



Environmental
Defenders Office

A Healthy Environment is a Human Right:

Summary Report





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1 Introduction

All human rights ultimately depend on a healthy environment. It was recognised 50 years ago that the environment is essential to humanity's wellbeing and to the enjoyment of basic human rights. It is recognised today that the triple planetary crises of climate change, biodiversity loss and pollution pose the *'single greatest challenge to human rights of our era'*. On 28 July 2022, the right to a healthy environment received universal recognition when the UN General Assembly passed a landmark resolution reaffirming recognition of the right as a human right.

The 2021 Australia State of the Environment Report identifies that, in a rapidly changing climate, with unsustainable development and use of resources and declining biodiversity, the general outlook of Australia's environment is poor and deteriorating. As stated in the report, *'[e]nvironmental degradation is now considered a threat to humanity, that could bring about societal collapses with long-lasting and severe consequences'*.¹

It is time to enshrine the right of all Australians to live in a clean, healthy and sustainable environment in law.

The Environmental Defenders Office (EDO) has advocated for the recognition of the human right to a clean, healthy and sustainable environment (the **'right to a healthy environment'**) in Australia for 20 years, since a Bill of Rights was first considered for the Australian Capital Territory (ACT) in 2002.

We have published a national report on the right to a healthy environment in Australia: ***A Healthy Environment is a Human Right***. Our report addresses what the right to a healthy environment is and its legal status in Australia, why we consider Australian governments should recognise the right to a healthy environment in our laws, and different options for the right to be recognised in Australian law.

The Special Rapporteur on Human Rights and the Environment (**Special Rapporteur**) has stated that the right to a healthy environment is *'an idea whose time has come'* and that implementation of the right will optimally begin with legal recognition.²

Our report makes four recommendations for the Australian government to support recognition of the right to a healthy environment in international law and for all levels of government to enshrine the right to a healthy environment in Australian law.

This Summary Report outlines the key findings from our national report.

2

What is the Right to a Healthy Environment?

It is important to acknowledge that the foundations of the right to a healthy environment come from a number of cultural knowledges and traditions of Indigenous peoples around the world, including First Nations Peoples,³ which have existed in Australia for over 60,000 years. The right to a healthy environment recognises that all humans have the human right to live in a clean, healthy, and sustainable environment.

The Special Rapporteur defines the right to a healthy environment as being comprised of six substantive elements:⁴ the right to **clean air**, the right to a **safe climate**, access to **safe drinking water and sanitation**, the right to healthy biodiversity and ecosystems, the right to live, work and play in **toxic free environments**, and the right to **healthy and sustainably produced food**. However, this list is not exhaustive and will evolve as our understanding of human rights law as it relates to a healthy environment evolves.

For example, the right of First Nations Peoples to carry out cultural obligations to look after Country and be with Country is not captured in the Special Rapporteur's list of substantive elements. However, this right is critical to keeping Country not only healthy but also happy as a living entity, and is therefore intrinsic to the notion of a healthy environment from First Nations perspectives. This right should also be recognised as a substantive element of the right to a healthy environment.

The Special Rapporteur recognises that the substantive elements must be accompanied by corresponding procedural elements, without which it is not possible to achieve recognition of substantive rights.⁵ Procedural elements of the right to a healthy environment are the **right to access environmental information**, the **right to participate in environmental decision-making**, and **access to justice for environmental harms**.

The Special Rapporteur has also identified 16 Framework Principles on Human Rights and the Environment (**Framework Principles**).⁶

The Framework Principles represent best practice for States to implement their human rights obligations as they relate to the environment. The Framework Principles are derived from obligations that States already have under international human rights treaties and other sources of international law.⁷ The first two Framework Principles are that States should ensure a healthy environment in order to respect, protect and fulfil human rights (Principle 1), and that States should respect, protect and fulfil human rights in order to ensure a healthy environment (Principle 2).

The right to a healthy environment can be expressed in a variety of ways. For example, the Canadian Senate recently passed amendments to its national environmental protection legislation that will impose a duty on the Canadian government to '*exercise its powers in a manner that protects the environment and human health, including the health of vulnerable populations*' and to '*protect the right of every individual in Canada to a healthy environment*'.⁸ In Colombia, the Constitution provides that '*[e]very individual has the right to enjoy a healthy environment*'.⁹ In South Korea, the Constitution recognises that '*[a]ll citizens have the right to a healthy and pleasant environment*', and imposes a duty on the State and all citizens to endeavour to protect the environment.¹⁰ In Fiji, the Constitution recognises that '*[e]very person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations*'.¹¹

In our report, we provide more examples of how the right to a healthy environment has been expressed in other countries.



3

What is the Legal Status of the Right to a Healthy Environment in Australia?

The right to a healthy environment is currently not expressly recognised in any federal, state or territory legislation in Australia.

The first positive step towards recognition of the right in Australia was taken in February 2022 by the ACT Legislative Assembly, which passed a motion to investigate including the right to a healthy environment in the ACT's *Human Rights Act 2004*. There has been other support at a sub-national level. For instance, in 2007, the Tasmania Law Reform Institute recommended that the right to a safe environment and to the protection of the environment from pollution and ecological degradation be included in a Tasmanian charter of human rights.¹²

The right to a healthy environment is not a new human right. The right is recognised in international law in the following ways:

1. **The right to a healthy environment has been recognised as a standalone human right.** Fifty years ago, in 1972, the right was recognised in the Stockholm Declaration, the first principle of which states that humanity '*has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being*'.¹³ In October 2021, the UN Human Rights Council (**HRC**) recognised that the right to a clean, healthy, and sustainable environment is a human right that is important for the enjoyment of human rights.¹⁴ Most recently, in a landmark resolution on 28 July 2022, the UN General Assembly reaffirmed recognition of the human right to a clean, healthy, and sustainable environment.¹⁵ The resolution passed with an overwhelming majority – with Australia voting in favour with another 160 UN Member States.
2. **The right to a healthy environment has been recognised in a growing body of environmental human rights law as a precondition to the enjoyment of other human rights.** At international law, human rights are protected under several international human rights treaties including the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on*

Economic, Social and Cultural Rights (ICESCR). These treaties protect rights such as the rights to life, health, water, food, housing, culture, and home and private life. There are currently no international human rights treaties that expressly include the right to a healthy environment. However, international and regional courts and tribunals, UN treaty bodies and inter-governmental bodies have considered several matters where other human rights have been applied to environmental issues. These matters have successfully established that there is an explicit link between degradation of the environment, and its impact on people's enjoyment of a wide range of human rights. As a result, there are now numerous decisions, recommendations, and reports from international bodies that environmental harm interferes with the enjoyment of other human rights.

Today, more than 80% of UN Member States (156 out of 193 States) recognise the right to a healthy environment either through regional human rights treaties, national constitutions, or domestic legislation. Australia voted with the General Assembly in favour of recognising the right to a healthy environment, however it is currently among the minority 20% of UN Member States (37 States) that do not yet expressly recognise the right in their laws.

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4

Why Recognise the Right to a Healthy Environment?

The right to a healthy environment should be recognised in Australian law as a standalone human right because:

- Australia's current environmental laws do not adequately protect our environment and impacts on our health and wellbeing;
- Australians are experiencing unacceptable levels of harm to our health and wellbeing and to our environment; and
- Australia's current human rights law offers only piecemeal protection of the environment and our health and wellbeing.

Australia has a broad range of environmental laws in place that protect our environment to some extent. However, Australian environmental laws are piecemeal and do not offer comprehensive protection of the environment. The 2021 Australia State of the Environment Report demonstrates that our laws have not done so, finding that '[o]verall, the state and trend of the environment of Australia is poor and deteriorating'.¹⁶ Our environmental laws tend to focus on controlling individual developments and managing our use of natural resources and not on cumulative impacts, nor on restoration or increasing health and wellbeing. Australians continue to witness unacceptable levels of harm to our physical and mental health and to our natural environment, including through toxic pollution, natural disasters driven by climate change, destruction of First Nations cultural heritage, and losses of our iconic and native species. Without the human right to a healthy environment, there are no laws in Australia that provide environmental benefits as a human right.

Our existing environmental laws – broad in subject matter though they may be – are not doing enough to fulfill our right to a healthy environment. This is broadly recognised, with national reviews in 2020¹⁷ and 2021¹⁸ both finding that we urgently need to change and strengthen environmental laws to address trajectories of environmental decline.

The 2021 Australia State of the Environment Report identifies that Australians are not immune to the impacts of environmental degradation on our health and wellbeing:

- the competition for land area in Australia caused by urban sprawl, combined with the impacts of climate change, is putting increasing pressure on fresh food provision and security;
- water quality is declining in many areas due to increased salinity, algal blooms, bushfire ash run-off and pollutants;
- Australia's air quality in general is good but is deteriorating, and air quality is experienced differently by certain communities - for example, people living near power stations and industrial facilities, in urban centres and along transport corridors generally live with poorer air quality, which will be further exacerbated by climate change;
- there is no 'safe' level of air pollution, particularly for sensitive populations exposed to ozone or particulate matter, and that in Australia in 2015, 2,566 deaths (1.6% of all deaths in Australia) were caused by air pollution;
- climate change impacts – including from heatwaves, dust levels, and extreme weather events like cyclones, bushfires and floods – are increasingly affecting human wellbeing, particularly for overburdened people and communities who are at greater risk of harm from such impacts, for example, the elderly, those with underlying health conditions, pregnant women and children are more susceptible to risk from exposure to pollutants in bushfire smoke and heat exposure; and
- degradation to Country and destruction of First Nations heritage – including cultural landscapes and other intangible heritage – is detrimental to First Nations Peoples' physical, mental and spiritual health and wellbeing.¹⁹

Australia has laws that protect some – but not all – human rights. Australia has ratified seven out of nine main international human rights treaties, including the ICCPR and the ICESCR. However, at a domestic level, Australia does not have a federal charter or bill of human rights – and is in fact the only Western democracy without one.²⁰ At the national level, Australia has a *Australian Human Rights Commission Act 1986* (Cth) and anti-discrimination legislation, such as the *Racial Discrimination Act 1975* (Cth). These implement Australia’s international human rights obligations in those areas, but tend to focus narrowly on discrimination and do not provide legal remedies or recourse for human rights violations outside those narrow frameworks. Three state and territory governments – the ACT, Victoria and Queensland – have enacted human rights legislation, which protect human rights of people who live in those jurisdictions but only in relation to laws and decisions in those jurisdictions and only in respect of the legislated rights, which tend to be civil and political rights. As evidenced by this, while there are some protections of human rights, it is piecemeal. Our human rights are not fulsomely protected in Australia’s current legal system.

The human right to a healthy environment may be recognised as a precondition to human rights that are protected under current Australian human rights law. However, this of itself is not sufficient. The application will be piecemeal, ad hoc, and dependent on case-by-case explanation of how environmental harm interferes with the enjoyment of specific rights, and the application of the law by individual decision-makers.

By contrast, expressly recognising the right to a healthy environment as a standalone right in Australian law would provide better certainty and protection of Australians’ rights. This is because:

1. The right to a healthy environment protects all components of the environment, including air, water, soil, the atmosphere, biodiversity, ecosystems, cultural heritage, people and communities. The protection it offers is more comprehensive in scope than the piecemeal protection of environmental issues offered by human rights law. It also provides stronger protection of aspects of our lives that are not currently adequately protected by other human rights, such as the right to life or the right to health.
2. As a human right, the right to a healthy environment places individuals and communities at the heart of environmental protection. The right provides clear recourse for public participation in environmental decision-making and for pursuing remedies for environmental harms.
3. Express recognition of the right to a healthy environment builds on Australia’s existing legal frameworks, and is a necessary and logical extension of partial protections that people in Australia already have under current pollution, environmental and natural resource management laws.

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5

Benefits of recognising the Right to a Healthy Environment

Evidence from decades of experience in other countries that already recognise the right to a healthy environment shows that express recognition of the right to a healthy environment will be a catalyst for a number of important benefits.

One of the strongest benefits is that recognition of the right contributes to better human rights and wellbeing outcomes through improved environmental performance, including cleaner air, enhanced access to safe drinking water, and reduced greenhouse gas emissions.

Comprehensive studies on the right to a healthy environment have reached the following conclusions:

- nations with the right to a healthy environment in their constitutions have smaller ecological footprints, rank higher on comprehensive indices of environmental indicators, are more likely to ratify international environmental agreements and have made faster progress in reducing emissions of sulfur dioxide, nitrogen oxides and greenhouse gases than nations without such provisions;²²
- constitutional environmental rights have a positive causal influence on environmental performance;²³ and
- constitutional environmental rights are positively related to increases in the proportion of populations with access to safe drinking water.²⁴

The result is that many millions of people are breathing cleaner air, have gained access to safe drinking water, have reduced their exposure to toxic substances, and are living in healthier ecosystems.

Other benefits include:

- stronger environmental laws and policies;
- improved implementation and enforcement of those laws and policies;
- increased levels of public participation in environmental decision-making;
- increased access to information and access to justice; and
- reduced environmental injustices.

These benefits are particularly important for overburdened people and communities who are at the most at risk of environmental harm, including women, children, people who are financially disadvantaged, First Nations Peoples and communities, older people, people with disabilities, people from a racial or ethnic minority, and people displaced by natural disasters.



6 Recommendations

The right to a healthy environment should be expressly recognised in Australian law. The approach taken should avoid piecemeal implementation and should include action at the international level and domestically at all levels of government. For this reason, we recommend the following:

Recommendation 1: The Australian Government support recognition of the human right to a clean, healthy and sustainable environment (**'right to a healthy environment'**) in international law, including by supporting and ratifying any international treaty mechanisms that includes the right.

Recommendation 2: Legislate the right to a healthy environment in an Australian Charter of Human Rights and Freedoms.

Recommendation 3: Legislate the right to a healthy environment in new and existing state and territory human rights legislation.

Recommendation 4: If the Australian Government does not introduce an Australian Charter of Human Rights and Freedoms, legislate a duty into the *Public Governance, Performance and Accountability Act 2013* (Cth) for Commonwealth officials to act consistently with the right to a healthy environment and make it a mandatory consideration when exercising their functions under federal legislation that affects the environment and human health, in particular human rights and environmental legislation.

*Opposite: Photo by Colin + Meg on Unsplash.
Right: Photo by Manuel Meurisse on Unsplash.*



7 Conclusion

It has been 50 years since the right to a healthy environment was recognised in the Stockholm Declaration. Today, the right to a healthy environment is universally recognised as a human right. The decisions that Australia makes now will determine what the next 50 years will look like. The 2021 State of the Environment Report shows that if Australia continues on the trajectory that we are currently on, *'the precious places, landscapes, animals and plants that we think of when we think of home may not be here for our children and our grandchildren'*.²⁵ It is time that all levels of Australian government enshrine the right of all Australians to live in a clean, healthy and sustainable environment in law.

To read the full report 'A Healthy Environment is a Human Right' please scan QR code:



Top: Photo by Rebecca Parker.

Middle: Photo by Cody Board on Unsplash.

Bottom: Photo by Wexor Tmg on Unsplash.

Opposite: Photo by Toomas Tartes on Unsplash.





“Let us take this step forward into a future we know is possible... to defend and improve the environment for present and future generations.”

Maritza Chan Valverde, Costa Rica's representative to the United Nations, introducing the UN General Assembly resolution recognising the right to a healthy environment.



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