



Environmental
Defenders Office

**Submission to Parliamentary Joint Committee on Inquiry into
Australia's Human Rights Framework**

23 June 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.

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Submitted to:

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations Peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the Land.

A Note on Language

We acknowledge there is a legacy of writing about First Nations Peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term 'First Nations Peoples'. We acknowledge that not all First Nations Peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

The role of EDO

EDO is a non-Indigenous community legal centre that works alongside First Nations Peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction.

EDO has and continues to work with First Nations clients who have interacted with Western laws, including litigation and engaging in Western law reform processes.

Out of respect for First Nations self-determination, EDO has provided high-level key recommendations for Western law reform to empower First Nations to protect their Countries and cultural heritage. These high-level recommendations comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.

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ATTACHMENTS

- **Attachment 1** – [*A Healthy Environment is a Human Right: Report on the Status of the Human Right to a Healthy Environment in Australia*](#) (August 2022)
- **Attachment 2** – [*Submission from EDO to the ACT Legislative Assembly in the Inquiry into Petition 32-21 \(No Rights Without Remedy\)*](#) (April 2022)
- **Attachment 3** – [*Submission from EDO to the ACT Government on its investigation into including the right to a healthy environment in the ACT's Human Rights Act 2004*](#) (August 2022)
- **Attachment 4** – [*Global Warning Report: The Threat to Climate Defenders in Australia*](#) (December 2021)
- **Attachment 5** – [*Submission from EDO to the UN Special Rapporteur on toxics and human rights*](#) (May 2023)
- **Attachment 6** – Wilderness Society, [*Who holds the power? Community rights in environmental decision-making*](#) (2022)

EXECUTIVE SUMMARY

The Environmental Defenders Office Ltd (**EDO**) welcomes the opportunity to contribute to the Parliamentary Joint Committee's *Inquiry into Australia's Human Rights Framework (Inquiry)*.

EDO notes that the timing of the Inquiry is particularly pertinent given recent resolutions in the United Nations Human Rights Council (**HRC**) and United Nations General Assembly (**UNGA**) that recognised access to a clean, healthy and sustainable environment (**right to a healthy environment**) as an universal human right.¹ As Australia voted in favour of the UNGA resolution, EDO considers the Inquiry is a significant opportunity for Australia to implement its commitment to the international community by enacting a federal Charter or Act of Human Rights and Freedoms (**Charter**) that enshrines the right to a healthy environment in law.

The 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.

Our work 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. This guides EDO to focus on empowering overburdened people and communities to fight for environmental justice.

In this submission, EDO responds to the following terms of reference for the Inquiry:

- developments since 2010 in Australian human rights laws (both at the Commonwealth and State and Territory levels) and relevant case law;
- whether the Australian Parliament should enact a federal Human Rights Act, and if so, what elements it should include;
- whether existing mechanisms to protect human rights in the federal context are adequate and if improvements should be made;
- the role of the Australian Human Rights Commission (**Commission**);
- the process of how federal institutions engage with human rights, including requirements for statements of compatibility; and
- the effectiveness of existing human rights Acts/Charters in protecting human rights in the Australian Capital Territory (**ACT**), Victoria and Queensland, including relevant caselaw, and relevant work done in other states and territories.

Please note that this submission does not respond to the following terms of reference:

- the scope and effectiveness of Australia's 2010 *Human Rights Framework* and the *National Human Rights Action Plan*;

¹ United Nations Human Rights Council, *The Human Right to a Clean, Healthy and Sustainable Environment*, GA Res 48/13, UN Doc A/HRC/48/13 (18 October 2021); United Nations General Assembly, *The Human Right to a Clean, Healthy, and Sustainable Environment*, UN Doc. A/RES/76/300 (28 July 2022).

- whether the Framework should be re-established, as well as the components of the Framework, and any improvements that should be made; or
- the remit of the Parliamentary Joint Committee on Human Rights.

In this submission, we make **14 recommendations** in response to the terms of reference.

SUMMARY OF RECOMMENDATIONS

EDO recommends the following:

1. The Australian Government should enact a federal Charter or Act of Human Rights and Freedoms (**Charter**).
2. The Australian Government should ratify the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (**Aarhus Convention**).
3. The Charter should include the right to a clean, healthy and sustainable environment (the **right to a healthy environment**), which should be defined broadly, consistent with international law.
4. The Australian Government should not strictly delineate between human rights and the rights of nature in the Charter or in any explanatory memorandum, guidelines or policies.
5. The Charter should enshrine the environmental procedural rights that are protected under the Aarhus Convention, in addition to the participation duty of public authorities proposed by the Australian Human Rights Commission (**Commission**).
6. The Charter should enshrine all rights protected under the international human rights treaties ratified by Australia.
7. The Charter should include the cultural rights of First Nations Peoples proposed by the Commission. In addition, the Charter should enshrine all rights protected under the *Universal Declaration of the Rights of Indigenous Peoples* (**UNDRIP**). Alternatively, the Australian Government should enact legislation to give domestic effect to UNDRIP. Any provision relating to the rights of First Nations Peoples must be developed in culturally appropriate consultation with First Nations Peoples.
8. The Charter should include rights to protect environmental human rights defenders, in particular the right to a safe and enabling environment so that they are able to act free from threat, restriction and insecurity in Article 9(1) of the *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean* (**Escazú Agreement**), and other relevant protest rights in Article 9(2) of the Escazú Agreement.
9. The Charter should include a positive duty on public authorities as proposed by the Commission.
10. The Charter should explicitly state that, consistent with international law, the positive duty on public authorities extends to a duty to ensure that private actors act

consistently with the human rights contained in the Charter. The Charter should also impose a duty on businesses and other private actors to act consistently with human rights, and should include accessible remedies for harmful interference on human rights by private actors.

11. The Charter should include a participation duty as proposed by the Commission, however this duty should require public authorities to ensure the effective participation of all people who are most at risk of experiencing environmental harm in addition to First Nations Peoples, children, and people with disability, such as women, people who are financially disadvantaged, older people, people from a racial, ethnic or other minority, people displaced by natural disasters, culturally and racially marginalised communities, and LGBTIQ+ communities.
12. The Charter should ensure access to effective remedies for breaches of human rights including an informal complaints mechanism, access to judicial remedies, and adequate protections for individuals against adverse costs orders, as proposed by the Commission.
13. The Charter should establish a rapid response mechanism to protect environmental human rights defenders exercising their rights in conformity with the Charter's provisions from penalisation, persecution, harassment, or any other form of retaliation for their involvement, similar to the mandate of the Special Rapporteur on environmental defenders under the Aarhus Convention. At a minimum, the Charter must enable expedited access to effective remedies for environmental human rights defenders in urgent matters.
14. The role of the Commission should be expanded to include consideration of environmental human rights, including by exercising five key functions:
 - a. advocate for a strong definition of a right to a healthy environment in state and Commonwealth human rights legislation;
 - b. promote and increase awareness of the interrelationship between human rights protection and protection of the environment;
 - c. conduct research into the interrelationship between human rights protection and the protection of the environment in Australia;
 - d. monitor and scrutinise Australia's performance in relation to its human rights commitments within the context of addressing environmental protection;
 - e. investigate and conciliate human rights complaints made within the context of the interrelationship between human rights and the triple planetary crises of climate change, biodiversity loss and a toxic environment.

In support of our recommendations, we **attach** the following:

- **Attachment 1 – [A Healthy Environment is a Human Right: Report on the Status of the Human Right to a Healthy Environment in Australia](#)** (August 2022) which describes the importance of the human right to a clean, healthy and sustainable environment (the ‘right to a healthy environment’) and calls on all levels of Australian government to enshrine the right to a healthy environment in Australian law;
- **Attachment 2 – [Submission from EDO to the ACT Legislative Assembly in the Inquiry into Petition 32-21 \(No Rights Without Remedy\)](#)** (April 2022) which supports the proposal to amend the ACT’s *Human Rights Act 2004* to introduce an informal and accessible human rights complaint mechanism, and which makes 13 recommendations to improve access to justice for human rights matters in the ACT;
- **Attachment 3 – [Submission from EDO to the ACT Government on its investigation into including the right to a healthy environment in the ACT’s Human Rights Act 2004](#)** (August 2022), which strongly recommends that the ACT Government includes the right to a healthy environment in the ACT’s *Human Rights Act 2004*, and which makes 17 recommendations to ensure that, if the right to a healthy environment is included in the Act, it is appropriately defined and can be effectively implemented in the ACT;
- **Attachment 4 – [Global Warning Report: The Threat to Climate Defenders in Australia](#)** (December 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.
- **Attachment 5 – [Submission from EDO to the UN Special Rapporteur on toxics and human rights](#)** (May 2023) which investigates the implications for human rights of environmentally sound management and disposal of hazardous substances and wastes, highlights how Australian law does not protect human rights to be free of toxic pollutants, and identifies changes that must be made at a national and subnational level to protect these rights.
- **Attachment 6 – Wilderness Society, [Who holds the power? Community rights in environmental decision-making](#)** (2022), which includes EDO’s analysis of federal, state and territory environmental protection and planning legislation to assess how well these provide for the three core environmental community rights established by the Rio Declaration, and the Aarhus Convention and reveals that environmental community rights are not adequately protected across the country.

1 – DEVELOPMENTS SINCE 2010 IN AUSTRALIAN HUMAN RIGHTS LAWS AND RELEVANT CASE LAW

In this section, we address some key developments in human rights law in Australia as it relates to the environment.

Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors

In respect of litigation, we draw the Parliamentary Joint Committee’s attention to the decision of the Queensland Land Court in *Waratah Coal v Youth Verdict & Ors* (**Waratah Coal decision**)², which in summary accepted the intrinsic connection between the enjoyment of human rights and the health of the environment, notwithstanding that there is no standalone right to a healthy environment in Queensland.

In this case, EDO acted for Youth Verdict and the Bimblebox Alliance in opposition to a proposed coal mine in the Galilee Basin, Queensland. On behalf of our clients, EDO argued coal from the mine would impact the human rights of First Nations Peoples by contributing to dangerous climate change. This case 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. When considering its human rights obligations under Queensland’s human rights laws,³ the Queensland Land Court found that the proposed coal mine would unreasonably and unjustifiably limit several human rights including the right to life, rights of First Nations Peoples, rights of children, and the right to property and privacy due to both climate change and localised impacts.⁴

Although this decision was not binding on the regulators of mining licences and environmental authorities, the coal mine was ultimately rejected after the decision-makers accepted the Queensland Land Court’s recommendation. This case is a key acknowledgement that in future, public authorities must consider the impact of climate change on relevant human rights protected under Queensland’s human rights legislation when making environmental decisions.

Daniel Billy and Ors v Australia (Torres Strait Islanders Petition)

We also draw the Parliamentary Committee’s attention to the recent decision of *Daniel Billy and Ors v Australia (Torres Strait Islanders Petition)* made by the UN Human Rights Committee,⁵ which monitors the implementation of the *International Covenant on Civil and Political Rights (ICCPR)* by State parties including Australia.

In this matter, the UN Human Rights Committee considered a complaint lodged by a group of Torres Strait Islander People, Australian nationals, and six of their children against Australia for its failure to adapt to climate change by, amongst other things, upgrading seawalls on the islands and reducing GHG emissions. The complainants argued that changes in weather patterns from climate change, including severe flooding from tidal waves, have direct harmful consequences on their livelihood, their cultures and traditional way of life. The complainants argued the Australian government had violated a number of their rights under the ICCPR including the right to life (Art 6).

² *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 (*‘Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)’*).

³ *Human Rights Act 2019* (Qld) ss 59-60 (*‘Qld HRA’*).

⁴ *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* at [44], [1655], [1703].

⁵ CCPR/C/135/D/3624/2019.

The Committee found that there had been no breach of the complainants' right to life because in the time that it would take to realise the risk to the complainants' life, estimated to be around 10 to 15 years, it was possible that Australia could intervene with affirmative measures. In making this finding, the Committee took into account evidence that Australia is taking adaptive measures to reduce vulnerabilities and build resilience to climate change harms. However, the Committee found that Australia had breached the complainants' other human rights under the ICCPR (the right to privacy and home (Art 17) and the right to culture (Art 27)) because of its delay in constructing seawalls.

Although this was an international human rights decision, it is relevant to the Parliamentary Committee's inquiry because it is instructive of how the Human Rights Committee may determine Australia's human rights obligations with respect to climate change. The decision also highlights that there are currently no effective domestic remedies in Australia for breaches of the ICCPR.

Commitment to incorporate the right to a healthy environment into the ACT's *Human Rights Act 2004*

In relation to legislative developments, we note that the ACT Government has committed to legislate a standalone right to a healthy environment by incorporating it into the *Human Rights Act 2004* (ACT) (**ACT HRA**) during the second half of 2023.⁶ This is an important development in human rights protection in Australia. EDO notes that this commitment follows a significant period of advocacy by the EDO in the ACT for the inclusion of the right in the ACT HRA. Should the ACT Government fulfil this commitment, this would mark the first jurisdiction in Australia to incorporate the standalone right expressly in legislation.

As we explain further in this submission, the right to a healthy environment is increasingly recognised under international law,⁷ and we advocate for the right to be included in a federal Charter.

Increasing repression of environmental defenders in Australia

Our report *Global Warning Report: The Threat to Climate Defenders in Australia* (**Attachment 4**) documents the importance of climate activism in Australia, maps the ongoing and worsening systemic repression faced by climate activists across the country, and examines the unregulated political influence of the fossil fuel industry driving that repression. This report makes recommendations for Australian law to protect the rights of climate activists, including recommending the introduction of federal human rights legislation and enshrinement of the rights to freedom of association and freedom of peaceful assembly.

Since the publication of this report in 2021, consistent with global trends, Australia has seen an increasing crackdown on climate protesters, with anti-protestor legislation now being implemented by multiple states and territories across Australia. The most prominent developments include amendments in NSW to the *Roads Act 1993* (NSW) and the *Crimes Act 1900*

⁶ Minister for Human Rights, Legislative Assembly for the Australia Capital Territory, *Your Say Report – Right to a Healthy Environment – Report on What We Heard* (Report, November 2022) 3.

⁷ See UN Human Rights Council, *The Human Right to a Clean, Healthy and Sustainable Environment*, GA Res 48/13, UN Doc A/HRC/48/13 (18 October 2021) and UN General Assembly, *The Human Right to a Clean, Healthy, and Sustainable Environment*, UN Doc. A/RES/76/300 (28 July 2022); see also *Stockholm Declaration on the Human Environment: Report of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14 and Corr.1 (16 June 1972).

(NSW) (collectively, the **NSW Protest Laws**),⁸ and in South Australia amendments to the *Summary Offences Act 1953* (SA).⁹ EDO recently represented ‘Knitting Nannas’ Dominique Jacobs and Helen Kvelde in a constitutional challenge to aspects of the NSW Protest Laws. Judgment is currently reserved before the Supreme Court of NSW.

EDO has also witnessed an increase in proactive policing of climate activists across all Australian states and territories including, for example, police raids, seizure of devices, pre-emptive checks, and onerous bail conditions, which are increasingly utilised as mechanisms for disrupting and isolating the environmental movement.¹⁰

EDO is deeply alarmed by this repression and the implications for human rights of climate advocates. This must be ameliorated by enacting a federal Charter, which must include the elements we recommend in the next section of this submission.

⁸ *Road Amendment (Major Bridges and Tunnels) Regulation 2022* (NSW), *Roads and Crimes Legislation Amendment Act 2022* (NSW) and *Crimes Act 1900* (NSW).

⁹ *Summary Offences (Obstruction of Public Places) Bill 2023* (SA).

¹⁰ See for example ‘Extinction Rebellion protesters have ‘onerous’ bail conditions revoked by Sydney court’, *SBS News* (online, 25 October 2019) available at <<https://www.sbs.com.au/news/article/extinction-rebellion-protesters-have-onerous-bail-conditions-revoked-by-sydney-court/8na7evqe8>>; Paul Gregoire, ‘Bail and Remand Are Being Weaponised to Stamp Out Climate Activism’, *Sydney Criminal Lawyers* (online 20 July 2022) available at <<https://www.sydneycriminallawyers.com.au/blog/bail-and-remand-are-being-weaponised-to-stamp-out-climate-activism/>>; Jesse Noakes, ‘WA police raid journalists’, *The Saturday Paper* (online, 13 May 2023) available at <https://www.thesaturdaypaper.com.au/news/environment/2023/05/13/wa-police-raid-journalists#hrd>.

2 – WHETHER THE AUSTRALIAN PARLIAMENT SHOULD ENACT A FEDERAL HUMAN RIGHTS ACT AND, IF SO, WHAT ELEMENTS IT SHOULD INCLUDE

EDO strongly recommends that the Australian Parliament enact a Charter or federal human rights Act (**Recommendation #1**). We recommend that any such Charter should include the elements discussed below.

The right to a healthy environment

EDO strongly recommends that any Charter include the right to a healthy environment (**Recommendation #3**), for the reasons set out in our report *A Healthy Environment is a Human Right* (**Attachment 1**).

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,¹¹ after this right was explicitly recognised by the UN Human Rights Council in October 2021.¹² The resolution passed with an overwhelming majority, with Australia voting in favour along 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.

Noting that Australia voted in favour of recognising the right to a healthy environment, EDO considers that Australia can implement its commitment to the international community at home by legislating a Charter and including the right to a healthy environment in such a Charter.

Our report *A Healthy Environment is a Human Right* discusses the meaning of the right to a healthy environment in international law (Section 1), its status in Australian law (Section 2), and presents arguments in favour of recognising the right to a healthy environment in Australian law in all levels of government (Sections 3 and 4). In our report, we recommend that the Australian government take the following steps to enshrine the right to a healthy environment in Australian law:

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.
2. **Recommendation 2:** Legislate the right to a healthy environment in an Australian Charter of Human Rights and Freedoms.
3. **Recommendation 3:** Legislate the right to a healthy environment in new and existing state and territory human rights legislation.
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

¹¹ UN General Assembly, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (28 July 2022).

¹² UN HRC, *The Human Right to a Clean, Healthy and Sustainable Environment*, GA Res 48/13, UN Doc. A/HRC/48/13 (18 October 2021).

consideration when exercising their functions under federal legislation that affects the environment and human health, in particular human rights and environmental legislation.

Definition of the right to a healthy environment

We note that the Commission has proposed that a Charter includes the right to a healthy environment, which it has defined as follows:

(1) Every person has the right to an environment that does not produce adverse health consequences in the following respects:

(a) Every person has the right not to be subject to unlawful pollution of air, water and soil.

(b) Every person has the right to access safe and uncontaminated water, and nutritionally safe food.

(c) No unjustified retrogressive measures should be taken with regard to this right.

(d) No one should be subject to discrimination regarding the realisation of this right.

While EDO endorses the Commission's proposal to include the right to a healthy environment in a federal Charter, EDO considers that the definition proposed by the Commission is overly restrictive. In particular, EDO disagrees with the inclusion of 'unlawful' pollution of air, water and soil, which implies that lawful pollution is permissible even if it produces adverse health consequences. In our view, this contradicts the Commission's proposed definition of the right to a healthy environment as the right to an environment that does not produce adverse health consequences. EDO's views in relation to the negative impacts of 'lawful' pollution on human rights in Australia is set out in our recent submission to the UN Special Rapporteur on toxics (**Attachment 5**).

Consistent with our recommendations to the ACT Government (**Attachment 3**), the right to a healthy environment should be defined broadly.

The right to a healthy environment should not be limited to an exhaustive list of substantive elements (such as the right to clean air, clean water, or safe food) and/or procedural elements. That is because interpretation of the right will evolve as our understanding of State obligations under international human rights law in relation to the environment evolves, noting that human rights treaties are considered living instruments that must evolve over time and be interpreted in light of present conditions.¹³

Our submission to the ACT Government includes further suggestions on how the right to a healthy environment could be defined (see recommendations 3 and 4, pages 16-21). In particular, **we recommend that the right to a healthy environment is defined to include the right to a 'clean', healthy' and 'sustainable' environment, consistent with the General Assembly's resolution**. Our submission contains further guidance on how these terms are interpreted in practice by UN Member States.

¹³ See e.g regional human rights courts and expressing this view in: *Loizidou v. Turkey*, 310 Eur. Ct. H.R. (ser. A), European Court of Human Rights (23 March 1995); Inter-American Court of Human Rights, *Advisory opinion on the interpretation of the American Declaration of the Rights and Duties of Man*, Advisory Opinion OC-10/89 (14 July 1989); *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Inter-American Court of Human Rights (31 August 2001).

Our submission to the ACT Government also addresses how the right to a healthy environment could be implemented in practice throughout the submission. This discussion may be useful when considering including the right to a healthy environment in a federal Charter.

The rights of nature

In addition, we note that there is commentary on environmental rights that suggests that nature and natural phenomena such as rivers, lakes and trees share the right to exist and that the rights of nature should be protected in the same way as the rights of humans.¹⁴ This concept is known as the ‘rights of nature’, through which the environment or its features are afforded legal personality, allowing the natural world to exist, thrive and evolve as an independent entity.

The rights of nature have emerged from a global movement that is growing and developing rapidly.¹⁵ As this movement evolves, it is becoming increasingly clear that rights of nature are closely intertwined with human rights including the right to a healthy environment, the right to culture, and the right to clean water.¹⁶

If the Australian Parliament enacts a federal Charter, it will need to ensure that Australian human rights law develops and evolves consistently with international law. We recommend the Australian Parliament does not strictly delineate between human rights and the rights of nature in the Charter or in any explanatory memorandum, guidelines or policies (**Recommendation #4**). Strict separation of the rights would be inconsistent with the global movement on the rights of nature. It may also be inconsistent with the views and cultural rights of First Nations Peoples, who tend to view the environment in a holistic way and not compartmentalised into separate components of nature (air, land, water, biodiversity) and humans.

All rights protected under the international human rights treaties ratified by Australia

All human rights are interconnected and are therefore indivisible. It will not be possible for Australia to realise human rights unless all human rights are recognised and protected under Australian law.

This includes all political, civil, economic, cultural, and social rights contained in the *International Covenant on Civil and Political Rights (ICCPR)* and *International Covenant on Economic, Social and Cultural Rights (ICESCR)*,¹⁷ as well as other rights including the rights of women, children and people living with disability enshrined in the seven international human rights treaties ratified by Australia.

¹⁴ Mihnea Tanasescu, ‘When a river is a person: From Ecuador to New Zealand, Nature Gets its Day in Court’, *The Conversation* (News Article, 19 June 2017); David R Boyd, *The Rights of Nature: A Legal Revolution That Could Save the World* (ECW Press, 2017); Elizabeth Macpherson, *The (human) rights of nature: a comparative study of emerging legal rights for rivers and lakes in the United States of America and Mexico* (2021) Duke Environmental Law and Policy Forum (Vol: XXXI) 327.

¹⁵ Alessandro Pelizzon et al, ‘Yoongoorookoo: The Emergence of Ancestral Personhood’ (2021) 30(3) *Griffith Law Review* 505, 505; Joshua Gellers, ‘Earth System Law and the Legal Status of Non-Humans in the Anthropocene’ (2021) 7 *Earth System Governance*, 2

¹⁶ For example, the Special Rapporteur’s thematic reports for a healthy biosphere and clean water refer to the rights of nature as good practice in achieving the right to a healthy environment: A healthy biosphere and the right to a healthy environment, UN Doc A/75/161 (15 July 2020) at [80] and Human rights and the global water crisis: water pollution, water scarcity and water-related disasters, UN Doc A/HRC/46/28 (19 January 2021) at [85].

¹⁷ *International Covenant on Civil and Political Rights*, opened for signature on 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) (ICCPR) and *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS (entered into force 3 January 1976) (ICESCR).

Rights of First Nations Peoples

The rights of First Nations Peoples are recognised under the *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*,¹⁸ in addition to other human rights treaties such as the ICCPR.

The Special Rapporteur on human rights and the environment has identified 16 Framework Principles on Human Rights and the Environment (**Framework Principles**),¹⁹ which are outlined on page 11 of our report (**Attachment 1**). 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.²⁰

Framework Principles 3, 14 and 15 are particularly important with respect to First Nations in Australia, which we discuss at pages 27 to 29 of our report. The specific rights of First Nations Peoples in relation to a healthy environment are outlined in Framework Principle 15. Framework Principle 15 of the Special Rapporteur's Framework Principles is that States have obligations to indigenous peoples and members of traditional communities, including to:²¹

- recognise and protect their rights to the lands, territories and resources that they have traditionally owned, occupied or used;
- consult 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;
- respect and protect their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources; and
- ensure that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.

The obligations in Framework Principle 15 arise out of international human rights sources including UNDRIP and art 27 of the ICCPR.²²

In its position paper, the Commission has proposed that any Charter include substantive cultural rights for First Nations Peoples.²³ We understand that this proposed right implements Article 27 of the ICCPR, and that the Commission has adopted its drafting from section 28 of Queensland's

¹⁸ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49 (2 October 2007, adopted 13 September 2007).

¹⁹ John H Knox, Special Rapporteur on Human Rights and the Environment, *Framework principles on human rights and the environment*, UN Doc. A/HRC/37/59 (24 January 2018).

²⁰ *Ibid*, 3 [8]; see *Selected Sources for Framework Principles on Human Rights and the Environment* (February 2018) accessible at

<<https://www.ohchr.org/sites/default/files/Documents/Issues/Environment/SREnvironment/ListSourcesFrameworkPrinciples.pdf>>.

²¹ *Ibid*, Principle 15, pp 18-20.

²² *Selected Sources for Framework Principles on Human Rights and the Environment*, Principle 15, pp 30-32.

²³ Australian Human Rights Commission, 'Chapter 5: What rights and fundamental freedoms should be protected in a Human Rights Act?', *Free and Equal: A Human Rights Act for Australia* (Position Paper, December 2022) p 114.

Human Rights Act 2019. EDO is supportive of the Commission’s proposal to include these rights and is supportive of the Commission’s drafting of this right.

The Commission’s proposed ‘participation duty’ also aims to ensure the participation of First Nations Peoples in relation to decisions that directly or disproportionately affect their rights (in addition to other people in society who require special protection under human rights, namely children and persons with disability).²⁴ The Commission’s proposed participation duty draws on international human rights law standards and common law procedural fairness principles.²⁵ In relation to First Nations Peoples, the duty will include positive requirements to enable participation of First Nations Peoples based on Articles 18 and 19 of UNDRIP.²⁶ These rights protect the right of Indigenous Peoples to participate in decisions that affect them and the right of Indigenous Peoples to free, prior and informed consent respectively.

EDO is very supportive of a Charter that imposes a duty on public authorities to uphold these collective consultation principles. As discussed further below in this submission, EDO recommends that the Charter include the participation duty proposed by the Commission, however this duty should require public authorities to ensure the effective participation of all people who are most at risk of experiencing environmental harm in addition to First Nations Peoples, children, and people with disability (**Recommendation #11**).

Further, EDO considers that the rights of First Nations Peoples must be reflected as individually held and exercisable rights within the Charter, rather than merely an obligation and duty on authorities to uphold those rights. In addition, although the Commission proposes that the participation duty will include positive requirements based on Articles 18 and 19 of UNDRIP, it is not clear whether the Commission proposes that such requirements are included in the text of the proposed legislation or merely in guidelines that must be followed in interpretation of the legislation. EDO considers that the collective rights of First Nations Peoples must be expressly included in any Charter.

EDO therefore **recommends that the Charter should incorporate all rights contained under UNDRIP, including the principle of free, prior and informed consent**. Alternatively, the Australian Government should enact legislation to give domestic effect to UNDRIP. Consistent with Articles 18 and 19 of UNDRIP, any rights relating to First Nations Peoples in the Charter should be developed with proper consultation and participation from First Nations Peoples, representative groups, and other First Nations stakeholders (**Recommendation #7**).

In making this recommendation, it is important to note that the EDO is not a First Nations organisation and therefore cannot speak on behalf of First Nations Peoples. Further, due to capacity and funding constraints, we have not consulted with any external First Nations Peoples in relation to our recommendations. We instead make this recommendation based on our interpretation of human rights law and international best practice.

As an example of a jurisdiction with legislation that gives effect to UNDRIP, the Parliamentary Committee may consider Canada’s *United Nations Declaration on the Rights of Indigenous Peoples Act* which entered into force in 2021.

²⁴ Australian Human Rights Commission, ‘Chapter 7: Procedural Duties’, *Free and Equal: A Human Rights Act for Australia* (Position Paper, December 2022) pp 161-241.

²⁵ *Ibid*, p 182.

²⁶ *Ibid*, p 183.

All procedural rights protected under the Aarhus Convention

The Aarhus Convention protects rights that are essential to achieving the three procedural elements of the right to a healthy environment: the right to access information, right to participate in decision-making, and access to justice. If the Australian Parliament enacts a Charter that includes the right to a healthy environment, it will be essential to also include rights protected under the Aarhus Convention to ensure the right to a healthy environment can be implemented in practice.

In partnership with the Wilderness Society, EDO recently conducted an analysis of federal, state and territory environmental and planning laws to examine the extent to which those laws protect the three core environmental community rights established by Principle 10 of the 1992 Rio Declaration on Environment and Development and further elaborated in the Aarhus Convention. The findings showed that the rights are not comprehensively or consistently enshrined in national, state or territory legislation.

In relation to better recognising these critical rights in environmental decision-making, EDO recommends that the Australian government ratify the Aarhus Convention which is open for global ratification (**Recommendation #2**). We note that this recommendation is consistent with Recommendation 1 of our report *A Healthy Environment is a Human Right* (**Attachment 1**).

As noted above, the Commission's position paper proposes including a 'participation duty', which would be a binding duty on public authorities to ensure the participation of First Nations Peoples, children, and persons with disability in relation to decisions that directly or disproportionately affect their rights.²⁷ This duty would also include a non-binding requirement for proponents of legislation to facilitate participation during the law-making process and to reflect what participation measures were undertaken in statements of compatibility. The Commission's proposed participation duty draws on international human rights law standards and common law procedural fairness principles.²⁸

EDO is supportive of the Commission's proposal and recommends that a Charter should include the proposed participation duty, however we consider that the participation duty should extend to ensure the effective participation of all people who are most at risk of experiencing environmental harm, in addition to First Nations Peoples, children, and people with disability (**Recommendation #11**). The Special Rapporteur on human rights and the environment has identified women, people who are financially disadvantaged, older people, people from a racial, ethnic or other minority, and people displaced by natural disasters as people who may be particularly vulnerable to environmental harm.²⁹ EDO also considers that culturally and racially marginalised communities and LGBTIQ+ communities may require additional protections from environmental harm.

We also maintain that any Charter should protect the broader participatory rights of all people. We consider that this could be achieved by ratifying the Aarhus Convention (**Recommendation #2**) and legislating each of the procedural rights contained in the Aarhus Convention as separate and distinct rights in the Charter (in addition to the 'participation duty') (**Recommendation #5**).

²⁷ Ibid, pp 161-241.

²⁸ Ibid, p 182.

²⁹ John H Knox, Special Rapporteur on Human Rights and the Environment, *Framework principles on human rights and the environment*, UN Doc. A/HRC/37/59 (24 January 2018) [41] p 17.

Rights to protect environmental human rights defenders

EDO strongly recommends that any Charter include rights to protect environmental human rights defenders. It is essential for such protections to be enshrined in law, particularly in light of recent developments in some parts of Australia, including NSW and South Australia, to enact legislation that restricts the ability of Australians to engage in peaceful protest, and the increase in proactive policing of climate activists.

This could be achieved by adopting our recommendation that any Charter includes the rights enshrined in Article 9 of the *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement)*, which provides the following (emphasis added):

1. *Each Party shall **guarantee a safe and enabling environment** for persons, groups and organisations that promote and defend human rights in environmental matters, so that they are able to **act free from threat, restriction and insecurity**.*
2. *Each Party shall take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters, including their **right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, as well as their ability to exercise their access rights**, taking into account its international obligations in the field of human rights, its constitutional principles and the basic concepts of its legal system.*
3. *Each Party shall also take appropriate, effective and timely measures to prevent, investigate and punish attacks, threats or intimidations that human rights defenders in environmental matters may suffer while exercising the rights set out in the present Agreement.*

In particular, we recommend that any Charter should include rights to protect environmental human rights defenders, in particular the right to a safe and enabling environment so that they are able to act free from threat, restriction and insecurity in Article 9(1) of the ‘Escazú Agreement’ and other relevant protest rights in Article 9(2) of the Escazú Agreement.

In relation to Article 9(2), we note that these rights appear to reflect the ICCPR rights to freedom of expression (Article 19), the right of peaceful assembly (Article 21), and the right to freedom of association (Article 22), however Article 9(2) protects a broader range of participatory rights which we consider is necessary to adequately protect environmental human rights defenders.

A positive duty on federal public authorities

EDO endorses the Commission’s proposal for a Charter to impose a positive duty on federal public authorities to act compatibly with the human rights expressed in the Charter and to consider human rights when making decisions.³⁰ We recommend that the Charter includes the Commission’s proposed positive duty (**Recommendation #9**).

Application of the Charter to private actors

Under international law, States’ obligations to protect human rights includes an obligation to protect against harmful interference on human rights by businesses and other private actors.³¹

³⁰ Australian Human Rights Commission, ‘Chapter 6: Positive Duty’, *Free and Equal: A Human Rights Act for Australia* (Position Paper, December 2022) pp 139-161.

³¹ John Knox, *Framework Principles on Human Rights and the Environment*, UN Doc A/HRC/37/59 (24 January 2018) [5], pp 7-8.

Similarly, individuals must be able to access effective remedies against private actors as well as government authorities.³² In the environmental context, recognising 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, the UN Human Rights Committee has declared that in order to fulfil their obligation to respect and ensure the right to life, States must preserve the environment and protect it against harm, pollution and climate change caused by both public and private actors.³³

EDO therefore recommends that the Charter should explicitly state that, consistent with international law, the positive duty on public authorities extends to a duty to ensure that private actors act consistently with the human rights contained in the Charter. The Charter should also impose a duty on businesses and other private actors to act consistently with human rights, and should include accessible remedies for harmful interference on human rights by private actors **(Recommendation #10)**.

This recommendation is consistent with Pillars I-III of the United Nations Guiding Principles on Business and Human Rights.³⁴ The Australian Government states that it has supported the UN Guiding Principles on Business and Human Rights since their inception in 2011 and made a pledge to implement the Guidelines in the 2016 Universal Periodic Review.³⁵

³² Ibid, [28] p 13.

³³ UN Human Rights Committee, *General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life*, UN Doc CCPR/C/GC/36 (3 September 2019) [62] p 13.

³⁴ John Ruggie, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises – Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework, 17th sess, Agenda Item 3, UN Doc A/HRC/17/31 (21 March 2011) annex (United Nations Guiding Principles on Business and Human Rights) (**UNGPs**).

³⁵ Attorney-General’s Department, ‘Annex 2: Australia’s Voluntary Commitments – Second cycle UPR 2015 - Status of Implementation’, *National Report of Australia - Universal Periodic Review 2021* (2021) item 10, available at <https://www.ag.gov.au/sites/default/files/2020-12/annex-2-upr-2021.pdf>, p 6.

3 – WHETHER EXISTING MECHANISMS TO PROTECT HUMAN RIGHTS IN THE FEDERAL CONTEXT ARE ADEQUATE AND IF IMPROVEMENTS SHOULD BE MADE

In our report *A Healthy Environment is a Human Right* (**Attachment 1**), we argue that existing mechanisms in the federal context are not adequate and that improvements are required (see p 37). Improvements could be made by accepting EDO’s recommendations to the present Inquiry.

Access to effective remedies

Further improvements can be made by ensuring that the Charter promotes access to justice by ensuring that all people have access to effective remedies, including an informal complaints mechanism and access to judicial remedies.

In its position paper, the Commission advocates for the inclusion of an independent cause of action for a breach of human rights committed by a public authority, and that people must have access to a range of remedies for a breach.³⁶ The Commission proposes including an accessible complaints process whereby a person can make a complaint to the Commission.³⁷ If conciliation through the Commission fails or is inappropriate, or if the matter is urgent, the Commission proposes that people would have the right to initiate proceedings in the Federal Court or the Federal Circuit and Family Court.³⁸ The Commission proposes that people could pursue a direct cause of action under the federal Human Rights Act, and that ordinary judicial review could be pursued as an alternative, or in addition to, this direct cause of action.³⁹ The available remedies should replicate the remedies available under the federal discrimination law regime which includes monetary damages, amongst other remedies.⁴⁰ People could also rely on the rights under the Human Rights Act in other legal proceedings.⁴¹ Finally, the Commission’s framework notes that an additional means of enhancing access to justice is to include protections against adverse cost orders.

EDO is very supportive of the Commission’s proposal and recommends that any Charter promotes access to effective remedies as proposed by the Commission (**Recommendation #12**). However, for clarity and as recommended earlier, EDO considers that each of these remedy mechanisms described above must be applicable against private actors (**Recommendation #10**).

Rapid response mechanism

EDO considers that the Charter should also incorporate additional measures to ensure that environmental human rights defenders who exercise their rights in conformity with the Charter’s provisions have access to effective remedies in urgent matters they experience, or are at imminent threat of, penalisation, persecution, harassment, or other forms of retaliation for their involvement.

EDO recommends establishing a rapid response mechanism within the Charter (**Recommendation #13**). Taking guidance from the rapid response mechanism established under

³⁶ Australian Human Rights Commission, ‘Chapter 11: Cause of action, complaints and remedies’, *Free and Equal: A Human Rights Act for Australia* (Position Paper, December 2022) pp 267-290.

³⁷ *Ibid*, 272.

³⁸ *Ibid*, 273.

³⁹ *Ibid*, 274.

⁴⁰ *Ibid*, 272.

⁴¹ *Ibid*, 273.

the Aarhus Convention, EDO considers that this rapid response mechanism could be implemented as follows:

1. Establish an independent office (either externally or as an independent office within the Commission) of a Human Rights Defender Commissioner (**HRD Commissioner**). The HRD Commissioner could function in a similar way to the position of the Special Rapporteur on environmental defenders under the Aarhus Convention. The HRD Commissioner's role would be to take measures to protect any person exercising their rights in conformity with the Charter's provision from penalisation, persecution, harassment, or other forms of retaliation for their involvement.
2. Affected persons or other stakeholders, including groups and organisations, should be able to apply to the HRD Commissioner for urgent assistance in relation to the harm they are, or are at risk of, experiencing. The HRD Commissioner could take various measures in response to an application including, for example, commencing an urgent investigation, making public statements, and/or making representations to the Government including ministers, statutory authorities and decision-makers. The HRD Commissioner could also intervene in proceedings involving human rights issues when appropriate.
3. The HRD Commissioner's role should be complementary to the procedures of the Commission and its complaint investigation and conciliation functions, operating in a similar way to the Special Rapporteur and the Compliance Committee under the Aarhus Convention. The HRD Commissioner could interact with the Commission in the following ways:
 - a. The HRD Commissioner would keep the Commission informed of their work.
 - b. Depending on the severity or systemic nature of the human rights violations they are responding to, the HRD Commissioner could refer a matter to the Commission for urgent resolution via its complaint mechanism.
 - c. During any referred complaint or in relation to another complaint relevant to the HRD Commissioner's functions, the Commission could seek the advice of the HRD Commissioner in relation to any rights, including participatory rights of the human rights defenders in question.

At a minimum, the Charter must enable expedited access to effective remedies for environmental human rights defenders in urgent matters. It is imperative that:

1. The Charter ensures environmental human rights defenders' urgent access to judicial remedies to seek relief for matters where, exercising their rights in conformity with the Charter's provisions, they are experiencing, or are at imminent threat of, penalisation, persecution, harassment, or any other form of retaliation for their involvement.
2. The Commission's human rights complaint mechanism includes a means to expediate urgent complaints, either by successful application of a party to a complaint before the Commission or on referral by the HRD Commissioner.

4 – THE ROLE OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION

It is EDO's view that the Commission can play an important role in the protection and promotion of human rights, particularly in relation to ensuring environmental and climate justice in Australia.

The UN General Assembly's 2021 resolution to reaffirm recognition of the right to healthy environment calls upon States, international organisations, business enterprises, and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.⁴² As Australia's national human rights institution, the Commission is a key relevant stakeholder that must steps to address the General Assembly's call to action.

In addition, the UN Human Rights Council's 2022 resolution on the role of national human rights institutions welcomed the critical contributions of such institutions in monitoring, reporting and advising governments and other stakeholders on climate action that is based on human rights.⁴³ The resolution highlights the important role that national human rights institutions play in assisting States to adopt effective frameworks to protect the human rights of all individuals without discrimination, and the particularly vulnerable situations of Indigenous Peoples to the impacts of climate change.

As Australia's only national independent statutory organisation tasked with promoting human rights in Australia and internationally, the Commission has a significant role to play in seeking to mitigate the effects of the triple planetary crises of climate change, biodiversity loss and toxic environments, on the enjoyment of human rights in both Australia and internationally.

EDO recommends that the Commission's role should be expanded to include consideration of environmental human rights (Recommendation #14). This could be achieved by expanding its role to include five key functions, which are consistent with the Commission's functions set out in the *Australian Human Rights Commission Act 1986* (Cth).⁴⁴

1. Advocate for a strong definition of a right to a healthy environment in state and Commonwealth human rights legislation. The Commission's functions include reporting on the actions Australia must take to comply with the provisions of any relevant international instrument.⁴⁵ We consider that this includes the recent HRC and UNGA resolutions recognising the right to a healthy environment.⁴⁶ As submitted earlier, EDO considers that it is necessary to incorporate the stronger and broader definition of the right to a healthy environment recognised in those resolutions. EDO notes that state legislation will not be enough to incorporate the stronger version of the right, given key pieces of environmental legislation such as the *Environment Protection Biodiversity Conservation Act 1999* (Cth), pursuant to which important environmental approvals are made, are legislated at a Commonwealth level.

⁴² UN General Assembly, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (28 July 2022).

⁴³ UN Human Rights Council, *National human rights institutions*, 51st Session, UN Doc. A/HRC/51/L.16/Rev.1 (5 October 2022).

⁴⁴ *Australian Human Rights Commission Act 1986* (Cth), Part II.

⁴⁵ *Ibid*, s 11(1)(k).

⁴⁶ United Nations Human Rights Council, *The Human Right to a Clean, Healthy and Sustainable Environment*, GA Res 48/13, UN Doc A/HRC/48/13 (18 October 2021); United Nations General Assembly, *The Human Right to a Clean, Healthy, and Sustainable Environment*, UN Doc. A/RES/76/300 (28 July 2022).

2. Promote and increase awareness of the interrelationship between human rights protection and protection of the environment. The Commission's functions include promoting an understanding and acceptance, and the public discussion, of human rights in Australia,⁴⁷ and undertaking educational programs and other programs for the purpose of promoting human rights.⁴⁸ EDO considers that environmental concerns should form a larger part of the Commission's focus given the significant long-term threat it poses to the enjoyment of human rights in Australia.
3. Conduct research into the interrelationship between human rights protection and the protection of the environment in Australia. The Commission's functions include undertaking research for the purpose of promoting human rights.⁴⁹ As Australia's national human rights institution, research and publications produced by the Commission examining this interrelationship will carry significant weight both in Australia and internationally. This will assist in furthering understanding amongst policymakers and the public that protecting the environment and addressing the triple planetary crises that Australia faces are human rights issues and challenges.
4. Monitor and scrutinise Australia's performance in relation to its human rights commitments within the context of addressing environmental protection. The Commission's functions include examining enactments, or proposed enactments, to ascertain whether they are inconsistent with or contrary to any human right.⁵⁰ This could include assessing pieces of important climate or environmental legislation against Australia's international human rights obligations, to determine whether Australia's current climate and environmental legislation and policies are consistent with these obligations.
5. Investigate and conciliate human rights complaints made within the context of the interrelationship between human rights and the triple planetary crises. The Commission's functions include to inquire into any act or practice that may be inconsistent with or contrary to any human right, and, by conciliation, to effect a settlement of the matters that gave rise to the Inquiry.⁵¹

⁴⁷ *Australian Human Rights Commission Act 1986* (Cth) s 11(1)(g).

⁴⁸ *Ibid*, s 11(1)(h).

⁴⁹ *Ibid*.

⁵⁰ *Ibid*, s 11(1)(e).

⁵¹ *Ibid*, s 11(1)(f).

5 – THE PROCESS OF HOW FEDERAL INSTITUTIONS ENGAGE WITH HUMAN RIGHTS

EDO briefly addresses the role of federal institutions engaging with human rights in our report *A Healthy Environment is a Human Right* (**Attachment 1**) (see pages 17 & 37).

As discussed earlier in this submission, we consider that it is essential to impose a positive duty on federal public authorities to engage with human rights. For this reason, we endorse the Commission’s proposal for a Charter to impose a positive duty on federal public authorities to act compatibly with the human rights expressed in the Charter and to consider human rights when making decisions (**Recommendation #9**).⁵²

In addition, recommendation 4 of our report *A Healthy Environment is a Human Right* (**Attachment 1**) suggests that if it is not possible for the Australian government to enact a federal Charter, an alternative suggestion may be to legislate a duty into the *Public Governance, Performance and Accountability Act 2013* (Cth) (**PGPA Act**) 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.

Consistent with this recommendation, if the Australian Parliament is not minded to enact a federal Charter, an alternative solution may be to legislate a positive duty on federal public authorities in the PGPA Act in relation to all human rights.

⁵² Australian Human Rights Commission, ‘Chapter 6: Positive Duty’, *Free and Equal: A Human Rights Act for Australia* (Position Paper, December 2022) 139-161.

6 – THE EFFECTIVENESS OF EXISTING HUMAN RIGHTS ACTS/CHARTERS IN PROTECTING HUMAN RIGHTS IN THE ACT, VICTORIA AND QUEENSLAND

In our report *A Healthy Environment is a Human Right* (**Attachment 1**), we address the effectiveness of existing human rights legislation in the ACT, Victoria, and Queensland (see pages 17-18, 24 and 37).

In relation to the ACT in particular, EDO recently prepared two submissions to the ACT Government that both address the effectiveness of the *Human Rights Act 2004* and make recommendations for improvement. One submission advocates for the inclusion of an accessible complaints mechanism and for other amendments to improve access to justice for human rights matters in the ACT (**Attachment 2**), and the other advocates for the inclusion of the right to a healthy environment (**Attachment 3**).

In response to these inquiries, the ACT Government has committed to introducing both an accessible complaints mechanism to the ACT Human Rights Commission and the substantive right to a healthy environment in the *Human Rights Act 2004* (ACT).

For further information about anything raised in this submission or in relation to our recommendations, please contact melanie.montalban@edo.org.au or (02) 6230 6627.