



Submission to the Inquiry into the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023

November 2023



Jesuit
Social Services
Building a Just Society

Jesuit Social Services: Who we are and what we do

Jesuit Social Services has been working for more than 45 years delivering support services and advocating for improved policies, legislation and resources to achieve strong, cohesive and vibrant communities where every individual can play their role and flourish.

We are a social change organisation working with some of the most marginalised individuals and communities, often experiencing multiple and complex challenges. Jesuit Social Services works where the need is greatest and where we have the capacity, experience and skills to make the most difference. Our services span Victoria, New South Wales and the Northern Territory where we support more than 57,000 individuals and families annually.

Our service delivery and advocacy focus on the following key areas:

- **Ecological justice** – inviting discussion on what practices, policies and actions can be taken by governments, individuals, organisations and the community services sector within Australia, to build an ecologically just society. This includes the Centre for Just Places, and place-based work in the Northern Territory, Western Sydney and Victoria
- **Justice and crime prevention** – people involved with the justice system, including children, young people, their families and communities
- **Mental health and wellbeing** – people with multiple and complex needs including mental illness, trauma, homelessness and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees, and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment
- **Gender Justice** – providing leadership on the reduction of violence and other harmful behaviours prevalent among boys and men, and building new approaches to improve their wellbeing and keep families and communities safe.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence people's lives and improve approaches to address long term social challenges.

We do this by working collaboratively with governments, business and the community sector to build coalitions and alliances around key issues and building strong relationships with key decision-makers and the community.

We acknowledge the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for their love and care of people, community, land and all life.

Executive Summary

Jesuit Social Services welcomes the opportunity to respond to the *Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023* (the Bill), proposed by Senator Pocock. This is an important amendment which would require decision makers to more explicitly consider the impact of current decisions on the health and wellbeing of future generations.

Climate change threatens the lives, quality of life and human rights of everyone in Australia and globally. The decisions we make now in responding to climate change, including the long-term consequences of continuing fossil fuel exploration and extraction, which will not lead to reducing greenhouse gas emissions, will have a detrimental and irreversible impact on our children and future generations. It is the responsibility and legacy of this generation to limit the extent and impact of climate change to ensure that children in future generations have the opportunity to live in a safe and healthy environment.

As an organisation that works in climate justice, ecological justice and place-based disadvantage, we remain concerned about the impact of rising temperatures, higher risks of catastrophic weather-related events, including bushfires and floods, and the risks these pose for children and future generations.

Passing this amendment will ensure that Government decision-makers consider the interests of children and future generations when making decisions regarding the financing and development of certain projects which may have a negative impact on climate change, including fossil fuel exploration and extraction. This is an important step in safeguarding future health and wellbeing.

Jesuit Social Services endorses the adoption of the Bill.

Introduction

*“Australia is highly vulnerable to the impacts of climate change, including bushfires and floods, so the stakes are extremely high. Not acting would be an unforgivable act of intergenerational negligence. But we also have the most to gain from action.”*¹ **Chris Bowen**, Minister for Climate Change and Energy, first Annual Climate Change Statement to Parliament.

As we are seeing the worsening of the climate emergency across the globe and in Australia, so too we notice the detrimental and disproportionate impacts on the lives and quality of life of children and the likelihood of impact on future generations. We also observe that the negative effects of climate change often impact those already experiencing marginalisation or disadvantage, who have little power to influence decisions made by Governments and corporations. Such groups include people facing poverty, First Nations people, children and future generations.² While we acknowledge some of the steps taken by the Australian Government since 2022 to tackle climate change, including introducing the *Climate*

¹ Australian Government (2022). Annual Climate Change Statement 2022: The first Annual Climate Change Statement to Parliament as required by the Climate Change Act 2022. The Department of Climate Change, Energy, the Environment and Water. P. 3. ([Weblink](#))

² OHCHR (2015). Understanding Human Rights and Climate Change. Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change. ([Weblink](#))

Change Act 2022, Jesuit Social Services believes that as part of a genuine commitment, more needs to be done to mitigate and take action on the impacts of climate change on children and future generations.

Jesuit Social Services therefore supports the need for the *Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (the Bill)*, as a significant and collaborative step towards climate justice.

Jesuit Social Services believes in building a just society where everybody can thrive. As an organisation that has long advocated alongside those experiencing the greatest disadvantage, we understand that being born into worsening conditions driven by climate change is likely to compromise the healthy development of children and reduce the quality of life of future generations. The Bill aligns with our vision of building a just society, emphasising the need for decisions that might impact the climate explicitly placing a priority on the needs of children and future generations. From a social justice perspective, the Bill would be a vital step towards ensuring intergenerational equity and would be a valuable opportunity for Australia to lead the way internationally on tackling climate change.

The Disproportionate Impacts of Climate Change on Children and Future Generations

Climate change is the greatest threat of our time to humanity and to our environment.³ Without action the climate emergency will continue to escalate, with rising temperatures in Australia, an increase in the frequency and extent of natural disasters, and increasing human displacement.⁴ According to the Climate Council, “Australia is one of most vulnerable developed countries to climate impacts”.⁵ Climate change has the greatest impact on already vulnerable and marginalised populations. Children, in particular, are among the most vulnerable, including future generations who have not yet been born. Children born in vulnerable communities, where the impacts of climate change are understood to be more severe, will be at higher risk of experiencing the negative impacts of climate change. Communities experiencing economic and social disadvantage, such as rural and remote Aboriginal and Torres Strait Island Communities, as well as metropolitan areas with low socio-economic profiles, are already disproportionately experiencing the impacts of climate change.

An example of this that we are already seeing is the loss of culture and threat of displacement for Torres Strait Islander children and communities in northern Queensland, as a result of rising sea levels, severe flooding and more extreme weather.⁶

Another example is the exacerbation of complex disadvantage and risks of higher rates of mortality due to heat stress in disadvantaged areas of Western Sydney. This is an area which faces place-based and multilayered disadvantage including high levels of poverty, a greater concentration of public housing, higher rates of juvenile detention, higher levels of family violence, lower school attendance and high

³ OHCHR (2022). Climate change the greatest threat the world has ever faced, UN expert warns. ([Weblink](#)); UNHCR (2020). Climate change is the defining crisis of our time and it particularly impacts the displaced. ([Weblink](#))

⁴ The Australian Academy of Science (2021). The risks to Australia of a 3°C warmer world. ([Weblink](#))

⁵ Hutley, N., Dean, A., Hart, N., & Daley, J. (2022). Uninsurable Nation: Australia’s Most Climate-Vulnerable Places. The Climate Council of Australia. P. 4. ([Weblink](#))

⁶ *Daniel Billy and others v Australia (Torres Strait Islanders Petition)* to the U.N. Human Rights Committee

levels of children leaving school early, as well as poorer air quality and higher heat stress.⁷ In Western Sydney, it is predicted that if emissions continue to increase, there could be a fivefold increase in the number of days per year over 35 degrees Celsius by 2090 (up from under nine days per year).⁸ Furthermore, heatwaves are a higher cause of death in Australia than other natural disasters or weather events.⁹ These predicted rising temperatures that Western Sydney set to face if this is not addressed further entrenches disadvantage for children, their families and communities, including risks to their health and mortality.¹⁰ Our future generations will be inheriting the irreversible consequences of climate change. The decisions we make now in protecting children and our future children in Australia and around the world from the impacts of climate change are therefore paramount.

Australia's Human Rights Responsibilities against Climate Change

The impact climate change has on human rights has been internationally recognised. The UN General Assembly adopted a resolution affirming the universal human rights to a clean, healthy and sustainable environment in 2022.¹¹ The UN General Assembly adopted its resolution on “protection of global climate for present and future generations of humankind” in December 2022.¹² Further, the World Health Organisation, UNICEF and The Lancet noted in a joint report that every country needs to do more to protect the rights, health, environment and futures of children globally.¹³

Australia has not only a moral but an existing legal responsibility to protect the rights of children when it comes to climate. The unique needs and vulnerabilities of children and the way climate change and a worsening environment will likely negatively impact on their development and quality of life must be acknowledged. This involves protecting the rights of the child under *UN Convention on the Rights of the Child (CRC)*, the right to life and the right to health, the right to a healthy environment and the right to development under the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*. In considering how an unhealthy environment impacts the life and development of all children, these rights must be applied to all children including those who will be born in the future. The right to development for

⁷ Tanton, R., Dare, L., Miranti, R., Vidyattama, Y., Yule, A. and McCabe, M. (2021). Dropping Off the Edge 2021: Persistent and multilayered disadvantage in Australia, Jesuit Social Services: Melbourne, pp. 63-83; AIHW (2022). Social housing dwellings by Statistical Area 4. ([Weblink](#))

⁸ Melville-Rea, H. & Verschuier, R. (2022). HeatWatch: Extreme Heat in Western Sydney. The Australia Institute: Canberra. ([Weblink](#))

⁹ Hughes, L., Hanna, E., & Fenwick, J. (2016). The Silent Killer: Climate Change and the Health Impacts of Extreme Heat. Climate Council of Australia. ([Weblink](#)).

¹⁰ Ibid; Tanton et al. (2021)

¹¹ UN General Assembly (2022). The human right to a clean, healthy and sustainable environment: resolution/adopted by the General Assembly. A/RES/76/300

¹² UN General Assembly (2022). Resolution adopted by the General Assembly on 14 December 2022: 77/165. A/RES/77/165

¹³ Clark, H., Coll-Seck, A. M., Banerjee, A., Peterson, S., Dalgish, S. L., Ameratunga, S., Balabanova, D., Bhan, M. K., Bhutta, Zulfiqar., Borrazzo, J., Claeson, M., Doherty, T., El-Jardali, F., George, A. S., Gichaga, A., Gram, L., Hipgrave, D. B., Kwamie, A., Meng, Q., Mercer, R., Narain, S., Nsungwa-Sabiiti, J., Olumide, A. O., Osrin, D., Powell-Jackson, T., Rasanathan, K., Rasul, I., Reid, P., Requejo, J., Rohde, S. S., Rollins, N., Romedenne, M., Sachdev, H. S., Saleh, R., Shawar, Y. R., Shiffman, J., Simon, J., Sly, P. D., Stenberg, K., Tomlinson, M., Ved, R. R., & Costello, A. (2020). A future for the world's children? A WHO–UNICEF–Lancet Commission. *The Lancet*, 395(10224), 605-658.

current and future children is also part of other international human rights frameworks such as the Rio Declaration on Environment and Development, which Australia supports.¹⁴

Further, there needs to be a specific focus on addressing intersectional disadvantages of experiences of climate change, including the rights of Aboriginal and Torres Strait Islander children. Australia has existing responsibilities through other international human rights law to incorporate the rights of Indigenous peoples and Indigenous children into Australian legislation and policies under the *UN Declaration on the Rights of Indigenous Peoples*. This includes the right to life, collective rights to the enjoyment and practice of culture, the right to decision-making and particularly noting Article 13, “Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”

Australia has a responsibility to urgently act to mitigate the impacts of climate change and reaching its net zero targets under the Paris Agreement and the Sustainable Development Goals. This involves reducing its greenhouse gas emissions as soon as possible, including from fossil fuel exploration and extraction.

Australia also holds responsibility to protect children from climate change and ensure intergenerational equity under the Paris Agreement and Sustainable Development Goals.¹⁵ Unfortunately, the recent outcome of the Global Climate and Health Alliance's Healthy Nationally Determined Contributions Scorecard 2023 score showed that Australia had one of the lowest scores of all nations.¹⁶ Adopting the Bill would be one way to help bring Australia's actions on climate change in line with its international commitments.

Australia has a responsibility to prioritise climate change action and to prevent impacts on human rights and children's rights under its own federal policies. The National Climate Resilience and Adaptation Strategy 2021-2025 details in its Guiding Principles to factor current and future climate risks into decisions and to support those who are vulnerable to climate-related impacts, including those impacted by decision-making.¹⁷ The National Health and Climate Strategy currently being developed also promotes consideration of the impact of climate change on health, health equity and the health system. Intergenerational duty is also consistent with the National Climate Risk Assessment and National Adaptation Plan, requiring proactive measures of climate change adaptation rather than simply mitigation. The Bill would further strengthen these policies that the government has already set into motion.

Human Rights and Climate Change Cases

As we have seen the worsening of the climate emergency in the past few years, so too have we seen an increase in litigation where the human rights of children and young people have been threatened by

¹⁴ For example, Principle 3 of the *Rio Declaration on Environment and Development* states that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”

¹⁵ 'Intergenerational Equity' is specifically referenced in the *Paris Agreement*, p. 3.

¹⁶ The Global Climate & Health Alliance (2023). 2023 Healthy NDC Scorecard. ([Weblink](#))

¹⁷ Australian Government (2021). National Climate Resilience and Adaptation Strategy 2021 – 2025: Positioning Australia to better anticipate, manage and adapt to our changing climate. Pp. 13-19. ([Weblink](#))

climate change internationally. Climate change litigation has more than doubled since 2015 with over 1,000 new cases globally.¹⁸ These cases have highlighted the responsibility and duty of care of nations in protecting and mitigating the impacts of climate change.

In Australia, the case of *Sharma and Others vs Minister for the Environment* considered whether the expansion of the Vickery coal mine in NSW would contribute greenhouse gas emissions into the atmosphere that would contribute to the climate emergency.¹⁹ The judge found in *Sharma and Others vs Minister for the Environment* in 2021 that the Minister for Environment did have a duty of care to protect children against the impacts of climate change from greenhouse gas emissions in the Earth's atmosphere.²⁰ Even when the original decision was appealed and overturned, Chief Justice Allsop noted "the nature of the risks and the dangers from global warming, including the possible catastrophe that may engulf the world and humanity, was not in dispute".²¹

Internationally, one of the first cases was *Future Generations vs. Ministry of Environment and Others* in Colombia in 2018. Colombia's federal court found in relation to 25 children and young people - aged 7-25 years old including Indigenous children - that their right to life, right to a healthy environment, right to food and right to water were threatened from increased deforestation of the Amazon and were protected under Colombia's responsibilities to reduce deforestation through the Paris Agreement and its own federal law.²² Further, the Court recognised intergenerational equity, with deforestation impacting on the right to a healthy environment.²³ This case stands as an example of how courts in other nations recognise the effect of climate change and environmental degradation on children, and the responsibility of government in protecting their collective rights.

Human rights and climate change cases in Australia have been assessed internationally by the UN as well, including the formal complaint to the UN Human Rights Committee - *Daniel Billy and others v Australia (Torres Strait Islanders Petition)* found that Australia was not meeting its human rights responsibilities to the eight Torres Strait Islander adults and six Torres Strait Islander children whose homes are on low-lying islands in far north Queensland, as it was failing to respond to the impacts of climate change on rising sea levels, flooding and severe weather.²⁴ The OHCHR found that effects on climate were impacting their right to life, right to enjoy culture and to be free from arbitrary interferences with their private life, family.²⁵

Intergenerational Inequity

Current laws in Australia are insufficient to protect children and future generations from the disproportionate impacts of climate change. The decision by the High Court in 2021 not to issue an

¹⁸ Australian Government Solicitor (2022). Legal briefing - Recent trends in climate change litigation. Reference number LB123. P. 1. ([Weblink](#))

¹⁹ Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2) [2021] FCA 774

²⁰ Ibid

²¹ Minister for the Environment v Sharma [2022] FCAFC 35, introduction para. 2.

²² United Nations Environment Programme (n.d.). Future Generations vs. Ministry of Environment and Others. Law and Environment Assistance Platform. ([Weblink](#))

²³ Ibid

²⁴ UNHCR (2022). Australia violated Torres Strait Islanders' rights to enjoy culture and family life, UN Committee finds. ([Weblink](#))

²⁵ Ibid

injunction in the Whitehaven Vickery coal case²⁶ demonstrates this. To rely on ‘goodwill’ alone will not ensure decisions are made in the best interests of children and future generations regarding climate change. Adopting the Bill is a way of increasing government responsibility. Australia’s climate change policies and decision-making on climate change have varied according to the political party in power. Having a duty of care in our federal law will protect children and future generations, regardless of changes in government.

Under Australia’s current legislation and systems, not only are children and future generations vulnerable to climate change, but they face structural barriers of not having their voices heard in current decision-making and formal debate. The case of *Sharma and Others vs Minister for the Environment* is an example of this – all eight children were under the age of 18 at the time they were plaintiffs and required an adult representative Sister Marie Brigid Arthur in the class action. Furthermore, children under 18 years old do not have the right to vote, thus cannot have their say on who in parliament represents their best interests. Children are currently not included in decision-making about issues that impact them the most. Without the voice and interests of children being included, our existing legislation and systems can be said to further intergenerational inequity. This is a gap in our federal law and in protecting human rights of children and future generations.

Children and young people in Australia and across the world have been at the forefront of urgent climate change advocacy. The Bill was borne and developed from child and young people advocates in the *Sharma* case. The Bill embodies the voices and lived experiences of children and young people on how the climate emergency affects them, and their calls for legislative change.

We call on the Federal Government to adopt the *Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023* as part of its responsibilities in addressing climate change and supporting intergenerational equity.

²⁶ Slezak, M., & Bell, P. (2021). Environment Minister approves Vickery coal mine extension after teenagers' climate change legal challenge. ABC News. ([Weblink](#))