiainstitute.org.au/post/116-new-fossil-fuel-projects-4-8b-tonnes-of-pollution-24x-safeguard-cuts/>>.

¹³ The Australia Institute 'Coal Mine Tracker' (accessed 28 October 2023) <<https://australiainstitute.org.au/initiative/coal-mine-tracker/>>

Suggested Improvements

17. The creation of a duty to consider the health and wellbeing of children and future generations in relation to certain administrative decisions contributing to climate change¹⁴ and the duty not to make certain significant decisions that pose a material risk of harm to the health and wellbeing of children,¹⁵ while welcome improvements will nonetheless provide a complex task for administrative decision makers. Necessarily the consideration of future generations will require a shift in the mindset of decision makers to consider longer timeframes for the consequences of their decisions.
18. Over time the decisions of Courts may guide this exercise, and indeed the first instance *Sharma* judgement¹⁶ may assist in this task. However, we consider that the implementation of new human rights considerations into government decision making is most effectively achieved through the provision of advice, guidance and oversight by an independent human rights expert.
19. When the Welsh Parliament introduced the *Well-being of Future Generations (Wales) Act 2015*, it required administrative decision makers to consider the long term implications for their decisions on future generations.¹⁷ A Future Generations Commissioner was created to “act as a guardian of the ability of future generations to meet their needs, and encourage public bodies to take greater account of the long-term impact of the things that they do.”¹⁸ The Future Generations Commissioner’s functions includes to provide advice, assistance, raise awareness, review decisions and make recommendations to administrative decision makers.¹⁹
20. While the Bill has a narrower focus, applying only to decisions that would result in significant carbon emissions, we consider that vesting oversight of the implementation of the Bill would assist administrative decision makers in adjusting to this new way of considering the needs of children both present and future. We suggest that the National Children’s Commissioner is ideally placed to take on this responsibility.
21. Consistent with our long body of work on the subject, we further identify that the issue sought to be addressed by this Bill underscores the need for swift action to implement a Human Rights Act at the Commonwealth level.

This submission was prepared by Jay Gillieatt. We trust that this submission assists the Committee.

Yours sincerely,

Lydia Shelly
President
NSW Council for Civil Liberties
Contact in relation to this submission:

¹⁴ Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023, cl 15D.

¹⁵ Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023, cl 15E.

¹⁶ *Sharma v Minister for the Environment* [2021] FCA 560.

¹⁷ *Well-being of Future Generations (Wales) Act 2015* (Wales).

¹⁸ *Well-being of Future Generations (Wales) Act 2015* s 18(a).

¹⁹ *Well-being of Future Generations (Wales) Act 2015* ss 19-23.