

Your Ref:
Our Ref: 888

3 May 2021

Independent Review of the Climate
Change (State Action) Act 2008
Jacobs Group
100 Melville Street
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By email: ConsultationTasmania@jacobs.com

To whom it may concern

Re: Discussion Paper on Tasmania's Climate Change Act - Independent review of the Climate Change (State Action) Act 2008

Thank you for the opportunity to consider and respond to the Tasmania's Climate Change Act Discussion Paper (Discussion Paper) as part of the independent review of the *Climate Change (State Action) Act 2008* (the Act).

The Discussion Paper seeks feedback to inform the third independent review of the Act.

Role of the Commissioner for Children and Young People

The Commissioner for Children and Young People is an independent statutory office established under the *Commissioner for Children and Young People Act 2016* (CCYP Act).

The Commissioner's functions, which are set out in section 8(1) of the CCYP Act, include:

- advocating for all children and young people in the State generally
- researching, investigating and influencing policy development into matters relating to children and young people generally
- promoting, monitoring and reviewing the wellbeing of children and young people generally
- promoting and empowering the participation of children and young people in the making of decisions, or the expressing of opinions on matters, that may affect their lives
- assisting in ensuring the State satisfies its national and international obligations in respect of children and young people generally.



In performing these and other functions under the CCYP Act, the Commissioner is required to do so according to the principle that the wellbeing and best interests of children and young people are paramount and must observe any relevant provisions of the United Nations *Convention on the Rights of the Child* (CRC).¹

The Commissioner is required to give special regard to the needs of children and young people who are vulnerable or disadvantaged for any reason. The Commissioner's work must also be performed according to the principle that the views of children on all matters affecting them should be given serious consideration and taken into account and that children are entitled to live in a caring and nurturing environment and to be protected from harm and exploitation.²

The Commissioner may make recommendations in respect of the effects of any legislation, proposed legislation, documents, government policies, or practices or procedures, or other matters relating to the wellbeing of children and young people.³

Consistent with my functions and powers as Commissioner for Children and Young People, my comments below focus on matters relevant to the promotion of the rights and wellbeing of children and young people in Tasmania.

Background

As noted in the Discussion Paper, the purpose of the Act is to assist Tasmania to address the challenges of climate change and to contribute to broader national and international responses to those challenges.

The Act provides the legislative framework in Tasmania for action on climate change. Its primary objectives are to set and support action to achieve a target for greenhouse gas emissions reduction. The Act also addresses climate change adaptation through its objects, although there are no specific targets, regulations or reporting requirements for this theme.

A four-yearly independent review cycle is incorporated into the Act. Responses to the Discussion Paper will inform the third independent review of the Act.

Comment

"The adults are going to pass away sooner than us and we are going to be left with their decisions. They have to start involving us in these decisions now."

(CCYP Ambassador, 2021)

It is widely acknowledged that the rights and wellbeing of children are disproportionately affected by climate change, and the rights of children in vulnerable situations and future generations are even more affected.⁴ However, despite the disproportionate effects of

¹ CCYP Act, s3(1).

² CCYP Act, s3(2).

³ CCYP Act, s11(2)(d).

⁴ Office of the United Nations High Commissioner for Human Rights (2017). *Summary of the panel discussion on the adverse impact of climate change on States' efforts to realize the rights of the child and related policies, lessons learned and good practices*. [A/HRC/35/14 - E - A/HRC/35/14 -Desktop \(undocs.org\)](#); World Health Organization (2017). *Inheriting a sustainable world? Atlas on children's health and the environment*. [Inheriting a sustainable world: Atlas on children's health and the environment \(who.int\)](#).



climate change on their lives now and in the future, Tasmanian children and young people have largely been excluded from decision-making processes to prevent, mitigate, and remedy the effects of climate change. In my consultations and discussions with children and young people around Tasmania, it is clear they are very aware of the impacts of climate change on their lives and their rights, as well as the lack of mechanisms to allow their participation in climate change policy decision-making processes. Some examples of quotes and analyses of my discussions with children and young people on the topic of climate change and the environment can be found here:

- [Future Tasmania](#)
- [Listening to Children Report 2019](#)

In 2017, the Office of the United Nations High Commissioner for Human Rights (OHCHR) undertook an analytical study of the impacts of climate change on children including the relationship between climate change and the rights of the child. In its [report](#) of that study, the OHCHR examined the key impacts of climate change on children and the human rights obligations and responsibilities of States and other actors, including the elements of a child rights-based approach to climate change policies.

The OHCHR recommended, inter alia:

57. A child-rights based approach to climate change requires all relevant actors to take steps to ensure children's rights policy coherence, empower children to participate in climate policymaking, guarantee children access to remedies for climate harm, better understand the impacts of climate change on children and mobilize adequate resources for child rights-based climate action. When pursuing these objectives, the particular needs of those children most vulnerable to climate change and its impacts must be taken into account.⁵

In 2019, the UN Committee on the Rights of the Child (the Committee) emphasised the effects of climate change on the rights of children in the context of its periodic review of Australia's progress to implement the *Convention on the Rights of the Child* (CRC). In its concluding observations, the Committee 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; and
- Promptly take measures to reduce its emissions of greenhouse gases, establishing targets and deadlines to phase out the domestic use of coal and its export, and accelerate the transition to renewable energy, including by committing to achieve 100 per cent renewable energy in the electricity sector.⁶

⁵ UN Office of the High Commissioner for Human Rights (2017), Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child : report of the Office of the United Nations High Commissioner for Human Rights, [A/HRC/35/13 - E - A/HRC/35/13 -Desktop \(undocs.org\)](#)

⁶ Committee on the Rights of the Child (2019), *Concluding observations on the combined fifth and sixth periodic reports of Australia*, CRC/C/AUS/CO/5-6.

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsk5X2w65LqiRF%2FS3dwPS4NWFNCtCrUn3IRntjF11P2gZpa035aKkorCHAPJx8blZmDed5owOGcbWFeosUSqDTFKNqA7hBC3KiwAm8SB0665E>



Principles

Children and young people are the stakeholders most likely to bear the burden of climate change and to be affected by the outcomes of any current or future policies implemented to address it. I strongly recommend that the Act incorporate principles acknowledging the relationship between climate change, children's rights and wellbeing. This would ensure that all government decision-making processes and outcomes relating to climate change and the environment are consistent with the best interests of children and future generations. This approach would align with the recommendation made by the Premier's Economic and Social Recovery Advisory Council (PESRAC) in 2021 for the development of a sustainability vision and strategy for Tasmania which acknowledges the importance of placing a strong focus on environmental considerations and ensuring decisions account for the interests of future generations (recommendation 40). Further, this approach would bring the Act in line with our international obligations relating to children's rights. Principles consistent with this approach should include, but not necessarily be limited to, the following:

The participation principle

I strongly recommend the Act be amended to include a principle explicitly acknowledging the right of children and young people under the age of 18, individually and as a group, to be heard and to participate in decision-making processes for climate policy, including the development of Action Plans.

I note that section 18 of the Act, which provides for the four-yearly review of the Act, includes a requirement (see section 18(3)) that the Minister is to take reasonable steps to ensure that the review is carried out in consultation with relevant business, scientific, environment and community bodies. This provision should be amended to specifically acknowledge the need to consult with children and young people aged less than 18 years.

A participation principle would necessarily require the provision of climate change education, age-appropriate information (to ensure informed participation and decision making) and age-appropriate, best practice, ethical consultative mechanisms. This is in line with key recommendations of the OHCHR. I note also that the United Nations Committee on the Rights of the Child has recommended Australia develop toolkits for public consultation with children on issues that affect them, including on climate change and the environment.⁷

The intergenerational principle

Acknowledging that climate change and other policy decisions will shape climate for future generations, I strongly encourage incorporation into the Act of the intergenerational principle as espoused by the United Nations Framework Convention on Climate Change (UNFCCC), a convention to which Australia is a signatory.

⁷ In its *General Comment 20 (2016) on the implementation of the rights of the child during adolescence*, the Committee also highlights the need to tackle climate change and environmental degradation through suitable education and support (para 12). <https://www.refworld.org/docid/589dad3d4.html>



This principle would ensure political accountability to children and future generations that the impact of climate change will be mitigated and/or reversed to ensure that the health, diversity, and productivity of the environment is maintained and/or improved for future generations. This principle could also be enshrined within the Act through provisions, for example, that would require relevant ministers to disclose and justify the impact of policies on children and future generations, and provisions that require greater consultation and representation of children and young people in the development of climate policy.

Further, the Act could also require that children and young people are appraised – in age appropriate language – of risks associated with projected climate change that may occur within their lifetime or that of future generations. This would further bolster intergenerational equity as well as the ability of today’s children and young people to exercise their right to participate in an informed manner in climate change policy making.

Monitoring and reporting

The Act should include provisions to require monitoring and reporting on the impacts of climate change on the rights and wellbeing of children in Tasmania, as well as progress to mitigate those impacts. These monitoring and reporting provisions would align with recommendations of the OHCHR that States, *‘improve understanding of the relationship between climate change and children’s rights by collecting disaggregated data, conducting impact assessments, promoting intersectoral cooperation, and establishing consultative and reporting mechanisms focussed on the rights of children’*.⁸

Conclusion

As should be apparent from the above, in this comment I have not responded to all matters raised in the Discussion Paper released as part of the review of the Act. Rather, my focus is on ensuring we understand the importance of acknowledging the disproportionate effects of climate change on our children and young people and the crucial need to provide them with the opportunities and means to engage in and influence decision-making processes which inform Tasmania’s climate policy.

I am available to discuss my comments in more detail and thank you for the opportunity to contribute to the review process.

Yours sincerely

Leanne McLean
Commissioner for Children and Young People

⁸ OHCHR, Climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13), <https://www.ohchr.org/Documents/Issues/ClimateChange/RightsChild/ChildrenOnePager.pdf>