



Environmental Defenders Office

25 May 2023

Mr Ian Fry
Special Rapporteur on human rights and climate change
By email: hrc-sr-climatechange@un.org

Dear Special Rapporteur,

Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice.

Thank you for allowing Environmental Defenders Office the opportunity to contribute to the report on enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice, to be presented to the United Nations General Assembly in October 2023.

Environmental Defenders Office (**EDO**) is the largest environmental legal centre in the Australia-Pacific. EDO is dedicated to protecting the climate, communities and environment by providing access to justice, running litigation and leading law reform advocacy. As an accredited community legal service and non-government, not-for-profit organisation, EDO uses the law to protect and defend Australia's wildlife, people and places.

The work of the EDO is underpinned by an environmental justice and human rights framework. EDO recognises that the human rights of certain people and communities are disproportionately impacted by environmental harm, including the impacts of climate change, and guides EDO to focus on empowering overburdened people and communities to fight for environmental justice.

Enhancing climate change legislation

With the election of a new Federal Government in 2022, Australia has seen some improvements in climate legislation, with national emissions targets enshrined in legislation and a new emissions reduction regime for large industrial emitters. Recent commitments include to a Net Zero Authority to assist with a domestic just transition for fossil fuel workers, and the introduction of a fuel efficiency standard alongside investment in electric transport.

However, Australian efforts to meet the Paris Agreement goal of limiting global temperature rise to 1.5 degrees Celsius remain vastly inadequate. Our emissions targets are not line with the rapid and genuine emissions cuts needed to meet the Paris Agreements goals, and do not reflect Australia's fair share of the global emissions reduction task. The Government's primary emissions reduction mechanism only applies to a limited number of large industrial emitters, while the Federal Government continues to approve new fossil fuel projects.

Additionally, Australia currently does not have legislated human rights protections at the national level.

Consistent with global trends, Australia has also seen an increasing crackdown on climate protesters, with anti-protestor legislation now being implemented in States and Territories across the country. EDO is alarmed by these developments and the implications for climate advocacy, and supports the adoption of a duty on public authorities to guarantee a safe and enabling environment for human rights defenders, including environmental human rights defenders (such as that established by article 9, *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*).

In the context described above, EDO will continue to advocate for more ambitious and equitable climate legislation which upholds human rights, as detailed in the following reports.

Please find **attached**:

- [A Roadmap for Climate Reform \(2022\)](#), which outlines a roadmap for climate reform under Australian law and focuses on five opportunities for reforming climate law in Australia and the recommendations that should follow.
- [A Healthy Environment is a Human Right: Report on the Status of the Human Right to a Healthy Environment in Australia \(2022\)](#), which describes the importance of the right to a healthy environment and calls on all levels of Australian government to enshrine the right of Australians to live in a clean, healthy and sustainable environment in law. EDO notes the Special Rapporteur's support for all four recommendations and participation as a keynote speaker at the launch of this report.
- [Global Warning Report: The Threat to Climate Defenders in Australia \(2021\)](#), which documents the importance of climate activism in Australia, maps the systemic repression faced by climate activists across the country, and examines the unregulated political influence of the fossil fuel industry driving that repression. It makes recommendations for Australian law to protect these rights.

Supporting climate change litigation

EDO uses human rights frameworks to achieve outcomes in climate litigation. For example, in 2022 EDO acted for Youth Verdict and the Bimblebox Alliance in a historic legal win opposing the Galilee Coal Project. EDO argued coal from the mine will impact the human rights of First Nations Peoples by contributing to dangerous climate change, which was the first time an Australian coal mine was challenged on human rights grounds. This case was also the first time an Australian court heard evidence against a coal mine on-Country and according to First Nations protocols.

Please find **attached** the full case [Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors \(No 6\) \[2022\] QLC 21](#).

First Nations Communities and human rights

EDO has and continues to work with First Nations clients who have interacted with Western laws, including Western cultural heritage laws in many ways, including litigation and engaging in

Western law reform processes. A crucial focus is ensuring Australian legislation, policies and procedures are consistent with Australia's obligations under international law to consult all First Nations people who may be affected by fossil fuel activities.

The rights of First Nations Peoples have been internationally recognised, with the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) being adopted by the United Nations General Assembly on 13 September 2007 and endorsed by Australia on 3 April 2009. The principles of free, prior, and informed consent (**FPIC**) underpin the international obligation to consult First Nations peoples, enshrined in articles 19 and 32 of UNDRIP. EDO advocates for the adoption of FPIC in all environmental and project approval legislation, as well as any circumstances in which First Nations interests, community or heritage may be affected.

First Nations cultural heritage concerns and climate change mitigation frequently intersect in Australia. For example, EDO recently acted for Tiwi Senior Lawman Dennis Tipakalippa in a successful case to prevent drilling for fossil gas. Please find **attached** the full case [Santos NA Barossa Pty Ltd v Tipakalippa \[2022\] FCAFC 193](#).

[EDO's submission](#) to the Commonwealth parliamentary inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia by resources company Rio Tinto is also **attached**. This case further illustrates the failure of Australian legislative schemes to uphold human rights, and the rights of First Nations Peoples, in relation to fossil fuel projects.

EDO would be pleased to speak with you further about the integration of climate change and human rights in Australian legislation and litigation. For further information, please contact rachel.walmsley@edo.org.au or (02) 9262 6989.

Yours sincerely,

Environmental Defenders Office



Rachel Walmsley

Head of Policy & Law Reform