

Human
Rights
Law
Centre.

Submission to the Environment and
Communications Legislation Committee for
Inquiry and Report on the Climate Change
Amendment (Duty of Care and Intergenerational
Climate Equity) Bill 2023

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Human Rights Law Centre.

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Human Rights Law Centre

The Human Rights Law Centre uses strategic legal action, policy solutions and advocacy to support people and communities to eliminate inequality and injustice and build a fairer, more compassionate Australia. We work in coalition with key partners, including community organisations, law firms and barristers, academics and experts, and international and domestic human rights organisations.

The Human Rights Law Centre acknowledges the people of the Kulin and Eora Nations, the traditional owners of the unceded land on which our offices sit, and the ongoing work of Aboriginal and Torres Strait Islander peoples, communities and organisations to unravel the injustices imposed on First Nations people since colonisation. We support the self-determination of Aboriginal and Torres Strait Islander peoples.

Executive Summary

The Human Rights Law Centre welcomes the opportunity to provide a submission to the Environment and Communications Legislation Committee for Inquiry and Report on the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (**Duty of Care Bill**).

We strongly support the Duty of Care Bill.

Our current laws are failing us. Australian children are already experiencing the devastating impacts of climate change, which are being felt most acutely by the most disadvantaged children in our communities. These impacts will grow exponentially into the future if action is not taken now.

The Duty of Care Bill will assist in mitigating these impacts. By requiring decision-makers to consider the health and well-being of current and future Australian children when making significant decisions about projects likely to result in substantial greenhouse gas emissions, the Bill puts the principle of intergenerational equity at the heart of government decision-making.

Ultimately, this should result in far fewer coal, oil and gas projects being approved, a faster transition to net zero greenhouse gas emissions and a brighter future for Australian children and for humanity.

The Bill will also advance Australia's international obligations under the International Convention on the Rights of the Child (**ICRC**) and better align Australia with many other jurisdictions that have enacted similar legislation enshrining the right to a clean, healthy, and sustainable environment for current and future generations.

Recommendations

1. We recommend that the Government enacts the Duty of Care Bill. To further strengthen the Bill, we recommend that it be amended to require administrative decision makers to consider the likely impacts of greenhouse gas emissions on the “health, wellbeing, and rights” of current and future Australian children.
2. We recommend that implementation of the Bill also includes requirements to engage and consult meaningfully with children and young people when considering potential impacts on their health, well-being, and rights.
3. To further strengthen Australia's legal framework for protecting human rights and addressing the climate crisis, we recommend that the Government also formally enshrines the right to a clean, healthy, and sustainable environment into Australian law as part of a national Charter of Human Rights.

The Current Climate

From sweeping wildfires to sweltering cities, parched farmland to unprecedented floods, climate change is having a mounting toll on communities around the world. The past year has seen the highest global temperatures in over 100,000 years.¹ In all regions, increases in extreme heat events

¹ Intergovernmental Panel on Climate Change, AR6 Synthesis Report: Climate Change 2023, Summary for Policymakers (Report Summary, 2023), A.2.

have resulted in increased rates of death and illness and a significant increase in climate-related food and water-borne diseases.²

The impacts of this crisis are not evenly distributed, and one of the most significant inequalities is intergenerational.³ Children are both exceptionally vulnerable to the negative impacts of climate change and are the least able to participate in current decision-making on the issue.⁴

According to the Australian Medical Association, climate change is already responsible for an estimated 250,000 to 400,000 global deaths per year, of which almost 90 percent are children.⁵ Infants younger than one year old, for whom extreme heat can be particularly life threatening, are now exposed to twice as many heatwave days as they would have experienced in 1986 to 2005.⁶

Among children and young people across Australia, climate anxiety is widespread, with many experiencing frequent feelings of hopelessness, despair and anger, and fears that the world will no longer be liveable for humans in their lifetime.⁷

For marginalised or socio-economically disadvantaged children, the risks to health and well-being are compounded. Children who live in insecure or remote housing, for example, are more vulnerable to flooding, fires, and inadequate thermal protection.⁸ Lower cost housing is often located on land that is more vulnerable to extreme weather events or less accessible to services.⁹ In the Northern Rivers region of New South Wales, for example, low-cost housing is typically located in flood-affected areas.¹⁰

Children with disabilities are among the most seriously affected both in terms of health impacts and in the context of climate-related disasters, sustaining disproportionately higher rates of morbidity and mortality, and being among those least able to access emergency support.¹¹ During the Black Summer bushfires of 2019 and 2020, for instance, people living with disabilities were most acutely impacted by the natural disaster, as they were forced to leave their homes without access to essential aids and equipment.¹²

Aboriginal and Torres Strait Islander children are also uniquely and disproportionately affected by the crisis. As noted by the Lowitja Institute, Aboriginal and Torres Strait Islander children are more likely to live in areas of increased geographical risks, for example, the hot, dry conditions of central Australia, and have a stronger dependence on land and water resources than non-Indigenous Australians.¹³ The Institute has found that climate change is already impacting deep, spiritual ties to

² Ibid.

³ Ibid.

⁴ United Nations General Assembly, *Promotion and protection of human rights in the context of climate change, 76th sess, Agenda Item 69(b)*, UN DOC A/RES/77/226 (26 July 2022), [73].

⁵ Dr Indigo Weber, *Climate Change: The greatest threat to human health this century* (medicSA Article, 2019), 13.

⁶ The Lancet, *The 2023 report of the Lancet Countdown on health and climate change: the imperative for a health-centered response in a world facing irreversible harms* (Report, 14 November 2023), 1. During heatwaves, young children are at a higher risk of electrolyte imbalance, fever, respiratory disease, and kidney disease and are more likely to suffer heatstroke or die because they are unable to regulate their body temperature or control their surrounding environment.

⁷ Doctors for the Environment Australia, *How Climate Change Affects Mental Health in Australia* (Report, 2021), 4.

⁸ Christen Cornell, Nicole Gurrán and Tess Lea, *Climate change, housing, and health: A scoping study on intersections between vulnerability, housing tenure, and potential adaptation responses* (Report, 2020), 18.

⁹ Ibid, 5.

¹⁰ Ibid, 27.

¹¹ United Nations Human Rights Council, *Human Rights and Climate Change, 41st session, Agenda Item 3*, UN DOC A/HRC/41/L.24 (9 July 2019).

¹² People with Disability Australia, *People with disability must be part of bushfire plans and recovery* (Media release, 15 January 2020) <www.pwd.org.au/media-release-people-with-disability-must-be-part-of-bushfire-plans-and-recovery/>.

¹³ Doctors for the Environment Australia, *How Climate Change Affects Mental Health in Australia* (Report, 2021), 4.

Country, which is a fundamental determinant of health, foundational to Aboriginal and Torres Strait Islander identity, knowledge systems, and cultural practices.¹⁴ Climate change is and will continue to exacerbate the already disproportionate levels of ill health, stress and hardship experienced by Aboriginal and Torres Strait Islander communities, particularly children and young people.¹⁵

Climate change thus poses an existential threat to the health and wellbeing of all children, but particularly those who are already among the most disadvantaged in our communities.¹⁶ Unless urgent political action is taken now, the cost of the crisis will rise exponentially for future generations of children.¹⁷

Weaknesses in Australia's Current Legislative Framework

Australia's current legislative framework is insufficient to protect current and future Australian children from the impacts of climate change.

National instruments like the *Climate Change Act 2022* and Safeguard Mechanism do not cover the specific assessment and approval or rejection of projects based on their climate change impacts. Nor do they address full lifecycle greenhouse gas emissions – only territorial and scope 1 emissions – even though the most significant component of Australia's carbon footprint relates to exported or scope 3 emissions.¹⁸

Amendments to the Safeguard Mechanism have established a hard cap on total emissions for Australia's biggest polluters collectively and a 'pollution trigger' requiring the Climate Change Minister to consider whether new projects will exceed that cap.¹⁹ But these rules are only triggered once a project has already been approved under the *Environmental Protection & Biodiversity Conservation Act 1999 (EPBC Act)*.²⁰

The EPBC Act is the principal federal environment legislation.²¹ In theory, the EPBC Act already requires the Minister to consider principles of ecologically sustainable development, including intergenerational equity, as one of a number of considerations when weighing whether to approve or

¹⁴ Lowitja Institute, *Climate Change and Aboriginal and Torres Strait Islander Health* (Discussion Paper, 2021), 9.

¹⁵ *Ibid.*

¹⁶ The Guardian, Children at 'existential risk' from climate crisis, UK's top paediatrician says (News Article, 21 October 2023) <<https://www.theguardian.com/society/2023/oct/21/children-at-existential-risk-from-climate-crisis-uks-top-paediatrician-says#:~:text=In%20a%20major%20intervention%2C%20Dr,first%2Dhand%2C%20she%20added>>.

¹⁷ CRC/C/GC/26: General Comment No. 26 on children's rights and the environment with a special focus on climate change, [11].

¹⁸ Jacqueline Peel, *Legal opinion – gaps in the Environment Protection and Biodiversity Conservation Act and other federal laws for protection of the climate* (Report for the Climate Council, 2023), 5.

¹⁹ The national Safeguard Mechanism operating under the *National Greenhouse and Energy Reporting Act 2007* sets a hard cap on certain large emitting facilities in the mining, manufacturing, transport, oil, gas, and waste sectors. The purpose of the Safeguard Mechanism is to assist the nation in reaching its legislated emissions reduction targets of 43 percent below 2005 levels by 2030, and net zero by 2050.

²⁰ Jacqueline Peel, *Legal opinion – gaps in the Environment Protection and Biodiversity Conservation Act and other federal laws for protection of the climate* (Report for the Climate Council, 2023), 15. The fact that the assessment of emissions occurs only once a project has already been approved under the EPBC is problematic. Particularly in circumstances where there is an element of foreign investment in relation to a project, revoking a project that has already been approved under the EPBC Act would risk breaching Australia's international trade obligations and potentially be subject to challenge by companies under the WTO rules - creating a significant disincentive for the Climate Change Minister to revoke projects that have already been approved.

²¹ *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ss 3, 136(2)(a).

deny projects likely to have a significant impact on matters of national environmental significance (MNES).²²

In practice, however, this requirement has not tended to act as a significant brake on project approvals. Since the EPBC Act came into force in 2000, only 14 projects have been refused at the approval stage, compared to over 1,300 projects that have been approved.²³ Of these, 740 are fossil fuel projects, and 555 of these fossil fuel projects were waved through without undergoing a full environmental assessment.²⁴

In large part, this is because the EPBC Act does not currently explicitly address climate change or the regulation of greenhouse gas emissions. Although previous litigation has sought to argue that the EPBC Act can apply to greenhouse-gas intensive projects, such arguments have had limited success. As a result, the climate impacts of projects have generally escaped scrutiny in the EPBC Act assessment and approval process.²⁵

Recent unsuccessful attempts to challenge approval of coal projects under the EPBC Act in the courts, including *Minister for the Environment v Sharma (No 2)*²⁶ (**Sharma**) and *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)*²⁷ (**Living Wonders**), demonstrate this weakness in practice.

The *Sharma* case in particular highlights the inadequacies of the legislative framework in protecting current and future Australian children. Brought by eight children, the case argued that the Minister should be prevented from approving a coal mine on the basis that she owed a duty of care to protect young people from the physical harms of climate change. While the case was successful at first instance, it was overturned on appeal.

One of the key reasons cited by the Full Federal Court for overturning the initial decision was that a duty of care was inconsistent with the purpose and duties of the Minister under the EPBC Act. The Court noted that:

"The EPBC is not concerned generally with the protection of the environment, nor with any response to global warming and climate change. Nor...is the protection of the interests and safety of human beings in the environment a primary object of the Act, nor is human

²² *Environment Council of Central Queensland Inc v Minister for the Environment and Water (No 2)* [2023] FCA 1208; *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 3A(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.

²³ Department of Climate Change, Energy, the Environment and Water, Annual Report (Report, 2022-2023), 196.

²⁴ Climate Council, *Beating Around the Bush: How Australia's National Environment Law Fails Climate and Nature* (Report, 2023), 24. One of the fossil fuel projects determined not to require assessment under the EPBC Act was approved this year.

²⁵ Jacqueline Peel, Legal opinion – gaps in the Environment Protection and Biodiversity Conservation Act and other federal laws for protection of the climate (Report for the Climate Council, 2023), 9.

²⁶ [2022] FCAFC 65.

²⁷ [2023] FCA 1208. The applicant challenged the Minister's decision to approve two coal projects in New South Wales, on the basis that the Minister did not consider climate change when approving the projects under the EPBC Act. The Minister ultimately approved the coal projects on the basis that they would not cause any net increase in greenhouse gas emissions, and even if they did result in increased emissions, the likely increase would be small. Accordingly, the Minister determined that the proposed actions would not be a substantial cause of adverse impacts on matters of national environmental significance. The Federal Court dismissed this case. When interpreting the EPBC Act, the Court recognised that the Minister is required to assess the impacts the proposed action has, will have, or is likely to have. Where the impact is indirect, as it was in this case, the controlled action must be a substantial cause of the adverse impact for the Minister to deny the proposal, and the Minister does not have to engage in 'a process of indeterminate reasoning or speculation by reference to possibilities.' Ultimately, the Court concluded that it was open to the Minister to determine that any increase in global greenhouse gas emissions would not be a 'substantial' cause of adverse impacts, despite the Minister agreeing that 'climate change has, or will, impact MNES'.

*safety an implied mandatory consideration in the exercise of the Minister's statutory function".*²⁸

Apart from the EPBC Act, decisions regarding the approval of projects with the potential to have significant climate impacts are also made under the *Export Finance and Insurance Corporation Act 1991*, *Infrastructure Australia Act 2008*, *National Reconstruction Fund Corporation Act 2023*, *Northern Australia Infrastructure Facility Act 2016* and *the Offshore Petroleum and Greenhouse Gas Storage Act 2006*. None of these Acts currently require decision makers to consider intergenerational equity when making decisions about projects.²⁹

It is clear that Australia's current environmental laws do not prompt sufficient consideration by decision makers of either climate change impacts or the rights of future generations, particularly regarding decisions about new coal, oil, and gas projects. This is having a detrimental impact on all Australians, but particularly on current and future Australian children.

The Duty of Care Bill and International Obligations

The Duty of Care Bill would help to plug these gaps in Australia's current legal framework by putting the principle of intergenerational equity at the heart of government decision-making.

The Bill provides that where decisions are likely to directly or indirectly result in substantial greenhouse gas emissions, the decision maker must consider the likely impacts of the decision on the health and wellbeing of current and future Australian children and consider these as a paramount consideration. Further, in the case of decisions relating to the exploration or extraction of coal, oil, or gas, if the decision would be likely to pose a material risk of harm to the health and well-being of current and future Australian children, the decision-maker would be prevented from making a decision.

Thus, rather than being simply one of many competing considerations to be weighed, climate impacts on current and future generations of Australian children would become a key priority.

If enacted, the Bill would be likely to result in far fewer coal, oil and gas projects being approved, and a faster transition to net zero greenhouse gas emissions, in line with Australia's obligations under the Paris Agreement to reach net zero by 2050.³⁰

Enacting the Bill would advance Australia's obligations under the United Nations (UN) Conference on Environment and Development (**Rio Declaration**) to fulfil the right to development "so as to equitably meet development and environmental needs of present and future generations".³¹

It would also advance Australia's obligations under the International Convention on the Rights of the Child (**ICRC**). As a ratified nation, Australia has a duty to ensure that all children in Australia enjoy the rights set out in the ICRC. Relevantly, these rights include:

²⁸ *Minister for the Environment v Sharma (No 2)* [2022] FCAFC, 45 [101].

²⁹ Section 5 of the *Infrastructure Australia Act 2008* does however require Infrastructure Australia to consider economic, social and environmental sustainability when conducting audits to determine the adequacy, capacity and condition of nationally significant infrastructure.

³⁰ United Nations Framework Convention on Climate Change, The Paris Agreement (Signed 2016). It is well understood that, to avert the worst impacts of climate change and preserve a liveable planet, global temperatures must be limited to 1.5 degrees Celsius above pre-industrial levels. The Paris Agreement, of which Australia is a party to, legally binds nations to reach net zero by 2050.

³¹ United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 1992, Principle 3.

- Right to life, survival, and development, which is threatened by environmental degradation and climate change.³²
- Right to the highest attainable standard of health. Climate change, biodiversity loss and the degradation of ecosystems are obstacles to the realisation of children’s right to health.³³
- Right to social security and an adequate standard of living. A clean, healthy, and sustainable environment is a prerequisite for the realisation of this right, including to adequate housing, food security and safe and clean drinking water and sanitation.³⁴
- Rights of indigenous children and children belonging to minority groups. As mentioned, indigenous children are disproportionately affected by biodiversity loss, pollution, and climate change.³⁵

On 22 August 2023, the UN Human Rights Office of the High Commissioner released General Comment (GC) 26 on children’s rights and the environment, with a special focus on climate change. This GC is authoritative guidance that clarifies how the ICRC should be interpreted in the context of environmental degradation and climate change. It notes that inaction on the climate crisis is a child rights’ violation.³⁶

Notably, the GC requires States to refrain from violating children’s rights by causing environmental harm and encourages states to incorporate children’s rights to a clean, healthy, and sustainable environment into national legislation.³⁷ States have a due diligence obligation to take appropriate preventive measures to protect children against reasonably foreseeable environmental harm and violations of their rights. This includes assessing the environmental impacts of policies and projects, identifying, and preventing foreseeable harm, mitigating such harm if it is not preventable, and providing for timely and effective remedies to redress both foreseeable and actual harm.³⁸ The GC also urges states to take immediate action including phasing out coal, oil, and natural gas, and shifting to renewable energy sources.³⁹

In line with the ICRC, we recommend that the Duty of Care Bill be amended to require administrative decision makers to consider the likely impacts of greenhouse gas emissions on the “health, wellbeing, and rights” of current and future children in Australia. The climate crisis threatens not just children’s health and well-being, but also the enjoyment of their rights, particularly economic, social, and cultural rights.⁴⁰

We also recommend that implementation of the Bill include requirements to engage and consult meaningfully with children and young people when considering potential impacts on their health, well-being, and rights. Government practices that promote child and youth engagement and participation in environmental affairs is extremely limited. For example, there are no provisions in the EPBC Act regarding the participatory rights of children and youth, and there is no reference in

³² International Convention on the Rights of the Child, 27 [20].

³³ Ibid, 26 [39].

³⁴ Ibid, 26 [45].

³⁵ Ibid, 26 [58].

³⁶ Save the Children, Geneva: Landmark recognition says inaction on climate crisis is a child rights’ violation (Webpage, 28 August 2023) <www.savethechildren.net/news/geneva-landmark-recognition-says-inaction-climate-crisis-child-rights-violation#>.

³⁷ CRC/C/GC/26: General Comment No. 26 on children’s rights and the environment with a special focus on climate change, [67].

³⁸ Ibid, [69].

³⁹ UNICEF, UN Committee on the Right of the Child calls on states to take action in first guidance on children’s rights and the environment, with a focus on climate change (Press release, 28 August 2023) <<https://www.unicef.org/press-releases/un-committee-rights-child-calls-states-take-action-first-guidance-childrens-rights>>.

⁴⁰ Amnesty International, Stop Burning Our Rights! What governments and corporations must do to protect humanity from the climate crisis (Report, 2021), 6.

the National Action Plan for the Health of Children and Young People to practices that promote child and youth engagement in environmental affairs.⁴¹ Encouraging child and youth engagement and consultation is imperative because, as mentioned, children are particularly vulnerable to the impacts of climate change, and children have a right to be active participants in all matters affecting their lives.⁴²

The Duty of Care Bill and International Trends

The Duty of Care Bill is part of a growing international trend towards climate and environmental laws which specifically require policy-makers to consider intergenerational equity and climate impacts on vulnerable populations.

In many countries, this has been done through legislative recognition of the international right to a healthy environment. Currently, over 80 percent of UN member states (156 of 193) legally recognise the right to a healthy environment in national constitutions, national legislation and/or regional treaties,⁴³ and 101 UN member states have incorporated the right to a clean, healthy, and sustainable environment into national legislation.⁴⁴

The right to a clean, healthy, and sustainable environment has been recognised both by the UN Human Rights Council in 2021,⁴⁵ and the General Assembly in 2022.⁴⁶ Australia was one of 161 countries in the UN General Assembly that voted in favour of recognising this right.⁴⁷

The UN Special Rapporteur on Human Rights and the Environment has indicated six substantive elements of this right, being clean air, a safe climate, access to safe drinking water and sanitation, healthy biodiversity and ecosystems, toxic free environments in which to live, work and play, and healthy and sustainably produced food. The Special Rapporteur has also identified procedural elements of the right, which relate to accessing information, participation in decision-making and access to justice.⁴⁸ The Special Rapporteur has emphasised that recognising this right is imperative to allow current and future generations to lead healthy and fulfilling lives.⁴⁹

This right has been incorporated in different ways in different jurisdictions.

Portugal was the first country in the world to enshrine the right to a healthy environment in its Constitution, and the introduction of this right has led to the subsequent advancement of strong

⁴¹ Australian Conservation Foundation, *Children's Right to a Healthy Environment: An Australian Perspective 2023* (Report, 2023), 64 – 65.

⁴² Australian Children's Education & Care Quality Authority, *Supporting Agency: Involving Children in Decision-Making* (Information Sheet, 2018).

⁴³ United Nations Office of the High Commissioner, *A/77/284: The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals* (Thematic Report, 10 August 2022), [26].

⁴⁴ *Ibid.*, [25].

⁴⁵ United Nations Human Rights Council, *Resolution adopted by the Human Rights Council on 8 October 2021: The human right to a clean, healthy and sustainable environment*, HRC Res 48/13, 48th sess, Agenda item 3, UN Doc A/HRC/RES/48/13 (8 October 2021).

⁴⁶ United Nations General Assembly, *Resolution adopted by the General Assembly on 28 July 2022*, GA Res 76/300, 76th sess, Agenda item 74(b), UN Doc A/RES/76/300 (28 July 2022).

⁴⁷ *Ibid.*

⁴⁸ United Nations Human Rights Council, *Right to a healthy environment: good practices*, 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/43/53 (30 December 2019).

⁴⁹ United Nations General Assembly, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/73/188 (19 July 2018).

environmental and climate laws.⁵⁰ Portugal's *Framework Climate Law*, for instance, aims to guarantee climate justice, ensure the protection of the most vulnerable communities from the impacts of climate change and environmental degradation, promote climate security, and to ensure that all major legislative measures and public investments are strategically evaluated in relation to their contribution to fulfilling these climate objectives.⁵¹

The enshrining of the right to a healthy environment in Portugal has prompted decision-makers to seriously consider impacts of projects on children's rights and intergenerational equity. For instance, a proposed gas station which threatened the air quality around an elementary school, was refused on the basis that it would violate the school children's right to a healthy environment.⁵²

In Canada, the right to a healthy environment has also been enshrined through legislative reforms to the *Canadian Environmental Protection Act 1999*.⁵³ The reforms require the government to protect the environment and health of all Canadians. Its purpose is to promote equality, protect health, strengthen environmental laws nationally, and to ensure that regulators consider how their actions impact future generations and vulnerable populations.⁵⁴

Over the next two years, the Canadian Government will develop a framework which sets out how the right will be administered under the Act. This framework must account for the principles of environmental justice, non-regression, and inter-generational equity.⁵⁵ The right is intended to ensure that current and future children do not suffer the consequences of degraded air, water, and land.⁵⁶

While the Duty of Care Bill does not go as far as establishing a right to a healthy environment in Australian law, if enacted it would help to achieve many of the same legislative objectives. Most notably, it would require decision-makers to consider and prioritise the impacts of their decisions on future generations, improve Australia's progress towards reducing greenhouse gas emissions and help to mitigate impacts of the climate crisis on some of the most vulnerable in our communities.

The Human Rights Law Centre has long advocated for the Commonwealth to also explicitly implement the right to a clean, healthy, and sustainable environment.⁵⁷ We applaud the decision by the ACT Government to incorporate this right in the *Human Rights Act 2004* (ACT) and would encourage the Commonwealth and all other state and territory governments to follow suit.

We recommend that in addition to enacting the Duty of Care Bill, the Government also formally enshrines the right to a healthy environment into Australian law as part of a national Charter of Human Rights. This would provide a more holistic framework for considering the impacts of climate change on all Australians and to guide fast, fair, and rights-respecting action to address the climate crisis.

⁵⁰ For example, the *Environmental Framework Law no 19/2014* (Portugal), which was introduced in 2014, enforces environmental rights through policies that promote sustainable development, and ensure the well-being and gradual improvement of citizens quality of life.

⁵¹ *Framework Climate Law no 98/2021* (Portugal), article 3.

⁵² EcoJustice, *The Right to a Healthy Environment: Canada's Time to Act* (Report), 8.

⁵³ *Bill S-5: Strengthening Environmental Protection for a Healthier Canada* (Canada).

⁵⁴ *Ibid*, clauses 2(1)(a.3) and 5.1(2)(a).

⁵⁵ *Ibid*.

⁵⁶ *Ibid*; EcoJustice, *The Right to a Healthy Environment: Canada's Time to Act* (Report), 4-6.

⁵⁷ Human Rights Law Centre, *Right to a Healthy Environment in the ACT Human Rights Act*, (Submission, 7 September 2022); Human Rights Law Centre, *Submission to the Parliamentary Joint Committee on Human Rights* (Submission, 14 July 2023).

Conclusion

Climate change is already having disastrous consequences both in Australia and abroad, and children are disproportionately affected. Australia's current environmental laws are insufficient to protect current and future Australian children from the impacts of climate change, and these impacts will only worsen in the coming decades.

The Government should implement the Duty of Care Bill to fill the gaps in Australia's current legal framework and put the principle of intergenerational equity at the heart of government decision-making. The Bill will assist Australia in reaching its legislated target of net zero emissions by 2050.⁵⁸ It will also assist Australia in meeting its international obligations under the ICRC, and better align Australia with the growing international trend towards laws that seek to embed intergenerational equity in decision-making around climate action.

⁵⁸ *Climate Change Act 2022* s 10(1)(b).