

AUSTRALIAN CLIMATE ACCOUNTABILITY PROJECT

Calling Australia to account for the climate and human harms from exported coal and gas.



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

**Submission to the Senate Standing Committee on the Environment
and Communications**

Australian Climate Accountability Project

22 November 2023

About the Australian Climate Accountability Project

The Australian Climate Accountability Project is an initiative of the [Australian Human Rights Institute](#). The Institute produces world-leading research and advances debate on critical human rights issues. Through rigorous research, strategic advocacy and deep collaborations with government, business, and civil society partners, we **inform** policy debates, **influence** decision makers, and **empower** change makers to advance human rights globally.

The Project is undertaking new climate attribution and human impacts research from within a human rights law framework. The Project aims to quantify Australia's greatest contribution to global warming – the emissions from the burning overseas of its coal and LNG exports – and to argue the human rights case for an orderly but rapid and just phase-out of these exports.

It will pursue this through collaborating with renowned climate science analysts at [Climate Analytics](#) to deliver missing attribution evidence, revealing the major role of Australia's exported emissions in driving up global temperatures and identifying intensified risks of harms to population groups and human rights in Australia. The new evidence and analysis which the Project provides will empower communities at the frontline of climate impacts to seek protection of their human rights, and will support change-makers and the broader Australian public to demand accountability by Australian governments and the exporting corporations for the intensified harms, attributable to those massive exported emissions, to our communities.

Why a duty of care should be recognised at law

The Australian Climate Accountability Project welcomes the proposed Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023.

In our view, it is self-evident that decision-makers be positively required to consider the well-being of current and future children when making decisions which are likely to contribute to climate change in Australia. The two statutory duties which the Bill proposes to impose on decision-makers are appropriate and necessary, given the irrefutable evidence linking climate change and impairment of children's health.

Climate change in Australia is a children's health crisis.

Earlier this month, the 2023 *Lancet Countdown* stated:

Compared with 1986–2005, the number of heatwave days during 2013–22 increased 94% globally.

This increase resulted in each child younger than 1 year being exposed on average to 110% more days of heatwave, on average, in this time period Combined with demographic changes, the total person-days of heatwave exposure increased 134% for children younger than 1 year....

In 2013–22, infants ... experienced, on average, 108% more days of heatwave per year than in 1986–2005. Infants ... are particularly vulnerable to adverse health effects from heat exposure...

M Romanello et al, 'The 2023 report of the Lancet Countdown on health and climate change: the imperative for a health-centred response in a world facing irreversible harms', *The Lancet*, November 2023, at 13.

Through its direct, indirect, incremental and cascading impacts, climate change affects every aspect of children's well-being, particularly their physical and mental health, development, education, security, housing, standard of living, culture and, indeed, their very lives.

Climate change in Australia gives rise to state obligations at law

Australia carries specific obligations towards children that are clearly set out in the UN *Convention on the Rights of the Child* and other international human rights covenants. These obligations include, in all decisions relating to climate change, preventing discriminatory impacts on children, ensuring children's best interests are a primary consideration, protecting and supporting children's lives and holistic development, and upholding children's right to participate in decision-making.

In [General Comment](#) No. 26, the UN Committee on the Rights of the Child stated that the 'adverse effects of climate change' on the enjoyment of children's rights 'give rise to obligations of states to take actions to protect against those effects'. The Committee also stated that 'the best interests of the child shall be a primary consideration in the adoption and implementation of environmental decisions affecting children.' It added, at para 73,

Subject to any obligations under international law, including those contained in multilateral environmental agreements to which they are party, States retain discretion in arriving at a reasonable balance between determining the appropriate levels of environmental protection and achieving other social goals in the light of available resources. Nevertheless, such leeway is limited by the obligations of States under the Convention. Children are far more likely than adults to suffer serious harm, including irreversible and lifelong consequences and death, from environmental degradation. *Given their heightened duty of care*, States

should therefore set and enforce environmental standards that protect children from such disproportionate and long-term effects. (our italics)

The fact that these international human rights may not be enforceable under Australian law does not in any way absolve the Australian government, as a Party to all the relevant UN conventions, from responsibility to take all reasonably available steps to protect children in its territory from foreseeable climate harms.

Climate change in Australia is an eminently foreseeable crisis for children.

The science is unequivocal and the warnings of the harmful effects of intensifying climate change on population groups in Australia, including children, are based on robust, rigorously tested projections. Australian governments know the risks from extreme weather that young people in Australia now (and increasingly) face. They are also fully aware that, as the driest inhabited continent, Australia is one of the more highly climate-exposed countries ([IPCC](#); [Australian Academy of Science](#)). Its three eastern states, where most of the children live, are in the top 4 percent of the world's territories most exposed to the physical impacts of climate change ([XDI](#)).

These facts lead to the view that decision-makers in Australia do owe an effective duty of care to children in their territory, and that the seriousness and foreseeability of the threats to present and future children in Australia compel, for certainty, statutory statement of the duty.

Climate change in Australia is a crisis which could be mitigated by Australia.

Actions in mitigation are open to Australia, but it has so far chosen not to take most of these. In particular, as the world's third largest fossil fuel exporter and a very highly advanced economy, Australia could help slow the progress of global warming by assuming its fair share in the burden of global decarbonization. At present, Australia's total carbon [footprint](#) (including emissions from its huge coal and gas exports) is around 5 percent of global emissions, a figure which is sufficiently large to be measurable driving up global temperatures.

Mitigating steps which are within Australia's control include increasing the pace and ambition of its domestic transition. They also include inviting dialogues with its main coal and gas buyer countries to begin planning for a cooperative, orderly phase-out of its fossil fuel production for export and, instead, transitioning to its renewable energy exports. For Australia to continue to supply its main coal and gas buying countries with plentiful and affordable fossil fuels actively works *against* its ambition to establish itself as a renewable energy exports powerhouse in the region.

Even though Australia is not required to report its exported emissions under the Paris Agreement's accounting protocol, it is clear from the [fact](#) of still-expanding global fossil fuel production that separate action on that front is urgently required. Australia should not seek to avoid responsibility for the foreseeable harms to children within its territory from the coal and gas exports by relying on gun lobby arguments ('we only make the guns and ammunition, we don't pull the trigger'). Having been a major global producer and exporter of fossil fuels over many decades and as a highly advanced economy, Australia has an ethical obligation to take some responsibility for the foreseeable consequences of its significant *and growing* contribution to driving up global temperatures.

“If one of the world’s largest fossil fuel exporters began to phase out its exports and bed down a just transition for those affected, it would have a huge impact on fossil fuel finance and signal time really is up for an industry long thought untouchable.”

Professor Jeremy Moss, [Climate Justice Project](#) ([‘The Conversation’](#), 26 May 2022)

For the above reasons, we welcome the proposed Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023.

We thank the Committee for its work and welcome the opportunity to provide further input to the Inquiry.

For more information, please contact:

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