Environmental Defenders Office

Submission to UN Special Rapporteur on Toxics

15 May 2023

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

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Environmental Defenders Office

EXECUTIVE SUMMARY

The work of the EDO is underpinned by an environmental justice and human rights framework. Such a framework recognises that the human rights of certain people and communities are disproportionately impacted by environmental harm and guides EDO to focus on empowering overburdened people and communities to fight for environmental justice. This submission will focus on two overarching issues that Australia must address to ensure the effective management of hazardous toxics to protect its citizens' fundamental human rights. Australia must:

- enshrine in domestic law the right to a healthy environment; and
- reform the National Environmental Protection Measures (**NEPMs**) to reflect best practice health standards, and ensure they are enforceable and enforced.

This submission will provide input on the following thematic issues:

- Australia's failure to implement international human rights and environmental standards into domestic law;
- current cases and issues including key sources of hazardous substances such as mining and their impact on air and water quality; and
- the lack of effective remedies for harm caused by hazardous substances and wastes.

In addition to the below, we adopt our recommendations in our previous report on the status of the human right to a healthy environment in Australia, contained at **Annexure A**.[1]

We provide also at **Annexure B** a summary of case studies from different Australian jurisdictions in which the regulation of pollution has been inadequate to protect communities and environments from surrounding polluting industries.

List of recommendations

Australia must:

1. **enshrine the right to a healthy environment into domestic law;**
2. **urgently reform the *National Environmental Protection Council Acts* to require states and territories to translate the NEPMs into enforceable and enforced subnational law;**
3. **review the NEPMs to ensure they are in accordance with international standards and the best available science;**
   strengthen the NEPM in relation to ambient air quality to bring it in line with the WHO global air quality guidelines (2021); and
   establish a NEPM that guarantees water quality, that is adopted into subnational laws and adequately enforced by regulators.

[1] Environmental Defenders Office Ltd, 'A Healthy Environment is a Human Right: Report on the Status of the Human Right to a Healthy Environment in Australia' (Web Page, July 2022) <https://www.edo.org.au/publication/the-right-to-a-healthy-environment/>.

RECOMMENDATION 1: Australia must enshrine the right to a healthy environment into domestic law.

Australia must legally recognise an explicit, standalone right to a healthy environment, which includes a toxic-free environment in which to live and work.[2] Legislative reform is urgently required to bring Australia in line with the international community, and its international obligations. At minimum, EDO recommends Australia must:

- implement its international commitments into domestic law, including by passing national human rights legislation such as an Australian Charter of Human Rights;
- enshrine the right to a healthy environment in national and subnational legislation; and
- amend existing national legislation[3] to impose an obligation on national officials to act consistently with a right to a healthy environment when exercising functions under national laws.

Why is a right to a healthy environment urgently required?

In Australia, there is no explicit, standalone legal mechanism for overburdened people and communities to enforce the right to live in a clean, healthy, sustainable, and toxic-free environment.[4] Enshrining the right to a healthy environment in federal and state legislation as a standalone right will not only allow for access to remedies and redress, but it will also ensFure that new and amended legislation is scrutinised and assessed for its compatibility with the right to a healthy environment.

Despite being a signatory of several international human rights declarations and conventions,[5] Australia does not have a national bill or charter of human rights and there are limited human rights protections under the Constitution or other national laws.[6] For international treaties to be legally binding in Australia, they must be implemented into domestic law. While some states and territories have human rights laws that protect the rights of people who live in those jurisdictions,[7] unlike most United Nations member states, the right to a healthy environment is not expressly recognised as a standalone right in national or subnational laws in Australia. This is despite Australia supporting the United Nations General Assembly resolution to recognise the right to healthy environment.[8] Failure

[2] David R Boyd, *The right to a clean, healthy and sustainable environment: non-toxic environment – Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/49/53 (12 January 2022).

[3] Such as the *Public Governance, Performance and Accountability Act 2013* (Cth), which imposes other obligations on national officials.

[4] *Environment Protection Act 2017* (Vic) s 21 sets out the principle of equity which provides Victorian citizens are entitled to live in a safe and healthy environment and that people should not be disproportionately affected by harm or risk to human health and the environment. However, this is not a standalone right, rather it is part of the principle of equity to be considered by the entity administering that law.

[5] See, eg, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976)*; Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

[6] See, eg, *Australian Human Rights Commissioner Act 1986* (Cth); *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth); *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth).

[7] *Charter of Human Rights and Responsibilities Act 2006* (Vic) ('Victorian Charter'); *Human Rights Act 2004* (ACT); *Human Rights Act 2019* (Qld).

[8] *The human right to a clean, healthy and sustainable environment*, GA Res 76/300, UN Doc A/RES/76/300 (1 August 2022, adopted 28 July 2022).

to explicitly recognise this right at any level of government in Australia weakens our human rights system, as a healthy environment is a precondition to the enjoyment of many other rights.

Queensland, Victoria and the Australian Capital Territory have introduced their own subnational human rights laws. However, EDO notes:

- these laws fail to recognise and protect a right to a healthy environment. Rather, the laws focus on civil and political rights, with limited protection of economic, social and cultural rights.[9] Decision-makers retain discretion as to whether or not to recognise that these rights are fundamentally interconnected with the enjoyment of healthy environment;
- obligations are only imposed on public authorities,[10] and there are no direct obligations on private corporations to protect human rights when conducting activities that might impact human rights, such as the discharge of pollutants into the environment;[11]
- the ability for people and communities to enforce these rights is extremely limited. Only the Australian Capital Territory has a standalone cause of action for human rights in a court of law[12] – in other jurisdictions, human rights must be 'piggy-backed' onto other claims;[13] and
- where a complaint mechanism is available, inadequate resourcing means that recommendations are severely delayed. For example, the Queensland Human Rights Commission currently has a backlog of over 500 complaints.[14]

Where human rights have been enshrined in subnational law, some judicial bodies have recognised the intrinsic connection between enjoyment of these rights, and the health of the environment[15] (for further discussion, see Annexures A and B).

RECOMMENDATION 2: Australia must urgently reform the *National Environmental Protection Council Acts* to require states and territories to translate the National Environment Protection Measures into enforceable subnational law.

[9] See *Human Rights Act 2004* (ACT) pts 3–3A; *Human Rights Act 2019* (Qld) pt 2, divs 2–3; Victorian Charter (n 7) pt 2.
[10] *Human Rights Act 2004* (ACT) ss 40–40C; *Human Rights Act 2019* (Qld) ss 9–10, 58–60; Victorian Charter (n 7) ss 4, 38–9.
[11] In the Australia Capital Territory, other entities may choose to be subject to the obligations of public authorities, but this is not binding see: *Human Rights Act 2004* (ACT) s 40D. There is no such option under the Queensland or Victorian laws.
[12] *Human Rights Act 2004* (ACT) s 40C(2).
[13] *Human Rights Act 2019* (Qld) ss 59-60; Victorian Charter (n 7) ss 38–9.
[14] Queensland Human Rights Commission, *Shifting the focus: 2021-22 annual report on the operation of the Human Rights Act 2019* (Report, 24 November 2022) 109 <https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0019/41392/Complaints-ShiftingTheFocus_HumanRightsActAnnualReport_2021-22.pdf>.
[15] *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 <https://archive.sclqld.org.au/qjudgment/2022/QLC22-021.pdf>.

In Australia, pollution is regulated by state and territory governments under subnational laws.[16] At the national level, the *National Environment Protection Council Act 1994* (Cth) (**NEPC Act**) provides for the development of NEPMs to provide national standards for pollutants via the National Environment Protection Council (**Council**). The Council was established to ensure that people enjoy the benefit of equivalent protection from air, water or soil pollution and from noise, wherever they live in Australia.[17] However, there is currently no legal requirement to translate the NEPMs into national or subnational law.[18]

This has resulted in uneven implementation of the NEPMs across Australia's 8 state and territory jurisdictions. As illustrated in the case studies in **Annexure B**, the standards contained in the NEPMs are not being adequately translated into enforceable laws and regulations at the subnational level. Instead, the NEPMs are implemented via policy or guidance-type documents which leave decision-makers and regulators significant discretion in granting approvals for polluting activities and imposing conditions which satisfactorily limit the polluting impacts of such activities. This in turn constrains the ability for enforcement action to be undertaken when pollution events do arise.

We recommend that the *National Environmental Protection Council Acts* be reformed to require that NEPM standards be translated into enforceable standards in state and territory legislation. The NEPM standards in turn should require the imposition of conditions on environmental licences and development approvals that limit pollution to well below national standards and incentivise lowering emissions. In pollution hotspots where pollution is not easily attributed to a single point source, airshed or watershed values must be regulated to adequately address the cumulative impacts from localised polluting activities.

RECOMMENDATION 3: Australia must review the National Environment Protection Measures (NEPM) to ensure they are in accordance with international standards and the best available science.

Further, the NEPMs themselves need urgent reform in order to effectively regulate environmental toxics in a manner that fulfills Australia's international human rights obligations.

The current NEPMs are inadequate because:

- the National Environment Protection (Ambient Air Quality) Measure (**Air Quality NEPM**) is outdated: at minimum, the NEPM must be consistent with the World Health Organisation global air quality guidelines (2021) (**WHO Guidelines**);
- there is no NEPM in relation to water or noise;

[16] In Australia, the Commonwealth government has limited powers to make laws with respect to the environment due to its Constitution. However, if Australia has signed an international treaty, our High Court has found the federal government has the power to make national laws that are relevant to the subject matter of that treaty see: *Commonwealth v Tasmania* (1983) 158 CLR 1.
[17] *National Environment Protection Council Act 1994* (Cth) s 3(a).
[18] Ibid s 7(1) which stipulates a broad intention to implement the NEPM subnationally. See also *National Environment Protection Council Act 1994* (ACT); *National Environment Protection Council (New South Wales) Act 1995* (NSW); *National Environment Protection Council (Northern Territory) Act 1994* (NT); *National Environment Protection Council (Queensland) Act 1994* (Qld); *National Environment Protection Council (South Australia) Act 1995* (SA); *National Environment Protection Council (Tasmania) Act 1995* (TAS); *National Environment Protection Council (Victoria) Act 1995* (Vic); *National Environment Protection Council (Western Australia) Act 1996* (WA).

- monitoring systems are inadequate to report breaches as they occur, with the Air Quality NEPM only requiring measurement of pollutants at an 'ambient' level, thus failing to capture the full extent of peaks or hotspots in pollution, entrenching sacrifice zones;[24]
- in overburdened areas where even the Air Quality NEPM standards are regularly exceeded, industrial activities that are significant contributors to air pollution, such as coal mining, continue to be granted permits at a subnational level, further compounding a cumulative issue that is not adequately addressed by conditions imposed on individual licences; and
- compliance with the standards is not adequately enforced and there are limited or no rights for impacted individuals and communities to seek recourse to ensure their basic human rights are protected.

We recommend the Commonwealth, state, and territory governments:

- review the NEPMs to incorporate an exposure-reduction framework which guarantees continual reductions in the emission of pollutants for which there are no safe limits, shifting away from a reliance on threshold pollution limits;[19]
- if thresholds are to be retained, review the NEPM thresholds to ensure they meet and exceed the WHO Guidelines;
- identify and regulate areas worst affected by toxic pollutants, targeting overburdened populations;
- mandate real-time monitoring and accessible warning or alert systems; and
- enforce compliance with the standards with significant penalties for breaches including stop work mandates.

Recommendation 3a: Australia must strengthen the NEPM in relation to ambient air quality to bring them in line with the WHO global air quality guidelines (2021)

The Air Quality NEPM currently sets national ambient air quality standards in Australia. There is a separate NEPM that sets standards for air toxics including benzene, toluene, xylene, formaldehyde and polycyclic aromatic hydrocarbons,[20] however, due to an absence of available data on air toxics, this section will focus on the Air Quality NEPM.

The standards for nitrogen dioxide (**NO_2**), ozone (**O_3**), and sulfur dioxide (**SO_2**) in the Air Quality NEPM were set in 1998 and are overdue for revision. Scientific understanding of the impacts of these air emissions on human health has greatly changed since these standards were put in place.

International and Australian studies show that NO_2, ozone, and SO_2 are non-threshold pollutants, meaning that there is no safe level, or threshold, below which no health effects are observed.[21]

[19] For example, in relation to air quality, emissions of PM2.5, see Graeme R Zosky et al, 'Principles for setting air quality guidelines to protect human health in Australia' (2021) 214(6) *Medical Journal of Australia* 254 ('Zosky et al').

[20] National Environment Protection (Air Toxics) Measure.

[21] Jie Chen and Gerard Hoek, 'Long-term exposure to PM and all-cause and cause-specific mortality: A systematic review and meta-analysis' (2020) 143 *Environment International* 105974: 1–23; Pablo Orellano et al, 'Short-term exposure to particulate matter (PM_{10} and $PM_{2.5}$), nitrogen dioxide (NO_2), and ozone (O_3) and all-cause and cause-specific mortality: Systematic review and meta-analysis' (2020) 142 *Environment International* 105876: 1–15.

These standards and the regulatory frameworks that seek to implement them should therefore encourage continual air pollution emission reductions in Australia.[22]

The Air Quality NEPM sets standards for ambient air quality in relation to the following air pollutants: SO_2, NO_2, O_3, carbon monoxide (**CO**), particles and lead.[23] The measure falls short of the pollutant limits recommended by the WHO global air quality guidelines, as set out in table 1 below.[24]

Item	Pollutant	Averaging period	NEPM Maximum concentration standard	WHO Global Air Quality Guidelines	Dose threshold for health effects[25]
1	Carbon monoxide (CO)	8 hours	9.0 ppm/11.1 mg/m^3 [26]	10 mg/m^3	Unknown
2	Nitrogen dioxide (NO_2)	1 hour 1 year	0.08 ppm/162 µg/m^3 0.015 ppm/30.4 µg/m^3	200 µg/m^3 10 µg/m^3	Unknown ~6–11 ppb/12.16 – 22.28 µg/m^3
3	Photochemical oxidants (as ozone) (O_3)	8 hours	0.065 ppm/137 µg/m^3	100 µg/m^3	Unknown
4	Sulfur dioxide (SO_2)	1 hour 1 day	0.10 ppm/282 µg/m^3 (0.075 ppm/212 µg/m^3 from 1 January 2025[27]) 0.02 ppm/56.4 µg/m^3	N/A 40 µg/m^3	0.2–0.4 ppm/ 564 – 1130 µg/m^3 Unknown
5	Lead (Pb)	1 year	0.50 µg/m^3	No safe limit	None
6	Particles as PM_{10}	1 day 1 year	50 µg/m^3 25 µg/m^3	45 µg/m^3 15 µg/m^3	None
7	Particles as $PM_{2.5}$	1 day 1 year	25 µg/m^3 (20 µg/m^3 from 1 January 2025[28]) 8 µg/m^3 7 µg/m^3 from 1 January 2025[29]	15 µg/m^3 5 µg/m^3	None

Table 1: comparison of the NEPM standards against the WHO Global Air Quality Guidelines.

While the 2016 and 2021 amendments to the Air Quality NEPM did incorporate reductions in maximum concentration standards for SO_2 and $PM_{2.5}$, these measures are inadequate because:

[22] Zosky et al (n 31) 254.
[23] Air Quality NEPM (n 22) sch 2 table 1.
[24] Ibid. See also World Health Organisation, *Global Air Quality Guidelines: Particulate Matter ($PM_{2.5}$ and PM_{10}), ozone, nitrogen dioxide, sulfur dioxide and carbon monoxide* (Guidelines, 22 September 2021).
[25] Zosky et al (n 31) 255, referring to table and sources cited therein.
[26] Converted using Lenntech, Converter Parts per Million (ppm) (Web Page) <https://www.lenntech.com/calculators/ppm/converter-parts-per-million.htm>.
[27] Air Quality NEPM (n 22) sch 2 table 1A.
[28] Ibid s 6(c), sch 2 table 2.
[29] Ibid.

- there are only exposure reduction targets for SO_2 and PM2.5, with no equivalent for CO, NO_2, O_3, Pb, or PM_{10}, many of which have unknown or no safe exposure thresholds for health effects,
- the Air Quality NEPM only provides for one reduction, rather than establishing a framework for staged and continuous reductions,
- the reduction will only commence from 1 January 2025, and
- the new standards will in any event exceed the WHO Global Air Quality Guidelines.

In relation to $PM_{2.5}$, leading air pollution expert Dr Gabriel da Silva has stated: 'The national $PM_{2.5}$ standards…do not correspond to levels at which exposure to this pollutant is safe; instead, they represent a level of risk that is at present deemed acceptable'.[30]

The case studies in **Annexure B**, provide further evidence that the failure to adequately regulate pollutants is leading to significant environmental and community impacts around Australia.

Recommendation 3b: Australia must establish a NEPM that relates to water quality, that is adopted into subnational laws and adequately enforced by regulators.

There is no NEPM that relates to water quality. Presently, there exist only non-mandatory guidelines in relation to drinking water and other water-related issues, underpinned by the National Water Quality Management Strategy, all of which are intended to guide the work of the relevant state-based agencies.[31] The National Water Initiative, Australia's blueprint for national water reform agreed to by all States and Territories, fails to ensure drinking water security in remote Australian communities.[32] EDO recommends a new NEPM be urgently developed to mandate environmental standards in relation to water quality and specifically implement the Australian Drinking Water Guidelines and Guidelines for Groundwater Quality Protection in Australia.

Please see **Annexure B** for case studies relevant to water pollution from McArthur River Mine and the regulation of safe drinking water. Both examples in the Northern Territory highlight the need for enforced national standards to ensure access to safe drinking water, which is a basic human right.[33]

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[30] Independent Expert Report of Dr Gabriel Da Silva, Submission to the Independent Planning Commission of NSW, *Mt Pleasant Optimisation Project SSD 10418* (22 July 2022) 5.

[31] See, eg, Commonwealth of Australia, *Australian Drinking Water Guidelines 6 2011* (Guidelines, September 2022) <*https://www.nhmrc.gov.au/about-us/publications/australian-drinking-water-guidelines*>; 'Guidelines for water quality management', *Water Quality Australia* (Web Page) <https://www.waterquality.gov.au/guidelines>; National Water Initiative; Commonwealth of Australia, *Guidelines for groundwater quality protection in Australia* (Guidelines, 2013) <https://www.waterquality.gov.au/sites/default/files/documents/guidelines-groundwater-quality-protection.pdf>.

[32] See, eg, Kirsty Howey and Liam Grealy, "Drinking Water Security, the Neglected Dimension of Australian Water Reform" (2021) 25 *Australasian Journal of Water Resources* 2, 111-120.

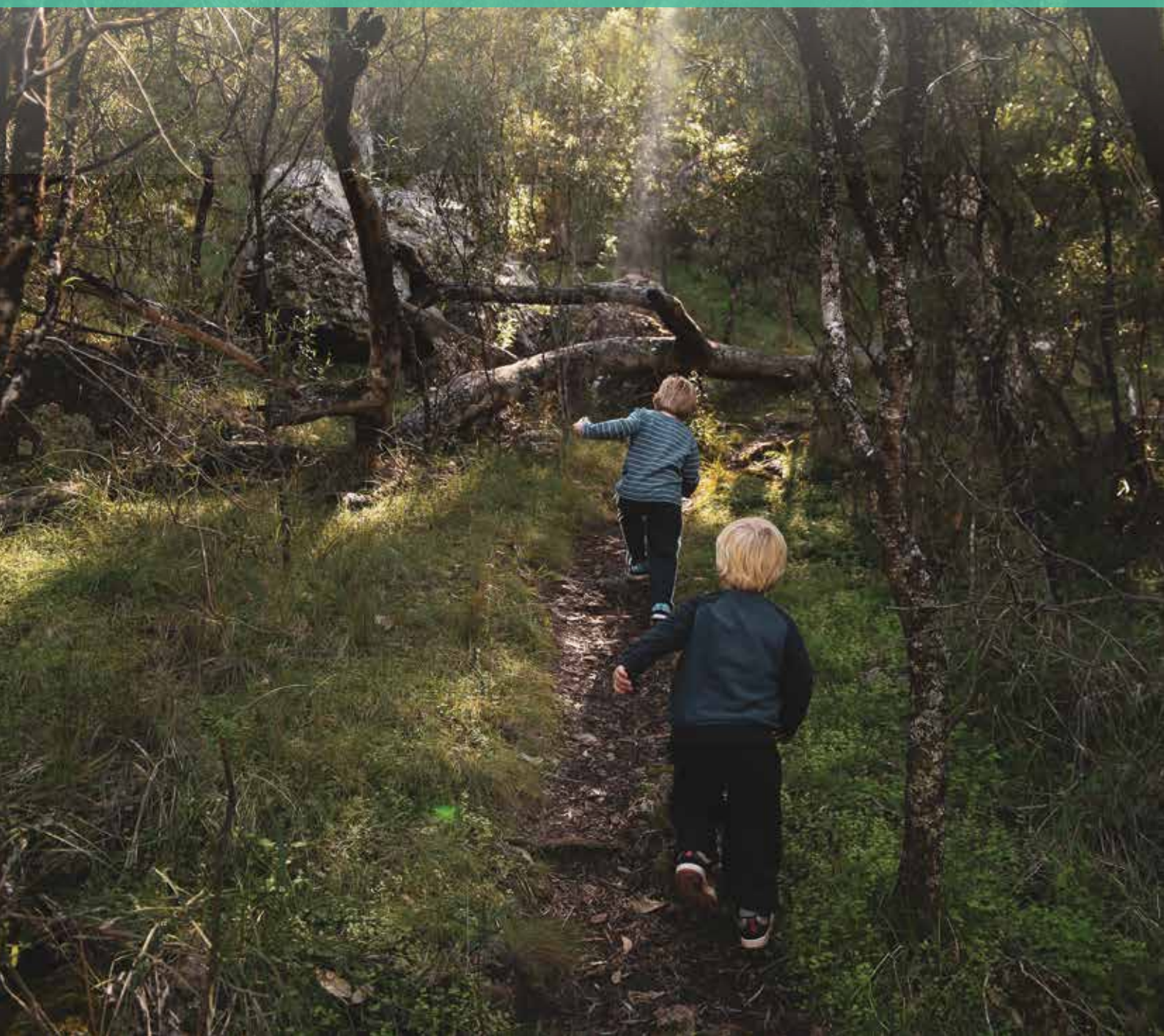
[33] UN General Assembly, The human right to water and sanitation: resolution / adopted by the General Assembly, 3 August 2010, A/RES/64/292.

Annexure A

Environmental Defenders Office

A Healthy Environment is a Human Right:

Report on the Status of the Human Right to a Healthy Environment in Australia



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www.edo.org.au

About Healthy Environment & Justice Program

EDO's Healthy Environment & Justice Program (HEJ Program) is underpinned by an environmental human rights framework. The goal of the HEJ Program is to empower overburdened people and communities to fight for environmental justice.

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Lead authors: Melanie Montalban and Frances Bradshaw

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Acknowledgment of Country

The Environmental Defenders Office recognises the Traditional Owners and Custodians of the land, seas and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging, and aspire to learn from traditional knowledges and customs so that, together, we can protect our environment and cultural heritage through Western law.

A note on Language concerning First Nations

We acknowledge that there is a legacy of writing about First Nations without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. In the domestic context, where possible, we have used specific references. Further, when referring to First Nations in the context of a particular Country we have used the term 'Traditional Owners'. More generally, we have chosen to use the term 'First Nations'. We acknowledge that not all Aboriginal and Torres Strait Island Peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

Foreword

Time for Australia to Recognise the Right to a Healthy Environment

The 1972 Stockholm Declaration sparked dramatic changes not only in environmental law but also human rights law and constitutional law. The bold assertion, in Article 1, that people have *'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'* has been particularly influential.

Today, the right to a clean, healthy and sustainable environment is recognised in law by more than 80 per cent of nations. Unfortunately, Australia is among the shrinking minority of States that does not yet recognise this fundamental right in law. In 2022, this right was the subject of an historic UN resolution confirming that everyone, everywhere has the right to live in a clean, healthy and sustainable environment. Australia voted in favour of the resolution, opening the door to domestic action.

History proves that human rights can be a powerful catalyst for transformative change. Think about the role of equality rights in the abolition of slavery and the emancipation of women. Rights also played a central role in the end of apartheid, the civil rights movement and dramatic improvements in the status of Indigenous Peoples, persons with disabilities and LGBTQ+ persons.

In the face of today's unprecedented global environmental crisis, which has wrought devastation upon people and ecosystems in Australia, it is exciting to contemplate the potentially transformative impact of recognising and implementing the right to a healthy environment.

But what does the right to a healthy environment mean? Decades of experience have established that it means people have the right to clean air, safe and sufficient water, healthy and sustainably produced food, non-toxic environments where they can live, work, study and play, healthy ecosystems and biodiversity, and a safe climate. It also comes with a toolbox of access rights, including access to environmental information, public participation in environmental decision-making, and access to justice if the right to a healthy environment is being violated or threatened. And finally, the interpretation of this right is guided by key human rights principles including prevention, non-regression and non-discrimination.

The key strengths of taking a rights-based approach to the climate, biodiversity and pollution crises include: putting a human face on the problem; focusing on people and communities suffering the most severe impacts; and providing mechanisms that ensure accountability. Bringing human rights into the picture addresses the fundamental weakness of international environmental laws such as the Framework Convention on Climate Change, the Paris Agreement and the Convention on Biological Diversity, which is a glaring lack of enforcement or accountability mechanisms. By uniting international human rights law and international environmental law we create powerful synergies that integrate the best available science with strong tools for compelling governments and businesses to fulfill their commitments.

Because its core requirement is a healthy planet, the right to a healthy environment also reminds us that humans are neither superior to nor separate from the rest of the natural world. DNA analysis confirms that humans are not only related to each other but also related to all other forms of life on Earth. Perpetuating today's hierarchical relationship between humans and nature undermines our efforts to attain a sustainable future.

Implementation of the right to a healthy environment should also accelerate the transitions to renewable energy and a circular economy, two of the most challenging and vital paradigm shifts in all of human history.

Fifty years after the pioneering Stockholm Declaration, the right to a healthy environment has finally gained global recognition. It is time for Australia to recognise this fundamental human right. Every Australian should be able to breathe clean air, drink safe water and eat sustainably produced food. Australia should be free of pollution, with a safe climate and healthy biodiversity and ecosystems. The time is now!

Dr. David Boyd

UN Special Rapporteur on human rights and the environment

July 2022

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Executive Summary

All human rights ultimately depend on a healthy environment. Humans are part of nature and therefore, a healthy environment also contributes to human health.

In recognition of the interdependence between the environment and human health, the UN High Commissioner for Human Rights has described the triple planetary crises of climate change, biodiversity loss, and pollution as the *'single greatest challenge to human rights in our era'*.[1]

Fifty years ago, at the 1972 Stockholm Conference, governments declared that the environment is essential to our *'well-being and to the enjoyment of basic human rights'*[2] and that humanity has a *'fundamental right to... an environment of a quality that permits a life of dignity and well-being'*,[3] which must be safeguarded for present and future generations.[4]

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,[5] after this right was explicitly recognised by the UN Human Rights Council in October 2021.[6] The resolution passed with an overwhelming majority - with Australia voting in favour with another 160 UN Member States. The result is that the right to a healthy environment is now universally recognised as a human right that is important for the enjoyment of other human rights.

However, despite voting in favour of the General Assembly resolution, Australia is among the minority 20% of UN Member States that do not expressly recognise the right to a healthy environment in their laws.

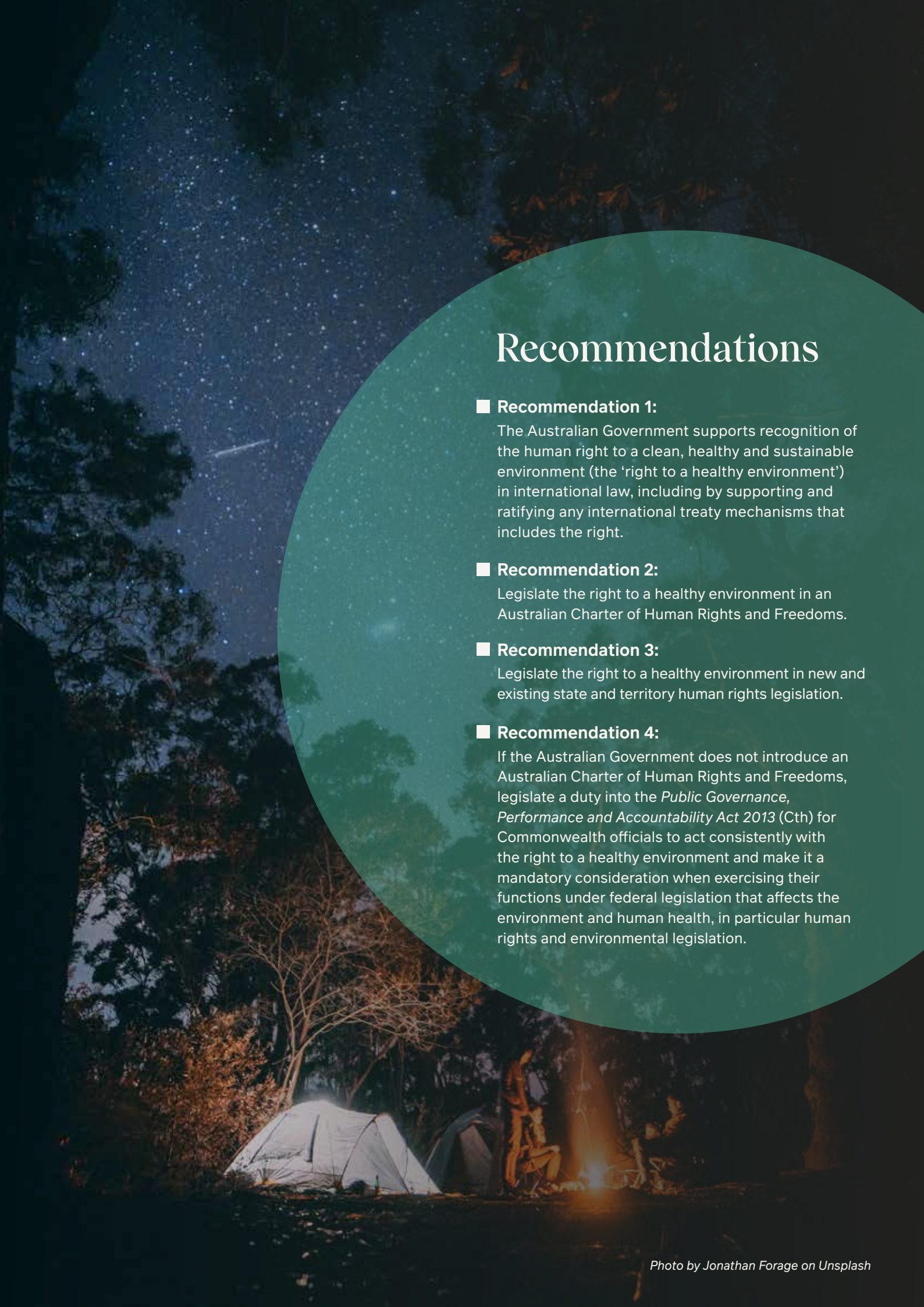
The Environmental Defenders Office (**EDO**) has advocated for the recognition of the human right to a clean, healthy and sustainable environment (the **'right to a healthy environment'**) in Australia for 20 years, since a Bill of Rights was first considered for the Australian Capital Territory (**ACT**)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

In Australia, we have a variety of laws, systems, and processes that protect components of our environment, and our human rights, to some extent. However, Australians are witnessing unacceptable levels of harm to our natural environment and human health from pollution, unsustainable development practices, destruction of significant First Nations' cultural heritage, and climate change. Environmental harm has a disproportionate impact on overburdened people and communities – such as First Nations, culturally and linguistically diverse communities, older people, young people, women, and people with a disability – who are at the most risk of environmental harm, but who are often least responsible for such harm.

It is clear that our existing laws – broad in subject matter though they may be – are not doing enough to fulfill our right to a healthy environment. The 2021 Australia State of the Environment Report and other independent reviews into Australian environmental law – such as Professor Graeme Samuel AC's review into the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) – have identified that stronger environmental laws are urgently needed to address future trajectories of environmental decline.

In this report, we address what the right to a healthy environment is and its legal status in Australia, why Australian governments should recognise the right to a healthy environment in our laws, the benefits of recognising the right to a healthy environment, and how the right can be supported on the international stage and recognised in Australian law. We make **four recommendations**, which are addressed to all levels of Australian government, to ensure that the right to a healthy environment is protected internationally, nationally, and within Australian states and territories.

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



Recommendations

Recommendation 1:

The Australian Government supports recognition of the human right to a clean, healthy and sustainable environment (the '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.

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1 What is the Human Right to a Healthy Environment?

In this section, we explain:

- the definition of the human right to a clean, healthy, and sustainable environment;
- States' obligations under international human rights law as they relate to the enjoyment of a clean, healthy, and sustainable environment, including towards First Nations Peoples;
- examples of how the human right to a healthy environment is recognised in other countries.

It is important to acknowledge that the foundations of the human right to a healthy environment come from a number of cultural knowledges and traditions of Indigenous Peoples around the world, including First Nations Peoples cultural knowledges and traditions,[7] which have existed in Australia for over 60,000 years.

The human right to a healthy environment recognises that all humans have the right to live in a clean, healthy, and sustainable environment (the **'right to a healthy environment'**).

The Special Rapporteur on human rights and the environment (**Special Rapporteur**) defines the right to a healthy environment as being comprised of six **substantive elements**:[8]

- clean air,[9]
- a safe climate,[10]
- access to safe drinking water and sanitation,[11]
- healthy biodiversity and ecosystems,[12]
- toxic free environments in which to live, work and play,[13] and
- healthy and sustainably produced food.[14]

This list is not exhaustive and will evolve as our understanding of State obligations under international human rights law in relation 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.[15] These are:

- the right to information,
- the right to participate in decision-making, and
- access to justice.

The Special Rapporteur has also identified 16 Framework Principles on Human Rights and the Environment (**Framework Principles**), which are outlined in the textbox on the next page.[16] The Framework Principles are 16 basic obligations of States under international human rights law as they relate to the enjoyment of a clean, healthy and sustainable environment. The Framework Principles do not establish new legal obligations. Rather, they are derived from obligations that States already have under international human rights treaties and other sources of international law.[17] The Special Rapporteur has reiterated: '[t]*o be clear, all States have obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, including States that have not yet recognised the right to a healthy and sustainable environment*'.[18] Australian governments should utilise the Framework Principles as a guide when implementing their human rights obligations in relation to a healthy environment.

The 16 Framework Principles on Human Rights and the Environment

1. States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights.
2. States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment.
3. States should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.
4. States should provide a safe and enabling environment in which individuals, groups and organs of society that work on human rights or environmental issues can operate free from threats, harassment, intimidation and violence.
5. States should respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental matters.
6. States should provide for education and public awareness on environmental matters.
7. States should provide public access to environmental information by collecting and disseminating information and by providing affordable, effective and timely access to information to any person upon request.
8. To avoid undertaking or authorising actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.
9. States should provide for and facilitate public participation in decision-making related to the environment, and take the views of the public into account in the decision-making process.
10. States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment.
11. States should establish and maintain substantive environmental standards that are non-discriminatory, non-retrogressive and otherwise respect, protect and fulfil human rights.
12. States should ensure the effective enforcement of their environmental standards against public and private actors.
13. States should cooperate with each other to establish, maintain and enforce effective international legal frameworks in order to prevent, reduce and remedy transboundary and global environmental harm that interferes with the full enjoyment of human rights.
14. States should take additional measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.
15. States should ensure that they comply with their obligations to indigenous peoples and members of traditional communities, including by:
    (a) Recognising and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;
    (b) Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;
    (c) Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;
    (d) Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.
16. States should respect, protect and fulfil human rights in the actions they take to address environmental challenges and pursue sustainable development.

Framework Principles 3, 14 and 15 are particularly important with respect to First Nations in Australia. Because of the intimate spiritual and cultural connections that First Nations have to their lands, waters, territories and resources, they are particularly at risk of harm from destroyed, degraded and polluted environments. The right to a healthy environment must be applied based on the principle of non-discrimination and the recognition that First Nations are distinct peoples with collective rights, including the right to self-determination and the right to culture. This means recognising that there is an intimate and interdependent relationship between a right to a healthy environment and the right to culture for First Nations and that the right to a healthy environment includes respecting and protecting these spiritual and cultural connections to the environment. A healthy environment, and the wellbeing, health and cultural identities of First Nations, are bound together and this interdependence is protected by a right to a healthy environment.

The specific rights of First Nations Peoples in relation to a healthy environment are outlined in Framework Principle 15. In relation to 15(d), it is important to clarify that this recommendation is to be interpreted as requiring governments to ensure that any benefits from activities relating to the use of First Nations lands, territories or resources – including extraction activities and the agreed use of traditional knowledges, which remains the property of First Nations Peoples – are to be fairly and equitably shared with First Nations Peoples.[19]

The right to a healthy environment can be expressed in a variety of ways. Some examples of how the right to a healthy environment is phrased in other countries that recognise the right to a healthy environment – including in multilateral agreements and existing and proposed domestic legislation – are outlined in the textbox opposite.

Examples of how the right to a healthy environment is phrased in existing and proposed laws and agreements

- *Aarhus Convention* (European Commission): '[the Convention] affirms the right of every person of present and future generations to live in an environment adequate to his or her health and well-being' (Art 1).
- *Draft additional protocol to the European Convention on Human Rights:* 'Everyone has the right to a safe, clean, healthy and sustainable environment' (proposed Art 5, as recommended by the Parliamentary Assembly of the Council of Europe in Recommendation 2211 (2021), as at 29 September 2021).
- *Strengthening Environmental Protection for a Healthier Canada Bill:* 'In the administration of [the *Canadian Environmental Protection Act, 1999*] the Government of Canada shall… exercise its powers in a manner that protects the environment and human health, including the health of vulnerable populations… [and] protect the right of every individual in Canada to a healthy environment as provided under [the *Canadian Environmental Protection Act, 1999*], subject to any reasonable limits' (proposed amendment to s 2(1) as at Third Reading, passed by the Senate on 22 June 2022).
- *Environmental Justice for All Bill* (United States)*:* 'All people have the right to breathe clean air, drink clean water, live free of dangerous levels of toxic pollution, and share the benefits of a prosperous and vibrant pollution-free economy' (proposed s 9 as introduced on 18 March 2021).
- *New York State Constitution:* 'Each person shall have a right to clean air and water, and to a healthful environment' (s 19, which was introduced in November 2021).

- *Constitution of the Republic of South Africa 1996:* 'Everyone has the right—
  (a) to an environment that is not harmful to their health or wellbeing; and
  (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
    (i) prevent pollution and ecological degradation;
    (ii) promote conservation; and
    (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development'
  (s 24, Chapter 2, Bill of Rights).
- *Constitution of Costa Rica 1949:* 'All persons have the right to a healthy and ecologically balanced environment. For that, they are legitimated to denounce the acts that infringe this right and to claim reparation for the damage caused. The State will guarantee, will defend and will preserve this right. The Law will determine the responsibilities and corresponding sanctions' (Art 50).
- *Constitution of the Fifth Republic 1958* (France)*:* 'Everyone has the right to live in a stable environment which respects health' (Art 1, *Charter for the Environment* (2005) grafted onto the *Constitution*).
- *Constitution of the Republic of Korea 1987* (South Korea): 'All citizens have the right to a healthy and pleasant environment. The State and all citizens shall endeavour to protect the environment' (Art 25(1)).
- *Constitution of the Republic of Fiji 2013*: 'Every 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 through legislative and other measures' (Art 40(1)).

2 Does Australia recognise the Right to a Healthy Environment

Australian laws do not expressly recognise the right to a healthy environment.

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*.[20] There has been other support at a subnational 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.[21]

However, the right to a healthy environment is not a new human right. On 28 July 2022, the right was recognised by the UN General Assembly as a universal human right.[22] It is also recognised in international law, and today more than 80% of UN Member States (156 out of 193) recognise the right to a healthy environment either through regional human rights treaties, national constitutions or domestic legislation. Although Australia supported the General Assembly's resolution to recognise the right, it is among the minority 20% of UN Member States (37 out of 193) that do not yet expressly recognise the right in their laws.

In this section, we explain how the right to a healthy environment is recognised in international law, and the status of the right to a healthy environment in Australian law.

Status of the Right to a Healthy Environment in International Law

The right is recognised in international law in the following ways.

A standalone right to a healthy environment

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'*.[22] Australia was one of the participants at the 1972 UN Conference on the Environment in Stockholm that adopted the Stockholm Declaration.[24]

The 1972 Stockholm Declaration was reaffirmed in the 1992 Rio Declaration,[25] and again in the outcome document of Rio+20 Summit in 2012, *The Future We Want*.[26]

In 1994, the final report of the Special Rapporteur for human rights and the environment, Fatma-Zohra Ksentini, outlined for the first time the legal foundations to a 'secure, healthy and ecologically sound environment', and recommended it as a standalone right in the annexed Draft Principles on Human Rights and the Environment.[27]

The 2016 IUCN World Declaration on the Environmental Rule of Law includes the 'right to a safe, clean, healthy and sustainable environment'.[28] Further, the 2017 Draft Pact for the Environment, which aims to be a new international environmental law constitution given there is no international instrument on environmental matters, includes the 'right to an ecologically sound environment'.[29]

On 8 October 2021, the UN Human Rights Council adopted Resolution 48/13 which recognises the standalone right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of other human rights (**Resolution 48/13**).[30] Resolution 48/13 called on States to build

capacity for the efforts to protect the environment and to adopt policies for the enjoyment of the right to a healthy environment. Resolution 48/13 also invited the UN General Assembly to consider and ultimately adopt the Council's resolution.

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.[31] The resolution passed with an overwhelming majority - with Australia voting in favour with another 160 UN Member States.

Though these resolutions do not create binding obligations, they are an important statement that may be used to inform the Australian government's approach when considering introducing the right to a healthy environment. In addition, the movement towards recognising a standalone right to a healthy environment shows that there is a converging trend toward greater uniformity and certainty in human rights obligations relating to the environment. This trend is backed up by the practices of other UN Member States, the majority 80% of which have recognised the right to a healthy environment in constitutional or legislative texts.

A healthy environment as a precondition to the enjoyment of other human rights

The right to a healthy environment has also 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.

Top: Photo by Milly Vueti on Unsplash.

However, international and regional courts and tribunals, UN treaty bodies and UN special rapporteurs 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. This is referred to as the 'greening' of existing human rights.[32]

For example, the right to the highest attainable standard of physical and mental health is protected by Article 12 of the ICESCR. In 2000, the UN Committee on Economic, Social and Cultural Rights stated that Article 12 of ICESCR *'is not confined to the right to health care'*, but encompasses *'a wide range of socio-economic factors that promote conditions in which people can lead a healthy life'*, including a healthy environment.[34] The Committee further stated that Article 12 requires the *'prevention and reduction of the population's exposure to harmful substances... or other detrimental environmental conditions that directly or indirectly impact on human health'*.[35]

The right to life is protected under Article 6 of the ICCPR. In 2019, the UN Human Rights Committee acknowledged that *'environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life'*, and therefore States' implementation of the obligation to respect and ensure the right to life, in particular life with dignity, depends on measures taken by States to preserve the environment and protect it against harm, pollution and climate change.[36] The Committee further said that human rights obligations should be informed by international environmental law, and vice versa.[37]

The right to life has been interpreted broadly and can include a requirement to reduce infant mortality and increase life expectancy.[38] Taking an even broader approach, the right to life could extend to incorporate a right to health which itself has been interpreted to include determinants of health such as access to food, safe drinking water, adequate sanitation, and a healthy environment.[39] In this way, the right to life extends to a right to a healthy environment.

The International Court of Justice has recognised that the protection of the environment is a vital part of contemporary human rights doctrine because it is an essential condition for numerous human rights such as the right to life and the right to health.[40] Indeed, the Court has said *'environmental rights are human rights'*.[41]

Moreover, Indigenous Peoples around the world have successfully relied on the right to culture to protect the natural environment, relying on the right to culture as including a right to a healthy environment.[42]

State parties to international human rights treaties have obligations to implement the human rights protected under those treaties. As a result of the greening of human rights, States now have obligations to guarantee a healthy environment as a precondition of these rights.

As the Special Rapporteur has said, 'the human right to a healthy environment is not an empty vessel waiting to be filled; on the contrary, its content has already been exhaustively discussed, debated, defined, and clarified over [50] years'.[33]

Australian Human Rights Law

Australia has ratified seven out of nine main international human rights treaties, including the ICCPR and ICESCR. Australia also voted with the UN General Assembly to adopt the *United Nations Declaration on the Rights of Indigenous Peoples* of 2007 (**UNDRIP**), which Australia endorsed in 2009. Although UNDRIP is not legally binding, it contains existing human rights of Indigenous Peoples derived from a range of treaties.[43]

As a party to these international human rights treaties, Australia is bound under international law to respect, protect and fulfill its human rights obligations. Australia also has a duty to implement its obligations at home in Australia, and is accountable to international treaty bodies for its human rights implementation.[44]

However, although Australia has signed up to many international human rights treaties, Australia's obligations under those treaties do not automatically translate to legal rights in Australia. Australia has a dualist legal system, which means that international agreements must be effectively implemented into domestic law by Parliament before the obligations will have a legally binding effect.

National human rights laws

Unlike most similar liberal democratic nations, Australia does not have a national bill or charter of human rights.

The Australian Constitution protects some individual rights. These are the right to vote (section 41), protection against acquisition of property on unjust terms (section 51(xxxi)), the right to a trial by jury (section 80), freedom of religion (section 116) and prohibition of discrimination on the basis of state of residency (section 117). Other rights, such as the freedom of political communication, have been found by the High Court of Australia to be implied from the text of the Constitution.[45]

Although Australia does not have national human rights legislation, human rights are reflected in some national Australian laws. For example, under the *Australian Human Rights Commissioner Act 1986* (Cth) (**AHRC Act**), the Australian Human Rights Commission can inquire into any act or practice by an Australian government agency that may be inconsistent with, or contrary to, human rights, including human rights protected under the ICCPR and the Declaration on the Rights of the Child, among others.[46] After inquiring into a human rights complaint, the Commission will publish a report with its findings and any recommendations, which can include recommendations for the payment of compensation or other action to remedy or reduce loss or damage suffered by the victim.[47]

In addition, the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)* requires members of Parliament who introduce new federal Bills and legislative instruments to prepare statements of compatibility against the seven international human rights treaties that Australia has ratified, which means that our federal legislation must be compatible with those human rights treaties.[48] The Parliamentary Joint Committee on Human Rights currently considers whether new legislation is compatible with the right to a healthy environment. However, this is confined to its consideration of the right to health under Art 12 of the ICESCR.[49] Australia has also enacted a wide range of anti-discrimination laws, which make it unlawful for anyone in Australia to engage in acts of discrimination.[50]

State and territory human rights laws

Three Australian states and territories – the ACT, Victoria, and Queensland – have enacted human rights legislation,[51] which is designed to protect civil and political rights, and some economic, social and cultural rights, of people who live in those jurisdictions.

Under human rights laws in the ACT, Victoria and Queensland, state/territory government agencies and their employees have a duty to act consistently with human rights, and to properly consider relevant human rights when making decisions.[52]

If a government agency contravenes this duty, people in the ACT, Victoria and Queensland have different options to enforce their human rights:

- **In the ACT**, a person may commence proceedings in the ACT Supreme Court.[53] The ACT Supreme Court may grant any relief that it considers appropriate, however it cannot grant damages (compensation) in human rights proceedings.[54]

At the time of writing, the ACT Government is also considering amendments to the *Human Rights Act 2004* (ACT) to introduce an informal complaints mechanism to resolve human rights matters.[55]

- **In Victoria**, a person can make a human rights complaint to the Victorian Ombudsman, who conducts an investigation into the complaint.[56] In conducting an investigation, the Ombudsman has broad investigative powers similar to a royal commission.[57] On completion of an investigation, the Ombudsman publishes a report, which includes their opinion about the administrative action and their recommendations.[58] The Ombudsman can also attempt to resolve the complaint by alternative dispute resolution.[59]
- **In Queensland**, a person can make a human rights complaint to the Queensland Human Rights Commission.[60] If the Commissioner accepts a complaint for resolution, the Commissioner may take any reasonable action that they consider appropriate to try to resolve the complaint,[61] including holding a confidential conciliation conference.[62] If the Commissioner considers that the complaint has not been resolved by conciliation or otherwise, the Commissioner must prepare a report about the complaint as soon as the Commission has finished dealing with the complaint, which may include the Commissioner's recommendations.[63]

In addition, new Bills and legislative instruments that are introduced into the ACT Legislative Assembly, the Parliament of Victoria, and Queensland Parliament are assessed for their compatibility against local human rights legislation.

The remaining five Australian states and territory – NSW, Tasmania, Western Australia, South Australia and the Northern Territory – do not currently have human rights legislation.

The right to a healthy environment in Australian law

The right to a healthy environment is not expressly recognised in any federal, state or territory legislation in Australia, including in Australian human rights law.

However, the right to a healthy environment can be implied as a precondition that is necessary for the enjoyment of other human rights that are protected in Australia.

For example, the right to life inherently recognises a right to a healthy environment. The basic requirements for life that are protected by the right to life – including clean air, clean water, sufficient food, and security of housing – are all under threat from harm from toxic pollution, climate change, and climate induced natural disasters. The link between the right to life and the right to a healthy environment is also supported by the international legal commentary described earlier in this section.

A healthy environment is also implied under laws that recognise the right to culture for First Nations Peoples based on their distinctive cultures. This link is evident in Australia's first climate change case based on human rights grounds, including the right to culture: **Waratah Coal v Youth Verdict, the Bimblebox Alliance** (see case study on the next page).

In Australia, laws that recognise the rights to life and culture include the AHRC Act, and legislation in ACT, Victoria and Queensland, all of which protect the right to life[64] and the right to culture.[65] These laws could be utilised by people in Australia seeking to rely on these rights. For example, it might be possible for the Australian Human Rights Commission to investigate a complaint about an act or practice that is inconsistent with the human right to a healthy environment, if the Commission was satisfied that a healthy environment can be interpreted as being part of the right to life or the right to culture. People living in the ACT, Victoria and Queensland may also be able to access remedies for a breach of the right under their local human rights laws.

Case Study: Waratah Coal v Youth Verdict, the Bimblebox Alliance (QLD)

Waratah Coal v Youth Verdict and the Bimblebox Alliance is the first matter ever launched in Australia to challenge a coal mine on human rights grounds, including the right to culture of First Nations Peoples.

First Nations-led organisation Youth Verdict, together with The Bimblebox Alliance, are opposing two applications by Waratah Coal (one application for environmental authority and one for a mining lease) on the basis that their human rights protected under the *Human Rights Act 2019* (QLD) will be impacted. Relevantly, Youth Verdict claims Waratah Coal's proposed mine will contribute to climate change in a way that will breach the cultural rights of First Nations Peoples to preserve, practice, and evolve culture due to shifting seasons, rising sea levels, and increasingly extreme weather events.[66]

Youth Verdict's case demonstrates the inherent link between the impact of Waratah Coal's proposed actions on the environment, and the impact these actions will have on the human rights of First Nations' Peoples right to culture.

3 Why Recognise the Right to a Healthy Environment?

In this section, we explain that 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;
- Australia's current human rights law offers only piecemeal protection of the environment and our health and wellbeing;
- Australians are experiencing unacceptable levels of harm to our natural environment, and to our health and wellbeing;
- First Nations and other overburdened people and communities in Australia experience disproportionate impacts on their health and wellbeing.

In contrast, expressly recognising the right to a healthy environment as a standalone right in Australian law will:

- offer more comprehensive protection of the environment than is currently offered by existing environmental and human rights law;
- place people and communities at the heart of environmental protection;
- be consistent with, and build on, Australia's existing legal frameworks.

Gaps in Legal Protection of the Environment and Human Health

The state of Australia's environmental laws

Australia has a broad range of environmental, pollution and resource management laws that protect our environment to some extent.

For example, we have a range of federal laws in place that regulate air pollution,[67] greenhouse gas emissions,[68] the emission of toxic substances on land and in water,[69] access to safe drinking water and sanitation,[70] food safety and quality standards,[71] and laws that promote healthy biodiversity and ecosystems by regulating development and planning[72] including some farming activities,[73] and that promote sustainable fishing practices.[74] In practice these issues are largely dealt with by state and territory laws relating to air pollution,[75] climate change,[76] renewable energy,[77] the emission of toxic substances on land,[78] access to safe drinking water,[79] water pollution,[80] food,[81] and biodiversity.[82]

However, our national, state and territory laws do not satisfy all of Australia's obligations under international human rights law as they relate to the enjoyment of a healthy environment.

Recent reviews show that Australian environmental laws are not working. Professor Graeme Samuel AC conducted an independent review into the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**the EPBC Act**), Australia's central piece of environmental legislation. Professor Samuel presented his report to the Australian Government in October 2020, concluding that:

The EPBC Act is out dated and requires fundamental reform. It does not enable the Commonwealth to effectively fulfil its environmental management responsibilities to protect nationally important matters... The resounding message that I heard throughout the Review is that Australians do not trust that the EPBC Act is delivering for the environment, for business or for the community.[83]

The ineffectiveness of the EPBC Act is further demonstrated by the following case study.

Case Study: Sharma v Minister for the Environment

Anjali Sharma and seven other children, who claimed to represent all people in Australia under 18 years old, brought proceedings against the Minister for the Environment to seek an injunction to prevent the Minister from approving an extension to the Whitehaven Vickery coal mine in NSW under the EPBC Act. The applicants argued that the extension of the coal mine would exacerbate climate change, which would harm young people in the future. In a judgment in May 2021, the Federal Court concluded that the applicants had established that the Minister has a duty to take reasonable care to avoid causing personal injury to the applicants when deciding to approve or not approve the coal mine extension project.[84] In establishing the duty of care, the Court found that the foreseeable harm from the project, if the risks were to come true, would be 'catastrophic', and that children would be so directly affected that the Minister ought to consider their interests when making the approval decision. In a later judgment in July 2021, the Court declared that the Minister has a duty to take reasonable care 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 the proceedings arising from emissions of carbon dioxide into the Earth's atmosphere.[85] However, the Court ultimately declined to issue an injunction. Despite the Court's decision, in September 2021, the Minister approved the coal mine extension under the EPBC Act. The Minister later appealed the Court's decision to the Full Federal Court, which overturned the primary judge's decision to impose a duty of care on the Minister.[86]

Cases like Sharma demonstrate how the EPBC Act, Australia's primary environmental protection legislation, is currently ineffective at protecting the environment and our children's health from harm, including from climate change.

Reviews into Australian cultural heritage laws also show that these laws are not working to protect First Nations cultural heritage from destruction. In 2020, the Senate Joint Standing Committee on Northern Australia conducted an inquiry into the destruction of 46,000-year-old caves at Juukan Gorge in the Pilbara region of Western Australia. The inquiry report, presented to the Senate in October 2021, highlighted the serious deficiencies across Australia's Aboriginal and Torres Strait Islander cultural heritage legislative framework in all states and territories and nationally.[87]

Photo by Ondrej Machart on Unsplash.

Case Study: Juukan Gorge (WA)

The high-profile destruction of Juukan Gorge by Rio Tinto on 24 May 2020 in the Pilbara Region of WA is an example of the insufficient protections provided to cultural heritage and the rights of First Nations. Juukan Gorge was the site of two culturally and archaeologically significant rock shelters, including one which demonstrated evidence of 46,000 years of continuous occupation, and which contained artefacts that were integral to the culture of the Puutu Kunti Kurrama and Pinikura people of the Pilbara.[88] This destruction was widely condemned as demonstrating a lack of respect for First Nations and their cultures,[89] and as representing a violation of the right to culture and cultural practices[90] through federal and state governments failure to ensure adequate protection of the important site.

Rio Tinto's actions were, at the time, legal under the *Aboriginal Heritage Act 1972* (WA) (**AH Act**),[91] highlighting the clear inadequacy of existing protections for First Nations cultural heritage. WA is a mining state where the interests of miners have clearly been privileged over the interests of First Nations Peoples in protecting their cultural heritage. For example, from 1 July 2010 to 14 May 2020, on land covered by a mining lease there had been 463 applications for permission to destroy Aboriginal heritage under the AH Act and none of them were refused.[92] This is a highly pervasive form of systemic and structural racial discrimination, leading to widespread damage and destruction of First Nations People's cultural heritage.

A report from the Inquiry into the Juukan Gorge destruction recommended that the WA government legislate for stronger heritage protection, including to make space for greater involvement of First Nations in heritage decision-making.[93] The subsequent *Aboriginal Cultural Heritage Bill* 2020 (WA) was passed by the WA parliament in December 2021 despite significant concerns raised by First Nations within Western Australia and the UN Committee on the Elimination of Racial Discrimination.[94] Those concerns included its compatibility with Australia's international obligations such as the right to culture and the requirement for free, prior and informed consent.[95]

The destruction of Juukan Gorge and the new *Aboriginal Cultural Heritage Act 2021* (WA) is an example of the law failing to protect First Nations cultural heritage or address the structural racism that has underwritten past and contemporary destruction of cultural heritage in WA.

Australia's protection of procedural rights is also declining. In the last 2014 ranking of the World Resources Institutes' Environmental Democracy Index, which evaluated 70 countries' compliance with recognised standards for environmental democracy established by the Bali Guidelines of the UN Environment Programme, Australia received the lowest score of any OECD country recorded, scoring 1.42 out of 3.[96] This decline is further demonstrated by the following case study.

Case Study: Freedom of Information Laws (Tas)

Under Tasmania's freedom of information law, the *Right to Information Act 2009* (**RTI Act**), individuals have the right to access Tasmanian government information. However, Tasmanian public authorities are reported to make an excessive number of decisions refusing access to information. In 2019-20, Tasmania recorded the highest rates of refusal decisions in Australia.[97] Tasmanian public authorities frequently provide inadequate reasons for decisions and consistently misapply the RTI Act.[98] Recent analysis conducted by EDO shows that a high rate of Tasmanian government decisions are overturned on review by the Tasmanian Ombudsman.[99] The timeliness of decisions is also a major concern,[100] and in the event that information is ultimately released, access to information is delayed and may no longer be of any use. In one case in 2017, it took EDO's client 842 days (over two years) to access government information from the Environment Protection Authority, and only after the original refusal decision had been overturned by the Tasmanian Ombudsman on review.[101]

The lack of timely access to environmental information under the RTI Act presents a critical barrier for people in Tasmania to participate in environmental decision-making and to access remedies for environmental harms.

As can be seen from the case studies, Australian environmental laws are piecemeal and do not offer comprehensive protection of the environment. Stronger environmental laws are urgently needed to address trajectories of environmental decline.

In addition, our environmental laws tend to focus on facilitating development and managing our use of natural resources and not on increasing health and wellbeing. Without the right to a healthy environment, there are no laws in Australia that provide environmental benefits as a human right.

The state of Australia's human rights law

In 2009, a comprehensive review into Australian human rights law by the National Human Rights Consultation Committee, chaired by Father Frank Brennan, identified that human rights are not properly protected in our laws.[102] Australia's Constitution contains very few human rights protections, and we do not have national human rights legislation. As explained earlier in this report, Australia has a duty under the international human rights treaties it has signed to implement its human rights obligations at home in Australia. However, that duty is, to date, not meaningfully realised.

Human rights are better protected in the ACT, Victoria and Queensland, which have human rights legislation. However, these laws offer limited protection, as the laws protect people in the ACT, Victoria and Queensland from the actions of their territory or state governments, and tend to focus on civil and political rights rather than economic, social and cultural rights. They do not protect everyone in Australia, and do not protect people from the actions of our national government.

The result is that human rights are not fulsomely protected in Australia's current legal system.

The state of Australia's environment

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.

The *Australia State of the Environment Report* of 2021 released in June 2022 (**SoE Report**) reported that the general outlook of Australia's environment is poor and deteriorating. Some of the impacts on Australia's environment that were reported on include:[103]

- impacts on Australia's ecosystems from climate change and environmental extremes, including impacts on the Great Barrier Reef from marine heatwaves causing mass coral bleaching events, and impacts from bushfires leading to whole ecosystems burning;
- increased numbers of invasive non-native species, such that there are now more foreign terrestrial plant species in Australia than natives;
- significant impacts on Australia's agriculture from climate change, including damage to tree crops caused by more severe storms and cyclones, the effects of heat stress on domestic animals, and more insidious impacts that disrupt the lifecycles of pollinators and beneficial predatory insects;
- environmental damage to Country and First Nations Peoples' heritage, cultural connections and obligations to Country caused by clearing of land, climate change and expansion of mining; and
- significant and unacceptable impacts on our land from soil and water pollution and illegally dumped waste, which directly affects soils, waters, biota and habitats.

The SoE Report identifies that climate action failure and human environmental damage are key risks that increase the likelihood of having significant negative impacts within the next 10 years.[104]

The state of Australia's health and wellbeing

Environmental harm harms our health. As stated in the SoE Report, '[e]*nvironmental degradation is now considered a threat to humanity, that could bring about societal collapses with long-lasting and severe consequences'.*[105]

The indivisibility of the health of the environment and human health and wellbeing is increasingly being acknowledged globally. There is a growing consensus that ensuring human health and prosperity requires the safeguarding of the planet's rich biodiversity and ecological integrity,[106] and biocultural diversity.[107] The COVID-19 global pandemic has served as a prescient reminder of the interdependence of human health and the environment, with scientists warning of the clear link between environmental degradation and loss of biological diversity and the occurrence of dangerous zoonotic diseases which pose an existential threat to human health and rights more broadly.[108]

A recent report released by the UN Intergovernmental Panel on Climate Change (**IPCC**) in February 2022 reported that Australians are experiencing a number of impacts on our health and wellbeing caused by anthropogenic climate change, including extreme water shortages and water insecurity,[109] heat stress,[110] changing rainfall patterns including floods and drought,[111] climate-sensitive air pollution including that caused by wildfires,[112] and other natural disasters including bushfires. For example, the 2019-20 Black Summer bushfires are estimated to have caused 417 deaths and 3,151 hospital admissions for cardiovascular and respiratory conditions from exposure to bushfire smoke.[113] More specific impacts of these catastrophic fires on people are outlined in our case study on the next page. Natural disasters also have a detrimental and acknowledged impact on mental health outcomes. For example, in the aftermath of the 2019-20 bushfires, it has been estimated that more than half of Australian adults felt anxious or worried about the bushfires. There was also a 10-15% increase in calls to the Lifeline crisis support hotline, resulting in the introduction of a bushfire-specific telephone service.[114] More recently, demand in NSW for health support for anxiety, distress, and trauma has escalated markedly following the 2022 floods.[115]

The IPCC predicts that climate impacts will have tangible economic costs but also intangible costs to people. Tangible costs include from a loss of wealth from climate-induced reduction in productivity across the agriculture, manufacturing and service sectors,[116] a predicted reduction in Australia's Gross Domestic Product caused by global warming, and an increase in costs of damage caused by flooding, coastal inundation, forest fires, land subsidence and wind.[117] The predicted intangible costs from climate impacts include death and injury and impacts on health and wellbeing, the personal cost of which may be far higher than tangible costs.[118] For example, following the Victorian bushfires in 2009, the tangible costs were $3.1 billion while the intangible costs were $3.4billion.[119] Following the Queensland floods in 2010-11, the tangible costs were $6.7 billion while the intangible costs were $7.4 billion.[120]

The SoE Report also identifies that Australians are not immune to the impacts of environmental degradation on our health and wellbeing, and identified the following impacts;

- 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 is generally 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 studies have reported that in 2015, 2,566 deaths (1.6% of all deaths in Australia) were caused by air pollution; and
- 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.[121]

Case Study: 2019-20 Black Summer Bushfires (ACT)

Between November 2019 and January 2020, Canberra, and the ACT more broadly, experienced significant air pollution caused by exposure to bushfire smoke from bushfires in neighbouring regions of NSW, and later from bushfires burning directly in the ACT. At times in January 2020, Canberra recorded the highest Air Quality Index (**AQI**) rating out of any capital city in the world.[122] On 1 January 2020, Canberra city's AQI peaked at 7,700.[123] With AQI levels above 200 considered hazardous, the air quality in Canberra city was more than 23 times the hazardous level.[124] Overall, people in Canberra spent more than one third of the 2019-2020 summer living with hazardous levels of air quality.[125] The bushfires were equally damaging to ecological health. The fire that swept through the Orroral Valley was one of the largest ecological disasters in the ACT's history, with 82,700 ha of Namadgi National Park (78% of the park's total area) and 1,444 ha (22%) of the Tidbinbilla Nature Reserve burnt.[126]

An ACT government risk assessment team deployed to assess the area identified 27 risks including direct impacts on cultural heritage, risks to public safety, threats to biodiversity, and impacts of threatened ecological communities.[127] On the public health front, the Australian Institute of Health and Welfare reported that there was a surge in presentations to hospital emergency departments for respiratory conditions, and that exposure to prolonged periods of dangerous air quality resulted in impacts on the financial, social, and physical wellbeing of residents.[128] However, the official statistics may grossly underestimate the prevalence of health problems associated with the Black Summer Bushfire's smoke. A survey conducted by ANU of more than 2,000 of Canberran residents found almost every respondent experienced at least one physical health symptom attributable to bushfire smoke and about half of the respondents reported mental health symptoms, but only 17% went to a medical practitioner for help and 1% went to hospital.[129] Exposure to bushfire smoke also has a significant toll on pregnant women, and has been associated with miscarriage, premature births, and impacts on babies' birth weight.[130] It is likely that pregnant women in Canberra who were exposed to bushfire smoke during the Black Summer Bushfires have experienced health impacts, however the full extent of these impacts is still unknown.

The devastating impact of the Black Summer Bushfires on health and air quality are a significant example of the fact that human health and the environment are inseparable.

The disproportionate impact on overburdened people and communities

Overburdened people and communities – including women, children, people who are financially disadvantaged, First Nations Peoples and communities, LGBTQIA communities, older people, people with disabilities, people from a racial or ethnic minority, and people displaced by natural disasters – are the most at risk of environmental harm, with subsequent impacts on their health and wellbeing.

First Nations Peoples

First Nations are particularly at risk of environmental harm from destroyed, degraded, and polluted environments because of the intimate spiritual and cultural connection they have to their lands, territories, and resources. Environmental burdens are disproportionately felt by First Nations, through impacts to their Country, cultural practices and the resources that they depend on. This burden is a direct consequence of colonisation, as historical and ongoing decisions around land management, ownership and environmental impacts have been highly destructive to First Nations and their culture, livelihoods and connection to Country and community.[131] The disproportionate impact of environmental injustices on First Nations is a clear example of environmental racism. Environmental racism can be seen to be perpetrated against First Nations communities through the ongoing impacts of colonisation, dispossession, and destruction of First Nations lands for settler purposes.

A recent IPCC report identified that changing climate conditions are expected to exacerbate many of the social, economic and health inequalities already faced by First Nations in Australia,[132] including from loss of bio-cultural diversity, nutritional changes through availability of traditional foods and forced diet change, water security, and loss of land and cultural resources through erosion and sea-level rise.[133]

As outlined in the following case studies, existing laws do not adequately protect First Nations cultural heritage and other human rights, including health, adequate housing, and access to water. As identified in the SoE Report, degradation to Country and destruction of First Nations heritage – including cultural landscapes and other intangible heritage – is particularly detrimental to First Nations Peoples' physical and mental health and wellbeing.[134]

Case Study: McArthur River Mine (NT)

The McArthur River Mine is located approximately 60km upstream from the predominantly Aboriginal town of Borroloola in the NT.[135] In 2013, as a result of a misclassification of potentially acid forming waste rock on the site, parts of a waste rock dump on the mine erupted in flames, emitting toxic smoke into the atmosphere over a prolonged period.[136] This event came after years of warnings from the four local clan groups (the Gudanji, Garawa, Mara and Yanyuwa) that the mine was a major environmental risk, especially when Glencore sought (and received) approval to divert the McArthur River for 5km to convert the mine to an open cut mine, cutting through a Rainbow Serpent dreaming site.[137] After Traditional Owners succeeded in challenging the NT approval in 2007, the NT Labor government passed legislation three days later that facilitated the mine's expansion, sidestepping the Court's ruling.[138] Traditional Owners also challenged Commonwealth approval for this expansion, and were successful in having it set aside,[139] however the Commonwealth government issued a new approval in 2009.[140]

Following the fire that resulted from mismanagement of the mine, Glencore admitted that the mine and its surrounds would need to be monitored for the next 1000 years,[141] especially because of the risk of ground water contamination. The NT government has since reduced the McArthur River Mine's environmental security bond by 23%.[142] This occurred after an environmental impact assessment report found that the original bond of $520 million was insufficient and based on water quality monitoring for only 25 years post closure, despite the mine site being likely to require a substantially longer period of monitoring and maintenance.[143] As Gudanji Traditional Owner Josephine Davey Green succinctly said: '*the government made a decision that could affect our people for thousands of years. If the mine walks away now, that river will be gone, and so will we*'.[144] Ms Davey Green, Garawa elder Jack Green and the Environment Centre NT have launched a legal action in the Supreme Court challenging the Minister's decisions with respect to the security bond.[145] As Mr Green says, *'the government doesn't realise how important this land is to our people. That land is Mother to all of us. That's the land that they're destroying'*.

This case study represents disregard for the rights of First Nations Peoples, with Australian governments focused on providing for the short-term economic interests and benefits of the mine rather than respecting First Nations Peoples' rights to culture and cultural flows.

'the government doesn't realise how important this land is to our people. That land is Mother to all of us. That's the land that they're destroying'.

Garawa elder Jack Green

Photo by Rebecca Parker.

Case Study: Endangered Spectacled Flying-Fox (QLD)

The Wet Tropics of Queensland World Heritage Site has been increasingly affected by the impacts of climate change, which has resulted in losses of biodiversity[146] and losses in culture for the Gimuy Walubara Yidinji Peoples, the traditional custodians of the region. The Spectacled Flying-fox is a local species that plays a crucial role in the local ecosystem, as a pollinator and propagator in eucalypt forests and rainforests.[147] Spectacled Flying-foxes traditionally serves as a source of food and medicine for the Gimuy Peoples, and also represent part of Gimuy Peoples' connection to the land through changing storylines.[148] However, the Spectacled Flying-fox population has declined by more than 80% in the last 15 years.[149] In 2018, a heatwave caused an extensive decline in Spectacled Flying-foxes, and is estimated to have reduced the total Australian population of Spectacled Flying-foxes by one third.[150] Studies have identified the Spectacled Flying-fox is nearing functional extinction. In addition to the negative implications this has on the ecosystem,[151] the Gimuy Peoples fear that destruction of the ecosystem and loss of biodiversity will curtail their ability to share traditional practices, resulting in significant losses in traditional culture and availability of food sources.[152]

Although there are laws in place for the management of Spectacled Flying-fox populations, existing laws have been contributing to the decline of the Flying-fox.[153] For example, under the *Nature Conservation Act 1992* (Qld), decision-makers are not required to consider cumulative impacts, which means that nationally significant Flying-fox roosts, such as the Cairns City Library Spectacled Flying-fox Camp, have been subject to clearing, undermining the roosts' viability.[154] The Gimuy Peoples possess knowledge and lore that could aid in stemming the decline of the Spectacled Flying-fox population. Some Gimuy are calling upon the Queensland government to recognise First Nations Lore through legislation and prioritise ecological values to aid in the recovery of the Spectacled Flying-fox, which help to maintain the ecological integrity of the World Heritage Site and to prevent loss of Gimuy culture.[155]

It is clear that Queensland's existing laws do not adequately prevent loss of biodiversity, or protect the Gimuy Peoples' human rights including cultural rights and health. Loss of biodiversity in the Wet Tropics of Queensland World Heritage Site, including from climate change, has a disproportionate impact on the Gimuy Peoples, who rely on biodiversity in their connection to the land.

Other overburdened people and communities

Other overburdened people and communities who are at the most risk of environmental harm and of impacts on their health and wellbeing include people who are financially disadvantaged, culturally and linguistically diverse communities, children, and young people.

For example, all humans can be exposed to environmental harm from pollution and contamination. However, the burden of such harms falls disproportionately upon overburdened people and communities that are already enduring poverty, discrimination and systemic marginalisation.[156] The disproportionate impact of pollution on such people and communities is a form of environmental injustice. Environmental injustices are rooted in racism, discrimination, colonialism, patriarchy impunity, and political systems that systematically ignore human rights.[157]

Some people and communities are exposed to levels of pollution and toxic substances that are so extreme in the areas in which they live that they are described as 'sacrifice zones'.[158] The most heavy polluting and hazardous facilities – including mines, coal-fired power stations, oil- and gas fields – are often located in close proximity to poor and marginalised communities.[159] It is also often the case that such communities are reliant on an industry for their economic stability, or where they cannot afford to live elsewhere.

The effects of environmental harm on overburdened communities in Australia is further explored in the following case studies.

Case Study: Urban Heat Islands (NSW)

'Urban heat islands' refers to the phenomenon where urban areas are generally hotter than surrounding rural areas. The replacement of native vegetation with heat-trapping construction materials in buildings and pavements, alongside the generation of heat from human activities like power generation and exacerbated by climate change, cause urban centres to absorb and retain heat at a greater rate than surrounding rural landscapes.[160] The impact of urban heat islands disproportionately affects groups who are at greater risk of environmental harm, such as culturally and linguistically diverse communities. For example, the suburb of Penrith in Western Sydney, which is one of the most diverse regions in Australia with large migrant communities,[161] was recorded as the hottest place on Earth on 4 January 2020 at 48.9°C.[162] Recent research by the Australia Institute has found that if emissions continue to accelerate, Western Sydney can expect to experience temperatures greater than 35°C on up to 46 days per year by 2090, and that places like Penrith could experience up to 58 days of extreme heat per year.[163] This is compared to more affluent and less diverse suburbs in Sydney's east, such as Mosman, which has moderately high vegetation cover compared to the western suburbs, lowering average temperatures and potential adverse health impacts.[164] Research has shown that more than 5 million people die each year globally because of excessively hot or cold conditions, with the incidence of deaths from high temperatures increasing.[165] Heart attacks, cardiac arrests, strokes, and other life-threatening diseases that particularly effect older individuals and people with underlying conditions increase with extreme heat.[166]

The heat island phenomenon in urban centres demonstrates the disproportionate impact of adverse environmental degradation and climate change on overburdened people and communities, such as culturally and linguistically diverse communities.

Lead Smelter in Port Pirie (SA)

Port Pirie, a regional town in South Australia, is home to one of the world's largest primary lead smelters that has operated since 1889.[167] Exposure to lead in dirt, dust and rainwater threatens the health of the community and exposes children to unacceptable levels of lead.[168] National guidelines identify safe lead levels in the blood to be less than five micrograms per decilitre,[169] while SA Health, the WHO and the US Environmental Protection Agency identify no safe threshold of exposure.[170] The 2021 SA Health report found that in the first half of the year the average blood lead levels of Port Pirie children under five was 5.7 micrograms, while children tested on their second birthday recorded 7.8 micrograms, the highest reading in a decade.[171] Children are most at risk of lead poisoning due to their small body size and hand-to-mouth activity.[172] Childhood exposure has been associated with significant negative health developmental outcomes including impaired cognitive development, reduced intelligence and poor mental health.[173] Meanwhile, Port Pirie residents have been advised to protect themselves by washing their hands, surfaces in the home and food.[174] Unfortunately, many Port Pirie residents are employed at the lead smelter or rely on the economic benefits of it to their town, meaning speaking out may threaten their livelihoods and positions in the community.

This case study demonstrates that environmental harm disproportionately impacts overburdened people and communities, such as children, regional communities and communities located near polluting industries that rely on that industry for their economic stability.

The Case for a Standalone Right to a Healthy Environment

As explained earlier in this report, the right to a healthy environment is not expressly recognised in any federal, state or territory legislation in Australia, including in Australian human rights law.

The right to a healthy environment should be expressly included as a standalone right in Australian laws for the following reasons:

- it provides comprehensive protection of all components of the environment, which are not adequately protected under current environmental or human rights laws;
- it places people and communities at the heart of environmental protection, empowering citizens to pursue environmental justice and achieve better outcomes for the environment;
- it is consistent with, and a logical extension of, partial protections that people in Australia already have under current laws; and
- it will not open the floodgates for vexatious litigation.

We explain these reasons in further detail below.

It provides comprehensive protection of all components of the environment

Australian environmental laws offer some protection of the various components of the environment. However, these laws are piecemeal and do not offer comprehensive protection of the environment.

The right to a healthy environment can be implied as a precondition that is necessary for the enjoyment of other human rights that are protected in Australia. However, this is not guaranteed because human rights are not fulsomely protected in Australia. To the extent that human rights are protected, the application of human rights to environmental issues in Australia could ensure that some discrete components of our environment are protected. However, this protection will be piecemeal, ad hoc, and dependent on case-by-case explanation of how environmental harm interferes with the enjoyment of specific rights.

In contrast, 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.

It places people and communities at the heart of environmental protection

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.

By putting humans at the centre of environmental protection, the right to a healthy environment can be used to empower citizens to pursue environmental justice.[175] In turn, the pursuit of environmental justice leads to better outcomes for both citizens and our environment.

In addition, introducing a human rights-based approach to environmental protection will clearly show that protecting the environment will positively benefit people and communities, rather than just protecting the environment for the sake of the

environment alone. This link may make it easier for people and governments in Australia to support recognition of the right to a healthy environment, and in turn could result in tangible positive environmental outcomes.[176]

It is consistent with Australia's existing legal frameworks

As outlined in this report, Australia has a broad range of environmental, pollution and resource management laws that protect our environment to some extent. By passing these laws, Australian parliaments have already taken steps to legislate protection of the environment. Express recognition of the right to a healthy environment builds on this existing legal framework and is a necessary and logical extension of the partial protections that people in Australia already have under current laws.

Some Australian laws already recognise that there is a clear link between environmental degradation and the impacts this has on human health.[177] The objects of environmental protection legislation in most Australian states and territories include protection of, or prevention of harm to, both the environment and human health. In other states and territories where protection of human health is not explicitly mentioned in the objects of the legislation, human health is a relevant factor for a number of matters under those laws.[178]

The three procedural elements of the right to a healthy environment – access to information,[179] participation in decision-making,[180] and access to judicial remedies[181] – are in most federal, state and territory environmental legislation (although these rights are not always available to third parties or members of the general public).[182] These procedural rights reflect developments in international environmental law, such as Principle 10 of the *Rio Declaration*, the *Aarhus Convention*,[183] and the *Escazú Agreement*.[184]

It will not open the floodgates for vexatious litigation

Finally, it is important to recognise that introducing the right to a healthy environment will not open the floodgates for individuals to bring vexatious litigation challenging government decisions and Australian laws. Previous governments have described the use of litigation to challenge government decision-making, particularly in the context of planning and development, as environmental 'lawfare'.[185] However, analysis conducted into legal challenges of decisions made under the EPBC Act found that only a negligible number of all EPBC Act decisions are challenged,[186] and that a high percentage of cases brought on public interest grounds were successful, which demonstrates that such claims raised genuine legal questions for the court to consider.[187] This research has concluded that there is no evidence of 'lawfare' under the EPBC Act.

In fact, court proceedings taken in the public interest have and continue to play an important role in upholding the rule of law, increasing government accountability, improving government decision-making, and making a positive contribution to Australian jurisprudence on a wide range of legal issues. If the right to a healthy environment was introduced, it would play a similarly important role. It is critical that Australians have access to remedies that permit incorrect or unlawful government decisions to be brought to the attention of independent tribunals and courts, and for government decision-makers to be held to account for correct implementation of the law.

4 What are the 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.

This evidence shows that if Australian laws were amended to recognise the right to a healthy environment, this would achieve better outcomes for our environment and our health in Australia.

There are four key benefits of recognising the right to a healthy environment in Australian laws:

- it will lead to better health outcomes for Australians and for our ecosystems;
- it will encourage stronger environmental laws and governance;
- it will improve access to justice for environmental harms; and
- it will reduce environmental injustices, which is particularly important for First Nations Peoples and other overburdened people and communities who are most at risk of environmental harm.

We explore these benefits in further detail below.

Improves Outcomes for Australians' Health and our Ecosystems

The most critical evidence in favour of recognising the right to a healthy environment is that countries that have formally recognised the right now have healthier people and ecosystems.

Studies from countries that recognise the right to a healthy environment show that recognition of the right has contributed to improved environmental performance, including cleaner air, enhanced access to safe drinking water, and reduced greenhouse gas emissions. This has resulted in millions of people, including overburdened people and communities, breathing cleaner air, gaining access to safe drinking water, and reducing their exposure to toxic substances, amongst other positive outcomes both for human health and the environment.[188]

For example, a global study undertaken by the current Special Rapporteur into the constitutions of 193 countries concluded that 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 greenhouse gas emissions than nations without such a provision.[189] A 2016 study into constitutional environmental rights found that such rights have a positive causal influence on environmental performance.[190] A further 2016 study conducted into 190 countries, 122 of which include environmental rights like the right to a healthy environment in their constitutions, concluded that constitutional environmental rights are positively related to increases in the proportion of populations with access to safe drinking water.[191] The World Health Organisation estimates that 23% of deaths globally could be prevented by ensuring that the right to a clean, healthy and sustainable environment is respected.[192]

This evidence shows that one of the strongest reasons for Australia to legally recognise the right is that it will result in improved health outcomes for Australians and our ecosystems.

As the right to a healthy environment has contributed to improvements in public health outcomes and reduction of deaths and illnesses, it is also likely that enshrining the right will have a positive impact on Australia's economy including by reducing the impacts of environmental harm on Australia's health care system.

Encourages Stronger Environmental Laws and Governance

Countries that have formally recognised the right to a healthy environment have since witnessed a number of positive developments in law reform and in better enforcement of environmental laws, regulations and policies.[193] This shows that recognition of the right to a healthy environment in Australia will result in stronger environmental laws, regulations and policies.

Framing environmental protection through the lens of human rights will shape law and policy-makers' understanding of the environment and its relationship with and to humanity.[194] In addition, introducing the right to a healthy environment would mean that scrutiny committees, parliamentary drafters and public entities will consider the need for laws that protect the environment and human health when considering all new Bills and legislative instruments.[195]

As a result, governments will be encouraged to uphold the right when considering making new laws or amending our existing laws.

Recognition of the right would also:

- require governments to consider and uphold the right in government decision-making;
- increase government accountability to its citizens;
- result in stronger implementation and enforcement of environmental laws; and
- encourage greater public participation in environmental decision-making.[196]

In particular, implementation of the procedural elements of the right – access to information, participation in decision-making, and access to judicial remedies – have proven to be crucial in ensuring individuals have access to mechanisms that promote accountability and safeguard the health of their environments and communities.[197]

Photo by Elia Pellegrini on Unsplash.

Case Study: Costa Rica and France

Costa Rica and France lead the High Ambition Coalition for Nature and People, are part of the Beyond Oil and Gas Coalition and have been leading voices in the campaign for universal recognition of the right to a healthy environment. Their own experiences illustrate the transformative potential of this right.

After adding the right to a healthy environment to its constitution in 1994, Costa Rica became a global environmental leader. Thirty percent of Costa Rica is national parks. Ninety-nine percent of electricity comes from renewable sources, including hydro, solar, wind and geothermal. Laws ban open pit mining and oil and gas development, while carbon taxes are used to pay Indigenous people and farmers to restore forests. Back in 1994, deforestation had reduced forest cover to 25 percent of all land, but today reforestation has driven that number above 50 percent.

France embraced the right to a healthy environment in 2004, sparking strong new laws to ban fracking, implement the right to breathe clean air, and prohibit the export of pesticides that are not authorized for use in the EU because of health and environmental concerns.

Improves Access to Justice

Formal recognition of the right to a healthy environment will improve access to justice by allowing individuals in Australia to rely on the right in order to better advocate for the environment and for our health. Access to justice is the right to seek justice for legal issues, and includes access to effective remedies. A 2018 study analysing empirical data from 198 countries found that countries that have the procedural elements of the right to a healthy environment entrenched in their constitutions have experienced positive environmental justice outcomes.[198] Access to justice is key to achieving the procedural aspects of environmental justice (procedural justice).

The remedies that are currently available through Australian human rights law are limited. At a national level, for example, when the Australian Human Rights Commission reports on human rights complaints under the AHRC Act, its recommendations are not binding, which means they are not legally enforceable. Similarly, in Victoria and Queensland, the recommendations of the Victorian Ombudsman and the Queensland Human Rights Commissioner are also not binding. In the ACT, although people have the right to commence proceedings in the Supreme Court and obtain a binding legal remedy for human rights contraventions, access to court can be prohibitive for most ACT residents due to financial barriers, and the Court cannot order damages (compensation).[199] In Australian states and territories without human rights legislation, the only avenue for redress is to make a human rights complaint to the Australian Human Rights Commission or, if that is not available, a complaint to an international human rights body. For example, the UN Human Rights Committee can consider complaints from individuals claiming to be victims of violations of rights in the ICCPR. However, the remedies that are available through international human rights complaints are also limited to non-binding recommendations only.

At a national level, including the right to a healthy environment as a standalone right in an Australian Charter of Rights, and introducing an obligation for government agencies to act in compliance with human rights, would provide a strong mechanism for individuals to access legal remedies for breaches of their human rights for causing environmental harms and impacting human health. In addition, the existence of the right to a healthy environment in Australian law would mean that subsequent laws (whether new or amended) would be scrutinised for compatibility with the right. This would lead to environmental human rights issues being identified and addressed in the early stages of developing laws and policies and making decisions, which in turn ensures that the right is effectively considered and implemented by decision-makers and improves the quality of decision-making. This in turn gives the public greater confidence in decision-making, ultimately reducing the risk of litigation.

In the ACT, Victoria and Queensland, which already have human rights legislation,[200] enshrining the right would ensure that the right could be captured by existing legal processes. This would mean that individuals living in those jurisdictions could access remedies and redress under their local legislation for breaches of the right. Redress for non-compliance with human rights under existing legislation includes complaint mechanisms (in Victoria and Queensland) and court proceedings (in the ACT). All three jurisdictions require parliamentary scrutiny of new legislation, whereby new legislation is examined for its compatibility with human rights.[201] Scrutiny of new laws against the right would facilitate proactive government action on legislation that has the potential to breach the obligations imposed by the right. There would also be similar benefits for other Australian jurisdictions that pass human rights legislation in the future.

Case Study: Philippines

Section 16 of the *Philippine Constitution of 1987* provides that the State 'shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature'. The Supreme Court of the Philippines has interpreted this provision to reflect a core constitutional right that is critical to the wellbeing of future generations.[202]

The constitutional right to a healthy environment has had a positive influence on access to justice for environmental matters in the Philippines. In 2008, the Philippines established additional specialised courts and tribunals to uphold environmental law.[203] In 2010, the Philippines' Supreme Court issued strong procedural rules for environmental cases, which enact open standing requirements, and limit costs for environmental litigants. For example, the rules provide that *'any Filipino citizen in representation of others, including minors or generations yet unborn'* acting in the public interest will have standing to bring an action under Filipino law for environmental harm.[204]

The Philippines' Supreme Court has also introduced two new civil action writs to remedy environmental harms. One writ provides a remedy for persons whose right under the Philippines' Constitution to a 'balanced and healthful ecology' is violated by an unlawful act or omission, and the other allows for the Court to engage post-judgment in ongoing monitoring of government compliance with a court order until satisfied.[205] The available relief under these writs includes directing the respondent to cease and desist from environmental destruction or damage, or to rectify the harm within a certain period,[206] although damages are not available for individual petitioners.[207]

Despite the implementation gap which has been identified in the Philippines,[208] **the strong constitutional basis for the right to a healthy environment has created a legal environment in which environmental and human rights defenders have the express right to challenge environmental abuses.**

Case Study: Uganda's National Environment Act 2019

In 2019, the Ugandan government passed the *National Environment Act 2019* (**NE Act**), Uganda's national environmental management law that recognises the right to a healthy environment. Section 3(1) of the NE Act provides that every person in Uganda has a 'right to a clean and healthy environment' in accordance with the Constitution and the principles of sustainable development, namely development that meets the needs of the present generation without compromising the ability of future generations to meet their own need.[209] Section 3 also allows people in Uganda to file a civil suit against a person whose act or omission has or is likely to cause harm to human health or the environment, even if there is no evidence that it has caused or is likely to cause personal harm or injury.[210] Section 146 of the NE Act enshrines the right of access to environmental information. Section 148 guarantees the integration of environmental education into educational curricula and programmes, ensuring that environmental literacy and awareness of sustainable development concerns are widely taught in the national education system.

While scholars recognise that implementation gaps still exist in the environmental assessment process in Uganda,[211] the creation of a strong legislative framework is a key step in improving access to environmental justice in the Global South. This is complemented by civil society efforts, such as the Sustainability School Programme, run by the National Association of professional Environmentalists in Uganda. This program builds capacity among disadvantaged groups, and seeks to enable them to participate in environmental decision-making through the provision of training courses for activists and community members, raising awareness around sharing experiences around environmental and development issues.[212]

Uganda's NE Act provides an exemplary model of legislative implementation of the right to a healthy environment, including both substantive and procedural elements.

Reduces Environmental Injustices

As described, express recognition of the right to a healthy environment is a catalyst that leads to improvements in human health and the health of our ecosystems, stronger environmental laws and governance, and improved access to justice. In this way, the right to a healthy environment ultimately reduces environmental injustices.

Environmental justice is a social movement that addresses the disproportionate impact of environmental harms – including harm from climate change, pollution, extractive industries, and natural disasters – on overburdened people and communities. EDO explores environmental justice, and the importance of applying an environmental justice framework to environmental protection, in our 2022 report *Implementing effective independent Environmental Protection Agencies in Australia*.[213]

Overburdened people and communities – including women, children, people who are financially disadvantaged, First Nations Peoples and communities, LGBTQIA communities, older people, people with disabilities, people from a racial or ethnic minority, and people displaced by natural disasters – are the most at risk of environmental harm, with subsequent impacts on their health and wellbeing. However, they are also often the least responsible for perpetuating such harms.

In this way, environmental justice also addresses environmental racism, which is the deliberate targeting of ethnic and minority communities for exposure to toxic and hazardous waste sites and facilities, coupled with the systematic exclusion of minorities in environmental policy making, enforcement, and remediation.[214] Any policy, practice or directive that differentially affects or disadvantages (whether intended or unintended) individuals, groups or communities based on race or colour is environmental racism.[215] In Australia, environmental racism can be seen to be perpetrated against First Nations communities through the ongoing impacts of colonisation and dispossession, as well as the destruction of First Nations lands including for planning and development purposes. It can also be seen to be perpetrated in Australia against culturally and linguistically diverse communities.

People and communities that experience environmental injustices have the right to live with their families in a healthy environment, and not to have environmental burdens placed on them simply by virtue of their postcode. People and communities can contribute to environmental solutions when empowered to do so.

As the benefits of recognising the right to a healthy environment include stronger environment protection through improved laws and systems, and healthier people and ecosystems, we would expect to experience less environmental degradation in Australia, which would reduce the presence and impact of environmental injustices on overburdened individuals and communities, and improve the distribution of environmental benefits in Australia.

Recognition of the right to a healthy environment is particularly important for First Nations justice because it will likely improve First Nations health and wellbeing and protect their spiritual and cultural connection to the environment.

Recognition of the right would also play an important role in facilitating greater awareness of the experiences of overburdened people and communities who are most at-risk of environmental injustice. This would serve to improve recognition in Australia of different societal groups and communities.[216]

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5 How to recognise the Right to a Healthy Environment

Australia must implement the human rights obligations that it has accepted and supported under international law. As emphasised by the Special Rapporteur, implementing the right to a healthy environment will optimally begin with legal recognition.[217]

We recommend that the Australian Government supports recognition of the right to a healthy environment at the international level, and that all levels of government in Australia enshrine the right to a healthy environment in Australian law.

Recommendation 1

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

Support for the right to a healthy environment should start with support at the international level.

We commend the decision of the Australian Government to vote in favour of the UN General Assembly's resolution to recognise the right to a healthy environment. The Resolution clarifies that the right to a healthy environment should be universally recognised, protected, respected and fulfilled. This is an important first step towards ensuring that UN human rights institutions can better address the most pressing threats to the enjoyment of all human rights.

We recommend that the Australian Government continues to support recognition of the right to a healthy environment on the international stage, including by supporting any international treaty mechanisms that include the right. This could include, for example, ratifying an additional protocol to the ICCPR, ICESCR or other environmental or human rights treaties that explicitly recognises the right to a healthy environment.

It is important for the Australian Government to support the right to a healthy environment at the international level for the following reasons:

- in countries that already recognise the right to a healthy environment, international developments will be a catalyst for additional legislative and policy changes that ensure that these countries fulfil their obligations to respect, protect and fulfil the right;
- in countries that do not yet recognise the right to a healthy environment, international developments will be a catalyst for new environmental and human rights legislation, and policies that recognise and implement the right; and
- all countries would be driven to prioritise and accelerate actions to implement the right to a healthy environment, leading to improved health and environmental outcomes.

Recommendation 2

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

The right to a healthy environment must be protected at the national level in Australia.

The best way to achieve this would be to enshrine the right in the Australian Constitution. However, due to Australia's unique constitutional history and the conservative culture of the High Court, inclusion of human rights in the Constitution either through implied or express recognition is extremely unlikely, and would also require a referendum.

In the absence of Constitutional amendment, the clearest way to achieve recognition of the right to a healthy environment at the national level is for the Australian Government to recognise the right in national human rights legislation.

The right to a healthy environment should be expressly recognised in national legislation. While the right can be implied through other rights, such as the rights to life, health or culture, express recognition of the right is the most comprehensive and secure option.[218]

Broadly speaking, introducing a Charter of Human Rights and Freedoms will benefit all Australians by preventing human rights violations, providing a powerful tool for challenging injustices and fostering a culture of understanding and respecting human rights.[219] In recognition that human rights are universal, indivisible, and interrelated,[220] we recommend that all human rights – whether civil and political or economic, social and cultural – are treated in an equal manner and recognised in an Australian Charter of Human Rights and Freedoms in accordance with Australia's international human rights obligations. Inclusion of the right to a healthy environment will strengthen the protection of other rights, which rely on a healthy environment as a precondition to their fulfilment.

It is important to acknowledge that the Australian Government can enact national legislation implementing the right to a healthy environment only if the right can be supported by the Australian Constitution. In our preliminary view, the right to a healthy environment can be supported by the external affairs power (section 51(xxix) of the Constitution) as giving domestic effect to, and/or being incidental to, Australia's obligations to ensure and respect the right to life under Article 6 of the ICCPR, or Australia's obligations to take steps to progressively realise the enjoyment of the highest attainable standard of physical and mental health under Article 12 of the ICESCR. However, at this stage, the constitutional basis for the right to a healthy environment is unknown as it has not yet been considered by the federal government or the courts.

Recommendation 3

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

State and territory governments should also recognise the right to a healthy environment in local human rights legislation.

Recognition of the right to healthy environment could occur in the various state and territory human rights legislative schemes, starting with the ACT, Victoria and Queensland, which already have human rights legislation.[221] The right to a healthy environment should be expressly recognised in such legislation, as this would provide the most comprehensive and secure protection of the right.

Enshrining the right in legislation would allow the right to be captured by existing legal processes, meaning that individuals living in those jurisdictions could access remedies and redress under their local legislation for breaches of the right. It would also ensure that new and amended legislation is scrutinised and assessed for its compatibility with the right to a healthy environment.[222]

Recognition of the right in state/territory human rights legislation can also improve the culture of human rights in government by increasing opportunities for dialogue between different arms of government, which helps to foster a culture of human rights.

Recommendation 4

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.

If it is not possible for the Australian Government to introduce an Australian Charter of Human Rights and Freedoms, another option to recognise the right to a healthy environment at the national level would be to legislate a duty for decision-makers to consider, and act consistently with, the right when exercising powers under federal legislation.[223]

6 Conclusion

It has been 50 years since the right to a healthy environment was recognised in the Stockholm Declaration. Following the General Assembly's resolution in July 2022, 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.

As the Minister for the Environment and Water, the Hon. Tanya Plibersek MP, acknowledged in July 2022, the SoE 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'.*[224]

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.

For a digital copy of report and references please scan QR code:

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ACT Government

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“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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