



**CONSERVATION
COUNCIL** ACT REGION

Submission to the Senate Environment and
Communications Committee

Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023

November 2023

The Conservation Council ACT Region is the peak non-government environment organisation for the Canberra region. Since 1981, we have spoken up for a healthy environment and a sustainable future for our region. We harness the collective energy, expertise and experience of our more than 40 member groups to promote sound policy and action on the environment.

We campaign for a safe climate, to protect biodiversity in our urban and natural areas, to protect and enhance our waterways, reduce waste, and promote sustainable transport and planning for our city. Working in the ACT and region to influence governments and build widespread support within the community and business, we put forward evidence-based solutions and innovative ideas for how we can live sustainably.

At a time when we need to reimagine a better future, we understand that the changes we need will only happen with the collective support of our community.

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Introduction

The Conservation Council ACT Region appreciates the opportunity to provide comment on the *Climate Change Amendment (Duty of Care and Intergenerational Equity) Bill 2023* which seeks to add two conditions to decisions made under six existing pieces of legislation, including the *Environmental Protection and Biodiversity Conservation Act 1999*, particularly, decisions that facilitate the financing and development of projects that could harm the climate.

The Council supports the Bill to impose a statutory duty on decision-makers:

- To consider the likely impact of the emissions on the health and wellbeing of current and future Australian children and consider their health and wellbeing as the paramount consideration; and
- In the case of decisions involving the exploration or extraction of coal, oil or gas, to prevent decisions where the resulting greenhouse gas emissions are likely to pose a material risk of harm to the health and wellbeing of current and future Australian children.

Discussion

The Synthesis Report of the IPCC's Sixth Assessment Report (AR6-SYR) released in March 2023 is unequivocal in its statements about the urgency required in global emissions reductions.

*“Keeping warming to 1.5°C above pre-industrial levels requires deep, rapid and sustained greenhouse gas emissions reductions in all sectors. Emissions should be decreasing by now and will need to be **cut by almost half by 2030**, if warming is to be limited to 1.5°C.”¹*

Australian Government policy and legislation have to date singularly failed to curb polluting fossil fuel emissions despite decades of collective knowledge and evidence about their damaging effect on Earth's atmosphere and the hospitable climate in which human civilisation has evolved and thrived. Our national legislation favours big business over both the natural environment that sustains us and the health of our people, both of which are increasingly vulnerable to the devastating impacts of a warming climate.

Even our key piece of environmental legislation, the EPBC Act, contains no mechanism for routinely protecting the planet from climate-wrecking projects despite the Government's own report recognising climate change as a key and exacerbating pressure². Bewilderingly, the Australian Government continues to approve such projects with reckless disregard for our future wellbeing.

Further, it is, frankly, appalling and unacceptable that the Australian Government does not currently have a legal duty of care to young people, as determined by the Federal Court of Australia in the case of *Sister Marie Brigid Arthur v Minister for the Environment* [2021] FCA 560.³ Our legislation effectively grants and protects the “right” of big business to flagrantly

¹ IPCC, 2023, 'Urgent climate action can secure a liveable future for all', Press release, 20 March, https://www.ipcc.ch/report/ar6/syr/downloads/press/IPCC_AR6_SYR_PressRelease_en.pdf

² Australian Government, 2021, Australia: State of the Environment 2021, <https://soe.dcceew.gov.au/overview/outlook-and-impacts>

³ Murphy, S & Dunford, E, 2022, 'The Federal Court Appeal in *Sharma*: what does it really mean for Government decisions makers', Maddocks,

damage the environment and the health of all creatures present and future. It is shocking and alarming to witness the Minister for the Environment defend coal mines over children's futures.⁴

However, the solutions to cut greenhouse gas emissions and stabilise our climate exist — they just need to be implemented. It is within the power of the Australian Government to halt emissions today. The Government, as a body of representatives elected by the people of Australia, has a responsibility to all Australians and regional neighbours to cut ties with the fossil fuel industry and reverse the damaging trends, to ensure a habitable, healthy environment that will support current and future generations of Australians in prosperity.

This Duty of Care Bill can be the lever to wrest power back from the fossil fuel industry, to govern in the interests of human and environmental rights and wellbeing instead of the profits of global corporations. It would:

1. Create a new duty for decision-makers to consider the health and wellbeing of current and future children in Australia when they are making decisions that could worsen the climate crisis, for example, decisions about whether or not to approve coal mine extensions or to use public money to fund new fossil fuel infrastructure.
2. Prohibit decisions that would support more fossil fuel mining or exploration, or which would lead to levels of emissions that would pose a risk of harm to children's health.
3. Promote intergenerational equity in decision-making by requiring decision-makers to consider the long-term impacts and the interests of future generations as well as any short-term benefits for present-day Australians of projects.
4. Require decision-makers to consider whether the emissions from a project would make it harder for Australia to achieve its emissions reduction targets.

The Explanatory Memorandum circulated by the authority of Senator David Pocock⁵ makes a strong case for intergenerational equity to be considered by decision-makers, on the basis that today's decisions will contribute to detrimental climate impacts for decades to come yet our current legislation fails to consider these impacts.

The Conservation Council urges the Australian Parliament to pass this Duty of Care Bill to enshrine legislation that protects the rights of current and future generations in the face of climate change.

Summary and Recommendations

The Conservation Council ACT Region calls on the Senate Committee to recommend that the Parliament pass the *Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023* to amend the *Climate Change Act 2022*.

<https://www.maddocks.com.au/insights/the-federal-court-appeal-in-sharma-what-does-it-really-mean-for-government-decision-makers>

⁴ Slezak, M, 2023, 'Despite a promise to escape the climate 'naughty corner', the government just scored a win against environmentalists', ABC News,

<https://www.abc.net.au/news/2023-10-11/living-wonders-climate-cases-federal-court-analysis/102962176>

⁵ Parliament of the Commonwealth of Australia, 2023, Climate Change Amendment (Duty of Care and Intergenerational Equity) Bill 2023: Explanatory Memorandum,

https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fs1385_ems_6e6bab02-d8fe-4dab-a67d-61095ede364b%22