

## Federal Court finds Novel Climate Duty of Care Owed Towards Children

### **Introduction**

In what has been hailed as a landmark decision and a world first, the Federal Court of Australia ruled in *Sharma v Minister for the Environment* [2021] FCA 560 that the Federal Minister for the Environment owes a novel duty of care to Australian children not to cause them physical harm in the form of personal injury arising from climate change.

The ground-breaking class action was brought by eight Australian children in 2020 against the Minister for the Environment seeking declaratory and injunctive relief in accordance with the law of negligence. The children sought recognition of the Minister's duty to exercise her powers with reasonable care under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act) and to prevent the Minister from approving the Vickery Coal Mine Extension Project as a result. The Extension Project is expected to result in 100 million additional tonnes of carbon emissions into the Earth's atmosphere.

### **The Submissions**

The Children submitted that the salient features of the relationship between the Minister and the Children support the recognition of a duty of care and that the type of harm relevant to the duty is mental or physical injury, including ill-health or death, as well as economic and property loss. The Children asserted that they will likely suffer those injuries as a result of their likely exposure to climatic hazards such as more intense bushfires, flooding and cyclones driven by the further carbon emissions into the Earth's atmosphere. The children alleged that this harm is a known, foreseeable risk of harm, which the Minister for the Environment can control but the Children cannot.

The Minister for the Environment denied the existence of a duty of care and denied that the injury from the approval of the Extension Project as alleged by the Children is reasonably foreseeable.

### **The Decision**

The Honourable Justice Bromberg presided over the proceedings and highlighted the grim reality that *"one million Australian children are expected to suffer at least one heat-stress episode serious enough to require acute care in a hospital' and 'many thousands will suffer premature death from either heat-stress or from bushfire smoke"*. (paragraph 291 of the Judgment)

His Honour held that *"by reference to contemporary social conditions and community standards, a reasonable Minister for the Environment ought to have the Children in contemplation when facilitating the emission of 100 Mt of Co2 into the Earth's atmosphere."* (Paragraph 491 of the Judgment)

His Honour recognised that the Minister for the Environment owes a duty to exercise reasonable care when exercising her powers in relation to the Extension Project *"to avoid causing personal injury or death to persons who were under 18 years of age and ordinarily resident in Australia at the time of the commencement of this proceeding arising from emissions of carbon dioxide into the earth's atmosphere."*

The Children were therefore able to establish that the Minister has a duty to take reasonable care to avoid causing personal injury to the Children when deciding, under s 130 and s 133 of the EPBC Act, to approve or not approve the Extension Project.

This decision already marks a significant and important shift in the legal and political landscape with respect to climate action and, if upheld on appeal, this decision could have far-reaching ramifications for business, legal and political decision-making, as well as society at large.

As Justice Bromberg poignantly observes:

*“It is difficult to characterise in a single phrase the devastation that the plausible evidence presented in this proceeding forecasts for the Children. As Australian adults know their country, Australia will be lost and the World as we know it gone as well. The physical environment will be harsher, far more extreme and devastatingly brutal when angry.*

*As for the human experience – quality of life, opportunities to partake in nature’s treasures, the capacity to grow and prosper – all will be greatly diminished. Lives will be cut short. Trauma will be far more common and good health harder to hold and maintain.*

*None of this will be the fault of nature itself. It will largely be inflicted by the inaction of this generation of adults, in what might fairly be described as the greatest inter-generational injustice ever inflicted by one generation of humans upon the next.*

*To say that the Children are vulnerable is to understate their predicament.”* (paragraphs 293-294 of the Judgment)

Read the full judgment here:

<https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/online-files/minister-for-the-environment-v-sharma/vid-389-of-2021-filed-documents/judgment-2021FCA560.pdf>