

Eastern Community Legal Centre Submission on Climate Change Amendment (Duty of Care and Intergenerational Climate Equity)

About ECLC

Eastern Community Legal Centre (ECLC) is as a multidisciplinary legal service dedicated to proactively preventing issues, advancing equitable outcomes, and fostering the well-being and resilience of communities and their members in Melbourne's East. Operating for over four decades, ECLC is among Australia's largest and well-established community legal centres, offering free legal advice from offices in Box Hill, Boronia, and Healesville, with outreach locations prioritising those who may be experiencing disadvantage. Situated in the Eastern region of Melbourne, ECLC serves the Cities of Whitehorse, Boroondara, Manningham, Maroondah, Knox, and the Shire of Yarra Ranges. Beyond delivering direct legal services, ECLC is committed to working across the prevention continuum whereby the Centre aims to address societal drivers of vulnerability to climate change, build capacity and manage climate risks and respond and support recovery following extreme weather events. ECLC's various projects and engagements support community development and education initiatives that empower clients, workers, and the broader community.

Additionally, community legal centres (CLCs), including ECLC, play an active role in strengthening communities to build their capacities to withstand and recover quickly from hardships that affect them at any given point in time. ECLC's programs not only deal with the pressing legal issues of an individual or community, but they also work to prevent further harms from occurring and play a role in primary prevention in a range of areas, including raising awareness about its services, new legal developments, and human rights through various projects.

ECLC is pleased to provide a submission to the parliament on the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (the Bill) and wishes to endorse the submission of the Federation of Community Legal Centres (FCLC), Australian National University, Human Rights Law Centre and the Climate Council.

In this submission, ECLC will highlight the ways in which the Bill will strengthen protection and access to justice for young people and the legal issues can be created or exacerbated by climate change and disasters, then provide recommendations for improving outcomes of the submission.

A call for Climate Justice from Eastern Community Legal Centre

As noted by the FCLC, "Climate Justice views the acceleration of environmental changes through a human rights lens and strives to address these inequities. Disaster Justice focuses on the role of governing structures in creating and perpetuating risks, inequalities and

injustices that are magnified by climate hazards.¹ Together, the principles of Climate and Disaster Justice promote sustainable and just solutions to the challenges posed by climate change and disasters and ensure that all affected individuals and communities have access to the resources and support they need through all phases of prevention, preparation, response and recovery.”

Based on the current climate change trajectory data, it is likely that future generations will be exposed to significant and increasing risk of climate related impacts. ECLC has recognised this risk and in 2023, designated *Communities Impacted by Climate Change* as a strategic priority community within its service framework.

ECLC acknowledges the multifaceted impact of climate change, extending beyond environmental and political realms to encompass social, legal, and financial implications. Emphasising climate justice as a core priority, ECLC contends that as the climate warms and disasters become more frequent and intense, communities experiencing marginalisation, and subgroups within these communities, bear a disproportionate burden. For this reason, ECLC works closely with key at-risk groups including First Nation’s communities, regional and remote areas, and women, including those who may be experiencing family violence linked to an event.

Across Melbourne's East, ECLC has observed early signs that a failure to address the legal implications of climate change can lead to a cycle of entrenched disadvantage within the communities we serve. ECLC advocates for breaking this cycle by addressing the legal challenges arising from climate-related disasters through address the key systemic drivers that lead to some communities being at greater risk of climate impacts and advocating for changes that promote the key principles of climate justice.

Further, there is community support in the Eastern Metropolitan Region for the Bill’s passing. Mums of the Hills Inc (MotHs) is a community group that advocates on local issues and provides community-driven services for over 6,500 families in Melbourne’s Dandenong Ranges. Often described as the ‘lungs of Melbourne’ the area comprises Sclerophyll forests, bushy blocks and treed urban areas.

The area is prone to extreme weather events such as the 2021 storm in which an estimated 25,000 trees fell in one night rendering families displaced and critical infrastructure such as power, communications and schools destroyed. Bushfires are also an ever-present risk to the area, considered one of the world’s most at-risk communities.

In the 2023 Mums of the Hills Perspectives Survey, 75% of all participants (n=963) stated climate change as the most pressing issue residents were concerned about. Now more than ever before, our families are susceptible to climate change. The group represents multiple generations, from young families to grandparents, all of whom are extremely invested in and concerned for our environment and the well-being of our children, grandchildren and generations to come. Both Mums of the Hills and ECLC share profound concerns that young people in our region will experience a diminished quality of life compared to current

¹ It is not limited to declarations of disaster by State or Federal governments: Robert RM Verchick, ‘Disaster Justice: The Geography of Human Capability Disaster Law’ (2012) 23(1) *Duke Environmental Law & Policy Forum* 23. **Disaster** recovery cannot happen without implicating justice outcomes: Krishna K. Shrestha, Basundhara Bhattarai, Hemant R. Ojha, Ayusha Bajracharya, ‘Disaster justice in Nepal’s earthquake recovery’ (2019) 33 *International Journal of Disaster Risk Reduction* 207.

generations if global temperatures exceed the 1.5-degree warming limit. The group says **“We urge members of parliament to support and adopt the Climate Change Amendment Bill 2023 to fulfil the Duty of Care and Intergenerational Climate Equity”**.

ECLC believes that without significant climate action, future generations will confront substantial challenges, including those of a complex-legal nature. Of the individuals ECLC supported through Centre services with disaster related legal matters since the June 2021 storms in the Yarra Ranges, over 15% were a family and/or with dependent children. These children would have also been impacted by their family units’ legal challenges. As climate change intensifies, it is likely that we will see an increase in families with children who are impacted by disaster related legal issues.

ECLC also recognises the following **high confidence** statements from the Intergovernmental Panel on Climate Change (IPCC):

- Climate impacts are cascading and compounding across sectors and socioeconomic systems.
- Complex connections are generating new types of risks, exacerbating existing stressors and constraining adaptation options.
- Adverse impacts of climate change, development deficits and inequality exacerbate each other.
- Existing vulnerabilities and inequalities intensify with adverse impacts of climate change.
- These impacts disproportionately affect marginalised groups, amplifying inequalities and undermining sustainable development across all regions.²

Based on the current climate change trajectory data, it is likely that future generations will be exposed to significant and increasing risk of climate related impacts. ECLC has recognised this risk and in 2023, designated *Communities Impacted by Climate Change* as a strategic priority community within its service framework.

The approach to climate justice advocated by ECLC seeks a paradigm shift in how climate change is perceived. Instead of framing the issue solely as an environmental or political issue, climate justice places issues of social equity and human rights at the forefront of decision-making as emphasised above by FCLC.

ECLC supports the need for the *Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (the Bill)*, as a substantial step towards achieving equitable climate change action.

Bill to Strengthen protection and access to justice for young people

As noted by FCLC in their submission, “The legal system is complex and hard to navigate without climate change impacts compounding access to justice issues. People experiencing economic, environmental and social precarity, people living with a disability, First Nations people, the elderly, people from migrant and refugee communities, people experiencing homelessness and single parents are even more likely to have complex legal problems as well as face greater complexity recovering from extreme weather events.

² International Panel on Climate Change (2022). Fact sheet - Australasia Climate Change Impacts and Risks. SIXTH ASSESSMENT REPORT.

The exacerbation of climate harms on the livelihoods of present generations will have an inevitable impact on future generations. As Community Legal Centres focus upon an integrated, holistic approach to addressing access to justice for communities it is imperative that the slide into intergenerational poverty, trauma and precarity is prevented and these legislative changes will assist in that goal.”

Additionally, Collin and McCormack (2020) state that there are a range of broader structural barriers that continue to prevent young people's participation in policy discussions and decisions. Young people are often excluded from decision-making processes due to both institutional and systemic obstacles, including the historical exclusion of young people from conversations about planetary health, and a lack of monetary investment in youth-led and focused initiatives.

This Bill's potential contributions to the strengthening of "access to justice" and increasing opportunities for participation of young people in climate change issues is multifaceted.

The Bill introduces a "duty of care" that holds the potential to significantly fortify protection for young people and concurrently enhance their access to justice. By explicitly recognising the health and well-being of current and future children, including young people, as paramount, this duty ensures their interests are a crucial consideration in decisions contributing to climate change. Consequently, it establishes a legal foundation for safeguarding the rights of young people. Failure by decision-makers to fulfill their duty of care opens legal avenues, including provisions for judicial review, providing mechanisms for holding those in power accountable.

This judicial review process will likely create pathways for empowering young individuals to have their voice heard through legal proceedings as they will be able to be formally recognised as stakeholders in environmental matters. Provisions for judicial review create a formal process for challenging decisions that could impact their well-being, broadening their access to justice. The statutory duty of decision-makers to consider the health and well-being of children establishes a legal framework for protecting the interests of young people, providing a basis for legal arguments and advocacy.

The Bill's extension of standing for judicial review, including individuals who are children, broadens the scope for young people to engage in legal actions related to significant decisions. Moreover, prohibitions on harmful activities, such as those related to the exploration or extraction of coal, oil, or natural gas, indirectly contribute to protecting young people from adverse environmental effects.

This preventive approach acts as a protective mechanism, averting decisions that could jeopardise the health, wellbeing and future prospects of generations to come. It aligns with the principles of prevention and resilience, minimising potential risks and enhancing the protection of young people. The duty of care contributes to the broader concepts of climate justice referred to above. By making decision-makers accountable for the impact of their choices on young people, the Bill supports the intergenerational climate justice ideals established by the UN, notably that “pursuit of welfare by the current generation should not diminish opportunities for a good and decent life for succeeding generations.”³ This is

³ United Nations (2013), Intergenerational solidarity and the needs of future generations - Report of the Secretary-General, <https://sustainabledevelopment.un.org/content/documents/2006future.pdf> (accessed on 4

crucial in addressing the disproportionate burdens often borne on young people and future generations in the context of climate change.

The duty of care may also serve as a tool for public education and awareness, fostering a better understanding of the link between environmental decisions and the rights of the young and future generations. Empowered with this knowledge, young people can actively engage in environmental issues, further contributing to a proactive stance in decision-making.

In essence, the Bill emerges as a critical instrument in creating a regulatory environment that recognises and safeguards the rights and interests of young people in the context of climate change, thereby fortifying their access to justice in environmental matters.

Legal Issues created or exacerbated by climate change and disasters

The aftermath of the June 2021 storms that impacted the Yarra Ranges Shire demonstrated the interconnected social, financial, mental health and legal challenges facing residents in the region (refer to Yarra Ranges Council Submission to General Insurance Code of Practice⁴).

Following this event, ECLC saw a range of legal issues which over time have become increasingly complex. including lengthy disputes with insurers, property damage disputes, challenges covering rental costs, difficulties accessing social security and increases in family violence in the home. This is often referred to as the ‘long legal tail’ of disaster impacts⁵.

As climate change continues to drive an increase in the frequency and intensity of weather events, the community legal sector anticipates an increase in demand for free and accessible legal support.

Further, ECLC expresses deep concern over the potential repercussions should the Bill fail to pass. This could lead to a surge in diverse legal challenges linked to climate change and environmental degradation within communities across Melbourne's East.

Recent data linking legal need and extreme weather events showed that “disasters [can] have a significant impact on both people’s likelihood of experiencing justiciable problems and their opportunities to resolve them. Findings relating to the 2019–2020 bushfires in Victoria point to challenges ahead. Those affected by bushfires were more likely to have justiciable problems, have a greater number and longer lasting problems, and make greater use of services. As climate change continues, the frequency of fires, floods and other climate-related disasters will place increasing burdens on legal and related services.”⁶

The Eastern Metropolitan Region (EMR) is already grappling with challenges accessing

April 2020).

⁴ *Yarra Ranges Council submission to General Insurance Code of Practice - CGC*. Available at: <https://insurancecode.org.au/app/uploads/2023/06/Yarra-Ranges-Council.pdf> (Accessed: 20 November 2023).

⁵ Margaret Paul (2023), [ABC News: Dandenong Ranges residents struggle with insurance and building costs](#)

⁶ Victoria Law Foundation (2023) [Public Understanding of Law Survey \(PULS\): Volume 1: Everyday Problems and Legal Need](#), ISBN: 978-0-6453851-8-2

necessities, impacting their right to access safe water, housing and standard of living. This often presents as practical issues such as disruptions in water supply, difficulties accessing heating and cooling, power outages, and other resource-related issues. ECLC is steadfast in its commitment to advocate for the protection of these resources and the rights of young people to access them both now and in the future.

The absence of a duty of care could expose young people to situations where their human rights are violated due to inadequate protection from climate-related harms. As noted by FCLC, “Climate change and disasters can have significant impacts on human rights, including the right to life, health, housing and water. Legal and policy strategies aimed at protecting and promoting human rights in the context of climate change and disasters are essential in preventing certain communities from being disproportionately affected or discriminated against.”

In the absence of the Bill's passage, young people may face a myriad of legal issues arising from the impacts of climate change, and community legal centres will play a pivotal role in addressing these concerns. ECLC will continue to advocate and work with its partners and pro bono firms in handling cases involving human rights violations, seeking remedies, and holding responsible parties accountable.

Recommendations

1. Include special consideration for marginalised young people

ECLC endorses the recommendation made by the Australian National University that the Bill should be strengthened to recognise that the impact of climate change on children varies based on socioeconomic and geographic factors. As noted by the Human Rights Law Centre, “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.⁷ Lower cost housing is often located on land that is more vulnerable to extreme weather events or less accessible to services”⁸ Decision-makers should be mandated to give special consideration to children facing disproportionate harm due to their socio-economic and/or geographic circumstances. Additionally, it is known that other intersectional issues, such as being of First Nations descent, gender, poverty, and disability status, should be considered, acknowledging their compounding effect on vulnerability to climate change. The duty of care in decision-making should have regard for alignment with the specific challenges faced by young people.

2. Broaden the definition of health and wellbeing

ECLC endorses the recommendation made by the Australian National University to enhance and clarify the definition of health and well-being to align with global standards. The current amendment refers to emotional, cultural, and spiritual health, but it should be expanded to explicitly include physical health, consistent with the World Health Organization's

⁷ Christen Cornell, Nicole Gurrán and Tess Lea (2020) Climate change, housing, and health: A scoping study on intersections between vulnerability, housing tenure, and potential adaptation responses

⁸ Ibid, 5

constitution. Also, mental health, given its significant impact on young people, should be explicitly addressed.

Highlighting the relevance to children's health, specific attention should be given to the physical health of pregnant individuals. Research indicates that current oil and gas developments, especially fracking, contribute to adverse health effects, impacting heart disease, respiratory disorders, and birth outcomes. As noted by the Human Rights Law Centre, "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 per cent are children⁹ 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."¹⁰ Considering these factors is crucial for assessing the potential health impacts on future generations. Access to justice and public health research has independently identified the impact of legal problems on people's health, health systems, and health costs¹¹.

3. Consider specific impacts on First Nation's children

The Bill, with its focus on considering the health and well-being of current and future children in Australia, including Indigenous or First Nations children, is likely to have specific implications for these groups. The Bill should be elaborated upon, to strengthen recognition of the unique risks faced by First Nations peoples due to factors like geographical location, cultural practices, and historical injustices. The Bill should go further to emphasise the disproportionate impact of climate change on First Nations populations. If passed, the Bill could strengthen protection for First Nations communities, particularly those in remote or high-exposure areas who may be disproportionately affected by climate change.

ECLC supports the following statement made by the Human Rights Law Centre around the intersection of First Nations peoples and climate change impacts: "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 Australians¹². The Institute has found that climate change is already impacting deep, spiritual ties to Country, which is a fundamental determinant of health, foundational to Aboriginal and Torres Strait Islander identity, knowledge systems, and cultural practices¹³. 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."

Further, ECLC supports the language used in the Bill to explicitly address impacts on "cultural health and well-being" as part of the definition of health and well-being. This

⁹ Dr Indigo Weber (2019), Climate Change: The greatest threat to human health this century (medicSA Article, 2019)

¹⁰ Ebi, K.L., Capon, A., Berry, P., Broderick, C., de Dear, R., Havenith, G., Honda, Y., Kovats, R.S., Ma, W., Malik, A., Morris, N.B., Nybo, L., Seneviratne, S.I., Vanos, J. and Jay, O. (2021). Hot weather and heat extremes: health risks. *The Lancet*, [online] 398(10301), pp.698–708. doi:[https://doi.org/10.1016/s0140-6736\(21\)01208-3](https://doi.org/10.1016/s0140-6736(21)01208-3).

¹¹ OUP accepted manuscript. (2019). Current Legal Problems. doi:<https://doi.org/10.1093/clp/cuz003>.

¹² Doctors for the Environment Australia (2021), How Climate Change Affects Mental Health in Australia

¹³ Lowitja Institute (2021), Climate Change and Aboriginal and Torres Strait Islander Health (Discussion Paper)

recognition is important for First Nations children as it acknowledges the significance of cultural practices, connections to land, and traditional knowledge in their overall health and well-being. Climate change can disrupt traditional ways of life for Indigenous communities, impacting access to traditional foods, water sources, and cultural practices. The Bill's provisions, by requiring consideration of the impact of decisions on greenhouse gas emissions, may indirectly contribute to the preservation of these aspects critical to the health and well-being of First Nations children.

The Bill's alignment with international human rights principles, including the right to health, underscores the interconnectedness of environmental sustainability and human rights. This recognition is particularly relevant for Indigenous communities whose health and well-being are closely tied to the health of their environment and connection to country.

The Bill must recognise the paramount need for self-determination and the ability for communities and Indigenous people to make decisions for themselves, and to have resources available to make those decisions (Mibu Fisher 2021). If the Bill includes provisions for meaningful consultation with Indigenous communities in decisions that may affect them, it could align with Australia's obligations under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), fostering a more inclusive and rights-based approach. While these points highlight potential positive impacts, it is essential to ensure that the implementation of the Bill is culturally sensitive, respects Indigenous rights and self-determination, and involves meaningful engagement with First Nations communities to address their specific concerns and aspirations. For these reasons, it is strongly recommended that meaningful consultation occurs with Aboriginal Community-Controlled Organisations in the Eastern Region of Melbourne.

4. Strengthen commitment to Australia's obligations under international laws and frameworks.

Failure to pass the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill might raise concerns about meeting Australia's obligations under international human rights law, including:

Climate Agreements: The Bill's amendments to the Climate Change Act 2022 align with international climate agreements such as the Paris Agreement. If the Bill does not pass, there could be implications for Australia's commitment to reducing greenhouse gas emissions and fulfilling its obligations under these agreements.

Children's Rights: The United Nations Convention on the Rights of the Child (UNCRC) emphasises the right of children to the highest attainable standard of health and protection from activities that may harm their well-being. If the Bill is not enacted, there could be implications for Australia's compliance with its obligations under the UNCRC, particularly regarding the health and well-being of children in the context of climate change. Further, the Government should meet its obligations under international law, including those observed in the United Nations *CRC/C/GC/26: General comment No. 26 (2023) on children's rights and the environment with a special focus on climate change*: "As rights holders, children are entitled to protection from infringement of their rights stemming from environmental harm and to be recognized and fully respected as environmental actors. In taking such an approach, particular attention is paid to the multiple barriers faced by children in disadvantaged situations in enjoying and claiming their rights".

Intergenerational Equity: The Bill explicitly addresses intergenerational equity, recognising the responsibility of the present generation to consider the impact of decisions on future generations. Failure to pass the Bill might be seen as a gap in fulfilling the principle of intergenerational equity under international environmental and sustainable development frameworks.

Human Rights and Climate Justice: The Bill's focus on considering the impacts of decisions on health and well-being aligns with broader human rights principles. Failure to pass the bill might be viewed as a failure to integrate human rights and climate justice into national legislation, potentially impacting Australia's commitment to these principles on the international stage.

In summary, ECLC strongly endorses the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023. Without meaningful climate change action from decision makers, future generations will be increasingly susceptible to the growing impacts of extreme weather events. By making decision-makers accountable for the impact of their choices on young people, the Bill supports the intergenerational climate justice, improve access to justice and provide opportunities for judicial review if their basic rights and needs are not met. Local communities in ECLC's catchment have express concern if the Bill is not passed and have provided support for its passing by Parliament.

Thank you for the opportunity to provide a submission on this important proposed Bill. If you have any queries in relation to this submission, please do not hesitate to contact the below:

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