

Article Information

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Can approval of a coal mine amount to a breach of a duty of care owed to Australian Children?

A recent Federal Court decision brought on behalf of eight Australian children found that the Minister for the Environment has a duty to take reasonable care to avoid causing personal injury to children when deciding whether or not to approve the Whitehaven Coal mine expansion under the *Environment Protection and Biodiversity Conservation Act*.

On 27 May 2021, in the case of *Sharma by her litigation representative Sister Marie Bridgid Arthur v Minister for the Environment* [2021] FCA 560, the Federal Court of Australia delivered a landmark judgment on climate change and its future effects on the lives of young Australians.

While the Court refused the application for an injunction to restrain the Minister from an 'apprehended breach of the duty of care' owed to the children, the Court did find that the Minister had a duty to take reasonable care to avoid causing personal injury to the children of Australia when deciding whether or not to approve the coal mine extension. That duty of care extended to mental or physical injury, including ill-health or death, economic and property loss which is likely to be suffered in the future due to temperature rises and increasing CO2 emissions.

The decision was based on considerable evidence from the Intergovernmental Panel on Climate Change, the CSIRO, the Bureau of Meteorology and ANU Climate Scientist, Will Steffen. The Court highlighted the potential harms demonstrated by the evidence 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 that, 'many thousands will suffer premature death from either heat-stress or from bushfire smoke.'

Conclusion & Key Takeaways

Although the Court did not grant the injunction, the judgment arguably means that, in considering applications for projects with climate impacts, those assessing them will have to give proper consideration, by way of evidence, to the future impacts of the projects on the climate and the health of younger generations.

- The Federal Court of Australia delivered a landmark judgment establishing a duty of care owed by the Minister of Environment to Australia's young.
- The Court, in delivering its decision, recognised the potential impacts of climate change on Australia's youth.