



14 March 2022

UN Committee on the Rights of the Child
General Comment No. 26
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Dear Committee,

Thank you for the opportunity to contribute to the consultation process for the proposed 'General Comment on children's rights and the environment with a special focus on climate change' (General Comment No. 26).

As National Children's Commissioner, situated within the Australian Human Rights Commission (the Commission), I promote discussion and awareness of the human rights of children in Australia, undertake research or educational programs for promoting the enjoyment of these rights, and examine existing and proposed laws to ascertain whether they recognise and protect these rights.

The Commission is an 'A status' National Human Rights Institution, established and operating in full compliance with the Paris Principles.

From the outset, I commend the development of General Comment No. 26 and the objective to provide authoritative guidance to States Parties on how to apply children's rights in the context of rapid environmental change and to clarify the extent of States Parties' obligations on this front. It is most pleasing to see that the rights of children and young people are being brought into focus on this increasingly important issue.

In this letter, I provide some overall comments on the need for General Comment 26. I also provide information relevant to each of the four Guiding Principles in the *Convention on the Rights of the Child* (CRC) and contribute relevant Australian examples of children's concerns, and participation in action, about environmental issues.

Overall comments

There is significant work to be done to frame the impacts of climate change as a human rights issue, and for governments and business to take greater action in this area. The Committee's concept note for General Comment 26 acknowledges

that 'while the effects of climate change are felt around the globe, their negative effects are acute within the populations and countries that have contributed the least to climate change'.¹

The Committee, in its 2019 Concluding Observations on the combined fifth and sixth periodic reports on Australia, recognised that as a State Party, Australia is not doing everything that it could be doing in this regard. The Committee was concerned about Australia's position that 'the Convention does not extend to protection from climate change'.² The Committee emphasised that the effects of climate change have an undeniable impact on children's rights, for example on the rights to life, survival and development, non-discrimination, health, and an adequate standard of living.³

The Committee made several recommendations for action by Australia related to climate change and protection of the environment, noting in particular the importance of facilitating children's right to express their views. It recommended that Australia 'develop toolkits for public consultation with children on issues that affect them, including on climate change and the environment'.⁴ It also recommended that Australia 'ensure that children's views are taken into account in developing policies and programmes addressing climate change, the environment and disaster risk management, and increase children's awareness and preparedness for climate change and natural disasters'.⁵

To be most effective, the General Comment should clearly spell out the extent of State Parties' responsibilities, what measures they need to implement, and what the expectation is on them to show that they are making their best efforts to address environmental issues with a children's rights focus. Operationalising clearly what best effort entails, and how children's rights can be emphasised, will assist States Parties to make the necessary changes.

The General Comment should also delineate the obligations of State Parties to take measures to ensure businesses minimise their impacts on children's rights with regard to the environment and climate change. The Committee may find useful a recent review by the Australian Human Rights Commission and the Australian Human Rights Institute on the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), *At the Crossroads*, with a section on addressing the adverse human rights impacts of climate change in Australia. It includes recommendations for businesses and investors, but also for the Australian Government, to ensure businesses meet their responsibility to protect human rights with respect to climate change by:

supporting the Paris Agreement's aim of limiting global warming to 1.5°C, by formally committing to reduce economy-wide emissions to net-zero by 2050 if not earlier and to a stronger 2030 emissions reduction target, ensuring the availability of funding and policy infrastructure to support businesses to contribute to meeting those targets, and facilitating an orderly and just transition.⁶

It is hoped that General Comment 26 will lead to better recognition by States Parties, businesses, and all stakeholders that climate change is a human rights and a children's rights issue.

The right to life, survival and development: the significance of environmental issues to children and young people

Childhood is a stage of intense growth and for some, developmental vulnerability, and stress. The physical and mental health of children can be particularly impacted by environmental and climate concerns, such as rising sea waters, carbon emissions, heat waves, pollution, and air quality, to name but a few. They can experience effects more acutely than adults and some are concerned about their future in ways that other generations have not been concerned.

When consulted about their rights and wellbeing, children and young people in Australia are increasingly listing environmental impacts and the effects of climate change as some of their main concerns.

For example, in July 2018, the Australian Human Rights Commission (in partnership with the University of Melbourne) ran an online survey that asked 22,700 Australian children about their rights. This survey showed that children and young people ranked their ability 'to be able to breathe clean air and drink clean water' in their top three most important rights.⁷

A majority of children surveyed by UNICEF Youth Ambassadors in Australia in 2019 viewed climate change as the biggest threat to their safety, a point clearly reflected in the title of the report, A Climate for Change.⁸ In this report, 59% of children and young people viewed climate change as a threat to safety.⁹

Concurrently, we are seeing increasing mental health concerns and poorer wellbeing in Australian children and young people, as they navigate uncertain futures. Survey data of 4,065 children and young people aged between 12 and 25 years collected by headspace in 2018 showed one-third (32%) of participating

Australian children and young people were experiencing psychological distress.¹⁰ Further, Australia ranked 35 out of 38 for mental wellbeing in a global UNICEF report with data collected prior to the pandemic.¹¹

While we know there are many stressors in young people's lives, and it is not necessarily a causal relationship, we know that climate concerns weigh on their minds. A 2021 study, which included 1,000 Australian young people, made a link for the first time between high levels of psychological distress and government inaction on climate change.¹²

Australian children and young people have had significant first-hand impacts of natural disasters in the last two to three years, with intense and extended floods, drought, and bushfires which many have linked to climate change.¹³ This is particularly poignant for those children living in regional and remote areas of Australia, who have been disproportionately affected by these events. Children living in these areas often feel less able to participate in decisions that affect them compared with their counterparts living in major cities.¹⁴

In 2020, the NSW Office of the Advocate for Children and Young People consulted with more than 400 Australian children in disaster affected areas and published a report entitled 'Children and Young People's Experience of Disaster'. This report linked natural disasters with far-reaching adverse outcomes for children and young people, including on their mental health and wellbeing, education, food security, feelings of safety, housing, employment opportunities and a feeling of being 'unable to influence the world around them', despite having a greater interest in being involved in recovery efforts.¹⁵

The views of the child: participation of children and young people in environmental action in Australia

Article 12 of the CRC affirms children's right to express their views and be involved in any decision that affects them.¹⁶

It is clear that policy and legislative decisions that contribute to global warming are decisions that affect the health and wellbeing of children and young people. Many children and young people are interested in exercising their right to participate and there is a growing acceptance and recognition of their right to be involved and make governments accountable for the environment in which they are growing up in.

There are some examples of decision-makers in Australia seeking children's involvement in environmental decisions. Recently, in 2020, the Tasmanian state government released a draft Renewable Energy Action Plan and developed a version for children and young people to seek their views and inform them about the plan. This was developed at the suggestion of the Tasmanian Commissioner for Children and Young People and provides a concrete example of where young people have been invited to contribute to decisions about the future.¹⁷

The General Comment should set an expectation of States Parties to provide children and young people with an opportunity to be heard in policy and legislation, advocate for their rights and take action on their concerns about the environment. Ensuring meaningful participation through consultation and the development of child-friendly resources will assist in this.

The Committee may also be interested to know that children and young people in Australia are starting to use litigation as a means of achieving climate justice. One example is the 2021 case of *Sharma v Minister for Environment*, where a group of school children led by Anj Sharma challenged the Federal Minister for the Environment about her approval of a coal mine. Sharma and her team argued that, in deciding whether to approve the coal mine expansion under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), the Minister has a duty to protect young people from the devastating impacts of climate change. They asked the Court to grant an injunction to prevent the Minister from doing so before a decision was made. While the Minister denied any duty of care was owed to the children or that the project would cause harm, the judge rejected the Minister's arguments and found the Minister had a duty of care to avoid causing injury or death to persons under 18 arising from emissions of carbon dioxide into the atmosphere further.¹⁸

Another group of young people in Australia, Youth Verdict, are also using legal pathways to advocate for human rights and climate justice. Based in Queensland, their first case is a case against Waratah Coal's new mine on the grounds that its contribution to climate change will breach the cultural rights of Aboriginal and Torres Strait Islander peoples to preserve, practise and evolve culture due to shifting seasons, rising sea levels and increasingly extreme weather events.¹⁹

It is clear that children and young people are creating their own opportunities to be heard on these issues through protests, like the School Strike 4 Climate, and even legal proceedings as discussed above. It would be beneficial for them to

have more formal avenues to be heard, such as by being consulted on legislative and policy decisions related to the environment. We consult children as a matter of practice.

Non-discrimination: impacts on children as a vulnerable group, and unique impacts on specific groups of children and young people

As described above, Australian children and young people have had significant first-hand impacts of natural disasters in the last two to three years, with intense floods, drought, and bushfires which many have linked to climate change. This has particular impacts on those children living in regional and remote areas of Australia, who have been disproportionately affected by these events. Often children living in these areas feel less able to participate in decisions that affect them compared with their counterparts living in major cities. For children living in poverty, the potential for an increased cost of living as a result of climate change, such as higher food and fuel prices, is also of concern.²⁰

Aboriginal and Torres Strait Islander children are especially vulnerable to the impacts of environmental changes. While the health impacts of climate change are well established²¹, the broader social and cultural impacts of environmental change are especially significant for Aboriginal and Torres Strait Islander children because of their close cultural connection to the land.

Article 30 of the CRC sets out children's right to practise and enjoy their own culture. Aboriginal and Torres Strait Islander children have the right to practise culture on traditional lands. Ease of access to traditional country that is healthy and cared for is fundamental to Aboriginal and Torres Strait Islander children being able to practise culture and to the protection and transference of intergenerational knowledge systems. Degradation of this land and natural environment can have an impact on their culture and connection to land.

Participation rights are also highly relevant to the intersection between Indigenous children's rights and the environment. The *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP)²² sets out how human rights apply in protecting Indigenous peoples' cultural identity, connection to country, and cultural knowledge. Under Article 18, Indigenous children and young people expressly have the right to participate in decision making in matters that affect their rights. Article 19 provides that States must consult and cooperate in good faith with Indigenous peoples. The rights of Indigenous children are also given special attention at Article 22. Participation and consultation must be consistent

with the principles of free, prior and informed consent. Aboriginal and Torres Strait Islander children and young people must be respected and treated as key stakeholders in developing, designing, implementing, monitoring and evaluating all policies and legislation that influences their wellbeing.

Aboriginal and Torres Strait Islander children's rights under UNDRIP need to be considered in the context of environmental justice and climate change and elaborated on in the General Comment. Please note, Articles 10; 12(1); 25; 26; 27; 29; 31 of the UNDRIP may be particularly relevant to General Comment no. 26.²³

In the Commission's *Wiyi Yani U Thangani* report (2020), Aboriginal and Torres Strait Islander women and girls spoke of the loss of country due to the impacts of climate change on their ancestral lands and waters. From flooding to dried-up waterways, Aboriginal and Torres Strait Islander peoples are confronting significant issues of environmental degradation and the abuse of natural resources. Many people spoke of the devastating impacts of this on the continuation of traditional practices. For certain communities, these impacts mean having to relocate from their traditional lands.²⁴

The report called for urgent action on climate change. Specifically, it was recommended:

- All Australian governments to recognise the vital role Aboriginal and Torres Strait Islander peoples, knowledge systems and technologies have in finding solutions to cope with impending climate changes and ensuring that their human rights are protected.
- All Australian governments to develop formal mechanisms to support the full and equal participation of Aboriginal and Torres Strait Islander peoples in developing climate change policy, negotiations and mitigation and adaptation strategies.²⁵

Finally, Aboriginal and Torres Strait Islander knowledge holds immense value and worth for all Indigenous and non-Indigenous peoples. It is essential that the General Comment contains scope for understanding the impacts of climate change and the cultural impacts, through this lens.

Best interests: the intersection of children's rights with the environmental context

Children's rights and the protection of the natural environment are connected. A clean and healthy environment is clearly in a child's best interests. Framing of a

clean and healthy environment as a child rights issue may help to de-politicise the debate and achieve common purpose.

Within the General Comment, clear guidance is needed on how to apply the rights within the CRC in the environmental context. Protection from environmental harm is embedded across a range of rights. However, there is a need for explicit examples and elaboration on how States Parties should take measures to meet their obligations on children's rights in the environmental context. For example, providing explicit examples of how the following rights will be better protected if States Parties commit to urgent action to ensure a clean and healthy environment for all:

- Article 6 on the rights to life, survival and development
- Article 12 on children's participation in decisions that affect them
- Article 24 on health
- Article 27 on an adequate standard of living
- Article 30 on children's right to enjoy their own culture
- Article 31 on children's right to leisure and play.

It is clear that environmental issues are at the forefront of children and young people's minds, and that their voices are getting louder. We have a responsibility to ensure these voices are listened to.

We look forward to making further comments when the draft General Comment is released.

Yours sincerely



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¹ United Nations Human Rights Office of the High Commissioner, *General comment on children's rights and the environment with a special focus on climate change* <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRC_GC26_concept_note.aspx>

² United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd Sess, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) para 40 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En>.

³ United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd Sess, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) para 40 <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En>.

⁴ United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd Sess, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) para 22(e) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En>.

⁵ United Nations Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia*, 82nd Sess, UN Doc CRC/C/AUS/CO/5-6 (1 November 2019) para 41(a) <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/AUS/CO/5-6&Lang=En>.

⁶ Australian Human Rights Commission and the Australian Human Rights Institute, *At the Crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia* (Report, September 2021) <<https://humanrights.gov.au/about/news/new-report-recommends-more-action-prevent-human-rights-harms-business-sector>>

⁷ Australian Human Rights Commission, *Children's Rights Report 2019* (Report, 2019) 62 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>>

⁸ UNICEF Australia, *A Climate for Change: 2019 Young Ambassador Report* (Report, 2019) <<https://www.unicef.org.au/Upload/UNICEF/Media/Documents/A-Climate-for-Change-Young-Ambassadors-Report-2019.pdf>>

⁹ UNICEF Australia, *A Climate for Change: 2019 Young Ambassador Report* (Report, 2019) 1 <<https://www.unicef.org.au/Upload/UNICEF/Media/Documents/A-Climate-for-Change-Young-Ambassadors-Report-2019.pdf>>

¹⁰ Headspace, *Insights: Youth mental health and wellbeing over time (headspace National Youth Mental Health Survey 2020)* (Report, 2020) <<https://headspace.org.au/assets/Uploads/Insights-youth-mental-health-and-wellbeing-over-time-headspace-National-Youth-Mental-Health-Survey-2020.pdf>>.

¹¹ UNICEF, *Worlds of influence: Understanding what shapes child well-being in rich countries* (Innocenti report card 16, UNICEF 2020) <<https://www.unicef-irc.org/publications/pdf/Report-Card-16-Worlds-of-Influence-child-wellbeing.pdf>>.

¹² University of Bath, 'Government inaction on climate change linked to psychological distress in young people – new study' (Media release, 14 September 2021) <<https://www.bath.ac.uk/announcements/government-inaction-on-climate-change-linked-to-psychological-distress-in-young-people-new-study/>>

¹³ Nick Kilvert, 'NSW and Queensland flooded the same week a major climate report was released. We need to talk about it', ABC Science (Analysis article, 7 March 2022) <<https://www.abc.net.au/news/science/2022-03-07/climate-change-floods-storms-weather-time-to-talk/100882016>>

¹⁴ Australian Human Rights Commission, *Children's Rights Report 2019* (Report, 2019) 196 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>>.

¹⁵ Office of the Advocate for Children & Young People, *Children & young people's experience of disaster*, (Report 2020) 30 <[https://f.hubspotusercontent20.net/hubfs/522228/docs/ACYP-children-and-young-peoples-experience-of-disaster-2020_\(160720\).pdf](https://f.hubspotusercontent20.net/hubfs/522228/docs/ACYP-children-and-young-peoples-experience-of-disaster-2020_(160720).pdf)>

¹⁶ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 171 (entered into force 2 September 1990) art 12 <<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>.

¹⁷ Guy Barnett, 'Helping Tasmanian children and young people engage with our renewable energy future', Tasmanian Government (Media release, 22 September 2020) <https://www.premier.tas.gov.au/site_resources_2015/additional_releases/helping_tasmanian_children_and_young_people_engage_with_our_renewable_energy_future>

¹⁸ Federal Court of Australia, *Sharma by her litigation representative Sister Marie Brigid Arthur v Minister for the Environment (No 2)*, (8 July 2021) 2.

¹⁹ Youth Verdict <<https://www.youthverdict.org.au/>>

²⁰ Australian Human Rights Commission, *Children's Rights Report 2019* (Report, 2019) 196 <<https://humanrights.gov.au/our-work/childrens-rights/publications/childrens-rights-report-2019>>.

²¹ World Health Organization, *Climate change and health* (Fact sheet, 30 October 2021), <<https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>>

²² *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) arts 5, 10, 11(2), 18–19, 27–29, 32(2), 41, 46 <<http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>>

²³ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, UN Doc A/RES/61/295 (13 September 2007) annex, Preamble 16, 17, arts 4, 5 <<http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>>

²⁴ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 447, <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>>

²⁵ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (Report, 2020) 135-136, <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>>