

# IS THIS THE FUTURE YOU THINK WE DESERVE?

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SAVE THE CHILDREN'S SUBMISSION ON  
THE CLIMATE DUTY OF CARE BILL

NOVEMBER 2023



Save the Children



# Our perspective

Climate change is a crisis for children's rights. Children and young people are the most affected by climate change, today and in the future. Yet their rights, interests and views are the least considered when decisions about climate change are made. This is a large part of why we are where we are today, with the scale and damage of the climate crisis far outstripping efforts to address it. The consequences of this historical and continuing neglect are devastatingly apparent, for current and future generations.

**Save the Children is Australia's leading child rights organisation. We exist to protect and promote the rights of all children. We believe:**

- Children and young people have a right to participate in decisions that affect them – to be heard, their stories seen, and their views taken seriously
- When this happens, better decisions are made and better outcomes will result
- Children and young people have the capacity to drive transformative change, helping their communities to strengthen their resilience and ability to adapt to climate change
- Their involvement is especially valuable and needed given climate change's far-reaching impacts on children and young people, and their extraordinary leadership in response

In Australia and globally, we are acting on these beliefs. We are committed to elevating the voices and expertise of children and young people through our climate-related research and advocacy, undertaken with and alongside them. We have publicly supported the right of children to take action and be heard through the School Strike 4 Climate movement and the pathbreaking litigation initiated by Anjali Sharma asserting a duty of care to children on climate change owed by the Federal Minister for the Environment. Our reports on climate change and its impacts (some cited in this submission) seek to embed children's and young people's views and priorities wherever possible, in ways that are substantive, not tokenistic.

Our perspective on the Duty of Care Bill – or the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 – is grounded in child rights principles and a rights-based approach.

In line with that approach, this submission has been co-developed by members of Save the Children's Youth Advisory Board and our Policy Team. Save the Children's Youth Advisory Board is made up of young people who bring diverse expertise and lived experience to their paid advisory roles.

**We particularly recognise the contributions of Dante Casanova and Sophia Pauchet as co-authors.**



# Recommendations

Our recommendations for the Senate Environment and Communications Legislation Committee and the Federal Parliament are:

## 1. **Prioritise the views of children and young people** when considering the Duty of Care Bill

- a. Hear directly from children and young people and see their stories directly
- b. Give weight to individual views, stories and submissions provided by children and young people – not just those of large organisations.

## 2. Consider amending the Duty of Care Bill to **refer to children's rights** and the United Nations Convention on the Rights of the Child

To recognise that the Bill is needed to meet Australia's obligations to uphold children's rights and to further strengthen the Bill's positive effect.

## 3. Enact **the Duty of Care Bill**

## 4. Ensure that implementation of the Duty of Care Bill includes requirements to **engage and consult meaningfully with children and young people** when making decisions about climate change

To ensure that 'considering' children is a meaningful process and incorporates children's and young people's own views and perspectives.

## 5. Ensure that implementation of the Duty of Care Bill **strengthens the ability of children to access justice**

Including giving full effect to granting standing to children as outlined in the Bill, such as via legal assistance, information services and other support so that children can understand legal problems affecting them.

Our reasons for these recommendations are explained in the rest of this submission.

# CLIMATE CHANGE AND CHILDREN'S RIGHTS

## The climate crisis is a crisis for children's rights

Climate change undermines every aspect of children's rights – their right to health, wellbeing, safety, housing, education, an adequate standard of living, culture, non-discrimination, and many others. Children's rights are enshrined in the United Nations Convention on the Rights of the Child (CRC), and can simply be described as the conditions, standards and supports that all children – defined as people aged up to 18 – deserve so that they can develop healthily and thrive.



## **Stronger climate resilience is essential to fulfil children's rights**

Climate harms are falling hardest on those who are already experiencing hardship. Climate change is pushing more children into poverty and driving increasing inequality, including intergenerationally.<sup>1</sup> First Nations peoples and communities are especially and uniquely impacted. To fulfil children's rights, communities should be empowered to strengthen their resilience and proactively adapt to climate change, including by realising children's particular capacity to drive transformative positive change.



## **Children have the right to a clean, healthy and sustainable environment**

A clean, healthy and sustainable environment is a human right in itself. It is also the basis for fulfilling nearly all other rights of children. The right has been recognised by the United Nations Human Rights Council, the UN General Assembly and the UN Committee on the Rights of the Child.<sup>2</sup>



## **The Australian Government has a legal responsibility to uphold and protect children's rights**

Under international human rights law, Australia is legally bound by the CRC and other applicable international human rights treaties and obligations. This means the Australian Government is obliged to act to address the impact of climate change on children's rights and must be accountable to children for its actions – or inaction.



## **All government decisions about climate change should consider children's rights and interests**

Child rights principles require the Australian Government to ensure its decisions about climate change:

- Prevent discriminatory impacts on children – either as a whole, or specific groups of children such as First Nations children or those experiencing poverty or socioeconomic disadvantage
- Ensure children's best interests are a primary consideration
- Protect and support children's lives and holistic development
- Uphold children's right to participate in decision-making.

These fundamental principles from the CRC are contextualised by other critical human rights treaties and instruments such as the United Nations Declaration on the Rights of Indigenous Peoples.



## **Children have the right to be heard and taken seriously, and the right to access to justice**

Children's right to be heard and taken seriously in all decisions affecting them applies to decisions of all types, from those directly targeting them as individuals to those implemented by governments at a whole-of-society level through policy and legislation. Access to justice is an important dimension which is directly relevant to climate change. Its fulfilment requires governments to ensure children can access information about their legal rights and legal processes, assistance in seeking justice through appropriate mechanisms, and remedies – including having legal standing.<sup>3</sup>



## **The interests of future generations should be protected**

Future generations have human rights. The principle of intergenerational equity, recognised in the preamble to the Paris Agreement and elsewhere, requires national governments and the international community to consider and protect their interests. In the face of climate change, urgent action is needed to protect the rights of current generations of children and young people. The responsibility and obligation to act also extends to future generations.<sup>4</sup>



<sup>1</sup> Save the Children, 2022, Generation Hope: 2.4 billion reasons to end the global climate and inequality crisis.

<sup>2</sup> Human Rights Council resolution 48/13; General Assembly resolution 76/300; UN 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, 22 August 2023, [6]-[8], [63].

<sup>3</sup> Human Rights Council, Access to justice for children: Report of the United Nations High Commissioner for Human Rights, 16 December 2023.

<sup>4</sup> Maastricht Principles on the Human Rights of Future Generations, 3 February 2023; Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, UN General Assembly, 28 July 2023, [59]-[61]; UN 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, 22 August 2023, [11].

# 1. “NO FUTURE WITHOUT A FUTURE”

## Children’s best interests must be paramount in decisions about climate change

The impacts of climate change fall the hardest on children and young people and will continue to worsen across our lifetimes. We live in a country where opportunity is rife and dreaming is encouraged, but how can we continue to believe that our hopes are attainable when, even for people so young, we view our futures with such dread?

We are a generation who, no matter where we live, are accustomed to summers of lifechanging and lethal bushfires. To flood warnings and hurricanes, to snowstorms in Spring and heat waves in Winter.

We are already seeing the direct impacts of climate change on our generation and on the communities most vulnerable. Children and young people feel the social, economic, and developmental effects of these disasters most severely, especially for those in rural, regional, and remote communities. Furthermore, First Nations people are the most significantly impacted by the rapid onset of climate change, exacerbating ongoing difficulties flowing on from colonisation and dispossession. Climate change has worsened the current cost of living crisis, with devastating effects on supply chains, agriculture, and trade impacting our access to education, support services, healthcare, and food. These impacts cause great deficits within early development and across childhood, leading to lifelong impacts on our overall wellbeing and views of our futures.

“I began having conversations with my friends at age sixteen about whether or not we wanted to have children. Not because we were dreaming of our futures, like our parents and many generations before us have, but because we were debating whether the planet will be in a state clean and safe enough to have our own families.”

At sixteen we should be focusing on our education, not skipping school to protest the government funding of oil and coal mining. At sixteen we should be anxious about whether our crush likes us back, not if climate change has caused such damage that having children is even imaginable. At sixteen, we are still in the care of our parents, teachers, guardians, and representatives, we shouldn’t need to be questioning their decision-making and concern for our futures.

“It’s objectively depressing to be part of a generation where the majority of us realise this is happening to us and we don’t have power to do anything about it.”

We know there is power and strength to our collective voices, and the future – our future, and the future for those who follow us – is a future worth fighting for. There will be no country to fight for power over if our leaders continue to put their political interests above the health and wellbeing of the people they’ve been elected to represent. Represent us, our needs, our interests, our livelihoods, our futures. Because there won’t be one if our voices continue to be dismissed.

### The evidence is overwhelming

- Human activities, principally greenhouse gas emissions, have unequivocally caused global warming, and greenhouse gas emissions continue to increase due to unsustainable energy use, land use, lifestyles, consumption and production<sup>5</sup>
- The choices made today will determine the extent to which current and future generations will experience a hotter and different world<sup>6</sup>
- Climate change is damaging Australia’s ecosystems, agriculture, forestry, fisheries and food security, cities and towns, and health and wellbeing<sup>7</sup>
- For Australia, the best scientific projections show with very high confidence that hot days will become more frequent and hotter, sea levels will rise, oceans will become more acidic, snow depths will decline and extreme rainfall events will become more intense<sup>8</sup>
- A child born in Australia today can expect to experience four times as many heatwaves, 3.4 times as many droughts, 1.4 times as many river floods and 1.3 times as many bushfires as their grandparents<sup>9</sup>
- Young Australians are deeply concerned about climate change, feel very strongly that Australia is not doing enough to reduce carbon emissions and do not feel listened to by leaders in government<sup>10</sup>

<sup>5</sup> Intergovernmental Panel on Climate Change, 2023, Climate change 2023: Synthesis report, p 4.

<sup>6</sup> Intergovernmental Panel on Climate Change, 2023, Climate change 2023: Synthesis report, p 7.

<sup>7</sup> Australian Academy of Science, 2021, The Risks to Australia of a 3°C warmer world.

## 2. “DON’T PASS THE BUCK”

### Governments should take responsibility and act to address climate change and its impacts

Due to historical inaction, the onus of acting to address climate change is sitting on children and future generations, but we do not currently have the power to act, and future generations certainly won't if they aren't even born.

Because of government neglect, and campaigns by major corporations, power to act has been framed as belonging to individuals. This is not only inequitable and not right, it also won't solve the problem.<sup>11</sup>

Even if every private citizen did their part, the climate crisis would not be resolved. Additionally, many disabled and chronically ill people do not have the energy and resources required to 'reduce their carbon footprint'. Some disabled people rely on bendable plastic straws for consuming liquid. The expectation that they improvise and innovate just so they can drink water without guilt is an undue burden.

“I often rely on microwave meals because of excruciating joint pain that prevents me from cooking. It would be unfair to expect me to put myself through hell three times a day to try and atone for the actions of wealthy corporations.”

Responsibility lies with those who have the power to take action, power which has been bestowed upon this government by the people – particularly thanks to the emerging generation of voters who are consistently showing support for more action on climate. In fact, it is our top concern – 2022 was, after all, colloquially known as 'the climate election'. We are watching and waiting for the promises made to be enacted and we are disappointed and losing hope.

Additionally, whilst not yet able to vote, children also show incredibly strong support for this issue. Every year through the School Strike 4 Climate and other protests children show that they feel the need to take action themselves to safeguard their future. When children feel forced to become activists, they have already been failed.

We feel like we have not been heard or seen, we have been actively ignored.

Every decision this government makes that impacts the climate negatively tells us that to you our futures are worth sacrificing for the sake of profit. This government needs to show that they believe we deserve to live to a healthy old age like previous generations have. You need to demonstrate to us that you think we deserve a future.

This kind of demonstration wouldn't go unnoticed.

The Australian Government has the opportunity to prove to the world that it cares about its children. It would also show its commitment to international human rights. This Bill would be a substantive commitment to uphold our rights and abide by the United Nations Convention on the Rights of the Child. It would also help to rehabilitate Australia's reputation for callousness toward climate, as even a year after the last Federal election Australia is still ranked far behind other developed nations.<sup>12</sup>

Enacting the Duty of Care Bill will establish a legacy of taking accountability now and in the long term. It will lay the foundation for us and future generations to safeguard our climate, our children and our future.

#### The international community is urging Australia to act

United Nations human rights bodies and Australia's peers have urged Australia to meet its obligations to uphold children's rights, and human rights in general, in the face of climate change. In reviewing Australia's performance in upholding children's rights, the UN has criticised Australia for making insufficient progress towards Paris Agreement goals and targets, continuing investment in coal and other extractive industries, and not considering children's views when making decisions on climate change.<sup>13</sup>

<sup>8</sup> CSIRO, 2023, Climate change in Australia.

<sup>9</sup> Save the Children, 2021, Born into the climate crisis.

<sup>10</sup> Australian Institute for Disaster Resilience, World Vision, Oaktree, UNICEF, Plan International, Save the Children and Australian Red Cross, 2020, Our world our say: National survey of children and young people on climate change and disaster risk.

<sup>11</sup> See, eg, M F Byskov, 'Climate change: focusing on how individuals can help is very convenient for corporations', The Conversation, 10 January 2019; R Solnit, 'Big oil coined "carbon footprints" to blame us for their greed. Keep them on the hook', The Guardian, 23 August 2021.

<sup>12</sup> Climate Change Performance Index, 2023, <https://ccpi.org/country/aus>.

<sup>13</sup> UN Committee on the Rights of the Child, Concluding observations on the combined fifth and sixth periodic reports of Australia, 1 November 2019, [40]-[41].

# 3. “SHOW US YOU’RE SERIOUS”

## Governments need to start taking children and future generations seriously

Those who forget the past are doomed to repeat it. That saying gets thrown around a lot. It can start to lose its meaning, until you really think about what it means. If Australia forgets that for the past hundred years our governments have been laser focused on the short term future of the country, then it will be a struggle to figure out how we got here.

We are acutely aware that the decisions that have been made that are impacting us right now were made without any thought for who would be forced to clean up the mess. Large corporations are guilty of this but the various governments, through their neglect, have become enablers in the destruction of our future before we ever had a chance to build it. The Australian Government has the chance to break the cycle and avoid repeating history by prioritising our wellbeing over profit.

We shouldn’t need to tell you about the innate vulnerability that comes with childhood. Many of you have children yourself. As guardians you legally and morally have a duty of care to nurture and protect your children. As a government you have a duty of care to the millions of children and young people around Australia. We’re asking you to consider them and the millions in the future who rely on the people and systems around them to survive and grow. You have the chance to protect our future by ensuring that we are considered beyond this moment.

Even though we are vulnerable, we are still aware of what is happening to us. To those engaged with the youth mental health system a very common theme of conversations is that no one cares about our opinions or experiences.

“I have had so many heartbreaking conversations where the sentiment expressed is essentially that there’s no point working on and overcoming mental health struggles because we do not have a future.”

No matter what you would say to a young person in that situation, what really matters is your actions. We are your future and we need to be shown that one day when we get handed the reins they’re not going to be on fire.

And despite the despair that many of us are experiencing, we are so resilient. We are ready and enthusiastic to have a say on what needs to be done to save our climate and our future. We are most affected by the problem but we are also part of the solution. We have unique and valuable insights that we want to tell you if you are willing to finally hear and see us.

### Considering children and engaging with children are closely linked

Considering the health and wellbeing of children and future generations, and listening to children (and seeing them and their stories), go hand in hand. Governments cannot meaningfully ‘consider’ children’s interests without engaging with them, listening to them, and taking their experiences and views seriously. This needs to extend well beyond the type of tokenistic ‘consultation’ that too often happens, if it even happens at all, and instead be part of a process of meaningful engagement.<sup>14</sup>

<sup>14</sup> UN Committee on the Rights of the Child, General comment No. 12 (2009): The right of the child to be heard, 20 July 2009.



# 4. “TRUST, RESPECT AND ACTIVE LISTENING”

## Children and young people have the right to participate in government decision-making

The impacts of climate change fall the hardest on children and young people, making our active participation in government decision-making paramount to political efforts in determining the trajectory of our future. Those in positions of power and privilege, who hold influence over the future of this country, more often than not tend to be those the least affected by ongoing social, economic and environmental challenges. This continues to be the case for the impacts of climate change, whereby those who experience the brunt of its direct and indirect effects tend to be from marginalised communities, including children and young people.

Providing us with a continuing opportunity to participate in government decision-making is a fundamental right and forms the basis of realising all of our other rights, simultaneously. However, ‘participation’ goes beyond the consideration of our interests, it requires an active and continuing engagement in respectful and considerate conversations, hearing our concerns, seeing our stories, and taking our views seriously about our concerns and positions on climate change.

Providing us with the opportunity to participate in government decision-making forms the basis of lived experience-informed policy and can have powerful effects beyond the scope of a three-year government cycle. This includes the fostering of trust between our state and Federal governments and the young people they have been elected to represent. For a generation of young people already feeling deeply lost and disheartened in the face of the future, providing us with an opportunity to actively participate in decisions that have real-world consequences for both us and future generations ahead is compelling. This perpetuates a feeling of self-determination and positivity for our future as a whole, ultimately reducing climate anxieties and increasing young people’s interest in political participation.

These conversations can be uncomfortable, as the inclusion of diverse lived experience exposes us all to perspectives we alone may have never faced, but sitting with this discomfort is key. Discomfort indicates that we are seeing and acknowledging the stories of people across this proudly diverse country we call home. This is our plea: actively listen to these stories and give weight to the submissions made by children and young people. This is the first step towards providing young people with the opportunity to actively participate in a future that should be ours.

### Accountability to children and young people

Children and young people are leading the way in identifying solutions when it comes to climate change – including what it would look like for Australian governments to hear them and take their views seriously.

A call to action developed with Save the Children’s support and released in 2022, *ARISE and Act*,<sup>15</sup> sets out five things that Australian governments can do to be accountable to children and young people for their decisions on climate change.

- 1. ACCOUNTABILITY:** governments must acknowledge they have a duty of care to us on climate change, and take all necessary steps to protect us
- 2. REPRESENTATION:** the Australian Government must create a Youth Ambassador for the Environment who represents and promotes our interests in international discussions
- 3. INCLUSION:** the Australian Government must ratify the Third Optional Protocol to the Convention on the Rights of the Child, so that our rights are included and we have direct access to the United Nations to uphold those rights
- 4. STANDARDS:** governments, leaders and communities must implement minimum standards for consulting with us about climate change policy and legislation, to ensure we are always consulted and provide clear guidance about when and how this happens
- 5. EMPOWERMENT:** governments must invest in programs for our participation in disaster preparedness, response, recovery and resilience-building activities in our communities, so that we are involved and our voices heard and taken seriously by local decision-makers

<sup>15</sup> Save the Children, 2022, *ARISE and act: Our future is on fire* – by Australian children and young people.

# 5. “THE CHANCE TO SAVE LIVES”

## A duty of care will make a difference

One of the reasons we got here is prioritising profit now over not only quality but possibility of life in the future. Children and young people need you to hear and see us when we tell you that we are living in fear of our lives, homes and communities being destroyed by bushfires in dry seasons and floods in wet seasons.

This Bill will make the difference between life and death for future Australians. Protecting the climate will directly save lives.

If the Bill is passed, every time there's a decision to be made about opening a new coal mine there'll be a new chance to save lives. It will prevent harm again and again. If enacted and implemented as intended, it will require the Australian Government to consider children's health and wellbeing in the climate-related decisions that it covers. It should also provide a basis for ensuring that our views are meaningfully included and influence Australian Government decisions about climate change. It would give us the chance to continuously have a hand in saving our lives and our future.

All around Australia the climate emergency is already directly associated with many fatalities. Bushfires and floods are the obvious ones, but there is also the cost of living pressures caused by supply chain issues that are contributing to suicides. Immunocompromised people (and especially babies) are suffering through extreme heat and cold, further compounding issues they're already experiencing due to poverty and improperly suited accommodation.

You have the chance to advocate and encourage others to advocate for children and young people and the future generations. You have the chance to advocate for our lives and the lives of our children and grandchildren. It's not as flashy as a firey running into a burning building, carrying out victims on their shoulders and being thanked by the survivors and their families, but the impact will be just as real.

This Bill is the chance for you to contribute to slowing if not altogether halting and reversing the escalation of the lethality of bushfires, floods and cyclones. It is the chance to address a major factor impacting the agriculture, trade, supply chain issues, and the overall cost of living crisis. It is a chance to tell us that we do deserve an uninterrupted education and make meaningful decisions that show us the sincerity of your words.

The Bill has the opportunity to spark hope in children and young people. Many of us are tired and discouraged at the lack of reception to our calls to have our voices heard and our stories seen. The Bill would encourage participation and engagement by more young people in politics and in our own communities when we do see that our voices and stories matter and they have an impact. This in itself will improve mental health by giving us a reason to be optimistic and supporting and validating how resilient we are.



We know that transformational change is needed. The change won't happen unless children and young people are at the centre of decision-making. More than that, we can be the agents of this change. We are a generation of strength, we are resilient and we will keep fighting because no matter the state the world is left in, we will become the future, and we will fight to ensure that it's ours. Transformational change is possible, but we need the help of our government – our guardians, those with the resources and power – the people we have elected to ensure that we achieve the future that we so rightly deserve. Trust can be rebuilt, but it starts with responsibility, accountability, active listening, and action. This is the opportunity. We urge the Australian Government to take it. For all of our sakes.

### Australian and international law

The Duty of Care Bill would fill a critical gap in **Australian law**. The Australian Government should always consider children and future generations when making major decisions. The lack of a legal requirement to do so has resulted in short-term decision making, with the compelling evidence of the harm caused by climate change ignored, undue influence by vested interests, and an absence of accountability to present-day or future citizens. In effect, governments have abrogated their most fundamental responsibility: to ensure the wellbeing, current and future, of those they represent. The harmful consequences are clear. A legislated duty of care would go a significant way to addressing these deficiencies.

At the same time, the Bill's passage would be a necessary step towards meeting Australia's **international human rights obligations**. The UN has been clear that the right to a clean, healthy and sustainable environment should be incorporated into national legislation.<sup>16</sup> This Bill would be a significant positive step in that direction, and would also be a positive and welcome step towards protecting and fulfilling children's rights more broadly in Australia.

<sup>14</sup> UN 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, 22 August 2023, [67].



# Save the Children

Save the Children has worked in Australia for over 100 years. We are part of a global child rights movement founded in 1919 by Eglantyne Jebb, the author of the first ever international declaration on children's rights. Our work today is guided by the United Nations Convention on the Rights of the Child.

We are fearless advocates for children's rights, advocating with and alongside children and young people to elevate their voices in pursuing policy reform and system change to uphold their rights.

In 2019, Save the Children Australia became the first non-environmental NGO to be accredited by the Green Climate Fund (GCF). Save the Children delivers large scale community-based projects to build climate resilience in the Pacific region and globally. This includes agreements with the GCF to deliver:

- In Vanuatu – the largest ever investment (\$47 million AUD) in community-based climate change adaptation in the Pacific region
- In the Solomon Islands – a major climate resilience project which will directly support about a quarter of the country's population to adapt to more extreme weather events
- In Laos – the first health systems project funded by the GCF, which will intensively support 100 health facilities and 250 communities over the next five years.

Through our Australian service delivery arm, 54 reasons, we work directly with children, their families and communities in every State and the Northern Territory to provide services that fulfil children's rights and support their wellbeing and development. We have responded to the devastating climate-driven disasters of recent years, including the Black Summer bushfires and major east coast floods, and are working with communities and partners to support long-term recovery and climate resilience-building. Our services span early childhood development, family support, domestic and family violence, educational engagement, youth justice, disaster response and recovery, child rights education and place-based services and programs.



**Save the Children**

**54 reasons**

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