

Climate Change, the Rights of Children, and the Duty of Care

Diplomacy Training Programme, Youth Law Australia, Australian Lawyers for Human Rights and the Human Rights Institute Webinar

Dr Noam Peleg, 29 July 2021

Sharma by her litigation represe ntative Sister Marie Brigid Arthur v Minister for the Environment [2021] FCA 560

What was the case about?

The legal framework

The Judgment

Duty of Care and children

The Best Interests Principle

Climate Justice litigation around the world

Article 3 as a Threefold Concept

Substantive Rights

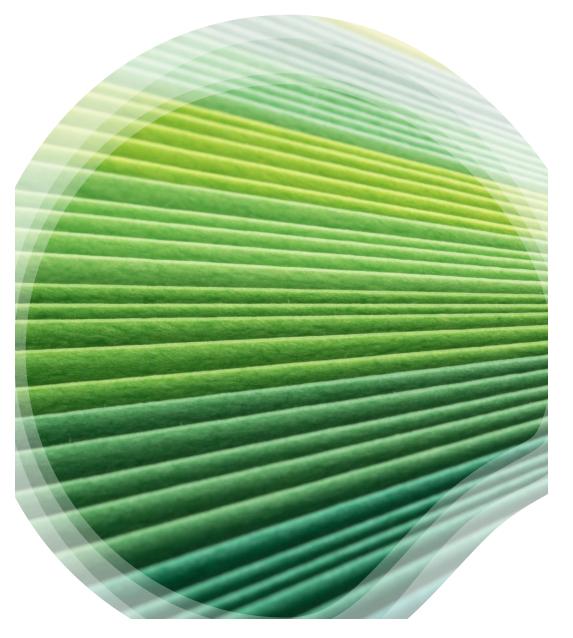
'The right of the child to have this or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision...'

A Fundamental Interpretative Legal Principle 'If a legal principle is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen'

A Rule of Procedure

Where a decision will affect a child (or children), the decision-making process must include evaluation of the impact of the decision, with the decision maker demonstrating how the BI have been taken into account.

UNCRC, General Comment no 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14



General Principles of the UN Convention on the Rights of the Child

Article 2 – the right to non discrimination

Article 3 – the principle of the best interests of the child

Article 6 – the right to life, survival and development

Article 12 – the right to participation

Source: UN Committee on the Rights of the Child, *General Comment no 5 (2003) General measures of implementation of the convention on the rights of the child*, 27 November 2003, CRC/GC/2003/5

Climate Change Litigation around the world - recent examples

- Netherland 19/00135 The State Of the Netherlands (Ministry of Economic Affairs and Climate Policy) and Stiching Urgenda (20 December 2019)
- Germany Constitutional Court decision BvR 2656/18
- Case No. 39371/20 Cláudia Duarte Agostinho and others v Portugal and 33 other States (submitted 7 September 2020).
- Greta Thunberg and others Communication to the UN Committee on the Rights of the Child (2020).