

Federal Court finds Sussan Ley owes duty of care

By Renew Economy

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The Federal Court has ordered that the Federal Environment Minister owes Australia's young people a duty of care to protect them from the potential harms caused by carbon dioxide emissions.

In a [landmark decision](#) that will impact any future project proposing to expand Australia's production of fossil fuels, Federal Court Justice [Mordecai Bromberg](#) said that when exercising powers under the *Environment Protection and Biodiversity Conservation (EPBC) Act*, the Environment Minister had a 'duty to take reasonable care' to 'avoid causing personal injury or death' to Australians under 18 years of age that arose 'from emissions of carbon dioxide into the Earth's atmosphere'.

The [legal proceedings](#) had been brought against Federal Environment Minister [Sussan Ley](#) by a group of eight Australian high school students who sought to pre-empt a decision

by Ley to issue environmental approvals to the expansion of Whitehaven Coal's [Vickery Coal Mine](#).

The decision will compel Ley to consider the potential climate change impacts of the coal mine's expansion when considering its approval under the federal *EPBC Act* and implement suitable measures that would work to mitigate the risk to young people resulting from the increased extraction of coal from the Vickery mine.

The expansion of the mine would allow for an additional 33 million tonnes of coal to be extracted from it. The additional coal production is expected to result in 100 million tonnes of additional greenhouse gas emissions.

The decision will also have wider-reaching implications, impacting upon any project seeking federal environmental approval that could create a 'reasonably foreseeable' risk to young people due to increase carbon dioxide emissions.

High school student [Ava Princi](#) said:

"Throughout the world, countries such as Canada and Ireland have promised no new coal projects. However, Australia remains a global outlier, with no firm plan other than continuing to encourage new fossil fuel projects."

We hope this ruling will be an important step to getting Australia – and the world – on the right path to a safer future for us all.”

Justice Bromberg, however, stopped short of declaring that the duty of care was owed to all young people, including those who resided outside of Australia — meaning Ley may not need to consider the impacts of climate change felt on a global basis.

One of the students, [Anjali Sharma](#), said:

It’s heartbreaking that young people even have to take to the courts to fight for basic protection against the climate crisis, when we’re so obviously facing its impacts right now, with temperatures increasing year upon year and natural disasters taking lives all around the globe.

But after too many years of politicians turning a blind eye, today’s historic ruling will make it harder for them to continue to approve large-scale fossil fuel projects that will only fast track the climate crisis. We are delighted that the law of the land now states that the Government has a duty to avoid causing harm to young people.

In an earlier decision, the Federal Court had indicated that the group of students launching the legal challenge had established that the Minister’s [duty of care existed](#). Shortly after the delivery of that earlier decision, Ley indicated that she [did not agree](#) with the conclusions of the Federal Court.

Lawyers representing the Environment Minister had tried to argue that if a duty of care existed, it only applied to a limited set of established “reasonably foreseeable risks” — covering just bushfires and extreme heatwaves.

However, the Federal Court ruled that while the risks considered by the Environment Minister under the *EPBC Act* did need to be ‘reasonably foreseeable’, they were not limited to just those two risks and could extend to any consequence of climate change that could result in personal injury or death to young Australians.

Justice Bromberg wrote:

'The nature of the risk of harm that the Minister must take reasonable care to avoid is personal injury or death to the Children arising from the emission of carbon dioxide from the burning of coal extracted from the Extension Project.'

A lawyer representing the students, [David Barnden](#), said that the decision now [made clear](#) what responsibilities the Federal Environment Minister has when assessing environment approvals that would expand the extraction of fossil fuels:

Today's historical outcome provides a safe harbour for the Environment Minister to act sensibly to not only protect the environment but to ensure that she does not increase the risk of death and injury to children by approving new coal mines.

It is now law in Australia that people in power have a responsibility to not harm children. We hope this breaks the political deadlock that is condemning young people to a treacherous future.

While the Federal Court denied an additional request from the students for an injunction to be issued that would prevent the Environment Minister from issuing environment approvals to the mine, the court did order that she was required to pay legal costs of the students given their success on the “duty of care” question.

The Federal Court decision is the latest in a recent flurry of legal proceedings that focus on the issue of

climate change.

The decision follows a win by [Greenpeace Australia Pacific](#) in proceedings brought against it by [AGL Energy](#), following the use of the AGL's logo and branding in campaign materials that targeted the energy company for its status as Australia's single largest greenhouse gas emitter.

It also comes as a [legal challenge](#) is launched in New Zealand by a group of 300 climate change concerned lawyers, challenging the process used by the Ardern Government to determine the country's carbon budgets, arguing that the budget was not consistent with limiting global warming to just 1.5 degrees.

The Department of Agriculture, Water and the Environment has been contacted for comment.

What happens when eight teenagers and an 86-year old nun join forces to fight a coal mine? A world-first court ruling declaring the government has a duty of care to protect young people from climate change. That's what! [#TheProjectTV](#) pic.twitter.com/jY1XHMQtKs

— The Project (@theprojecttv) [May 27, 2021](#)

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