



30 April 2025

Special Rapporteur on Climate Change
United Nations Office of the High Commissioner for Human Rights

Dear Special Rapporteur

Human Rights in the life cycle of Renewable Energy and Critical Minerals

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to the Special Rapporteur on climate change in relation to human rights in the context of the energy transition, with particular focus on critical minerals and renewable energy infrastructure.

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. Our submission is made in the context of EDO's work in providing legal assistance to communities concerned with the impacts of extractive and polluting industries on the environment, their health and wellbeing. EDO has extensive experience in analysis of local, state, territory and national laws which regulate the environment, pollution, and relevant developments. As such, and in line with the Special Rapporteur's mandate, this submission makes recommendations for alternative approaches which aim to better support an ecosystem-based and human rights-based approach for the energy transition.

Australia must reduce greenhouse gas emissions consistent with a carbon budget based on science and our international commitments. To meet the Paris Agreement goal of limiting global temperature rise to 1.5 degrees Celsius, there needs to be a large-scale energy transition from fossil fuels to renewable energy.¹ However, EDO acknowledges that renewable energy projects (including energy projects such as wind and solar farms and associated transmission infrastructure, as well as those relating to extraction and processing of minerals required for the renewable energy transition) will have impacts. In our view, the urgency of the decarbonisation task should not be to the detriment of First Nations communities, ecological sustainability and environmental integrity, or human rights obligations.

¹ Conference of the Parties, Adoption of the Paris Agreement, U.N. Doc. FCCC/CP/2015/L.9/Rev/1 (Dec. 12, 2015) art 2.

Instead, the renewable energy transition presents an opportunity to engage with environmental concerns, community consultation processes, and First Nations cultural heritage protection in a different way than has been the historical experience in respect to the fossil fuel industry and other mining developments. Laws can, and should, be designed to deliver outcomes for climate, nature and communities. The transition to renewable energy must be consistent with and promote human rights, including the right to a healthy environment and environmental justice principles. Accordingly, EDO's submission address the 3 following areas:

- *First Nations consultation and consent must be a priority for any transition project*
- *Australia must adopt the right to a healthy environment*
- *Importance of biodiversity protection in the energy transition*

1. First Nations consultation and consent must be a priority for any transition project

EDO is a non-Indigenous community legal centre, which works alongside First Nations around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction. In EDO's 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 recommendations aim to comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.

Both climate impacts and solutions affect First Nations communities in Australia. The scientific, social, economic, human rights and environmental imperatives for limiting warming to 1.5 degrees Celsius are clear – this is particularly so for overburdened communities who are more likely to bear the brunt of climate inaction. Limiting global temperature is critically important for the survival and sovereignty of Indigenous and First Nations Peoples, including in the Torres Strait Islands and Pacific States, who are already suffering significant climate harm. However, First Nations communities are not only more likely to be at risk from the impacts of global warming, but also to be disadvantaged from climate policies and measures which lack equity considerations and cultural appropriacy.² Climate solutions – including the laws that govern renewable energy projects and critical minerals mining – must not replicate the failures of the current system in relation to fossil fuel governance.

To date, in Australia, mining and energy industry practice has failed to uphold the principles of the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**), and in particular the duty to obtain free, prior and informed consent (**FPIC**). This is clearly illustrated through tragedies such as the destruction of 46,000+ year old Juukan Gorge rock shelters by Rio Tinto on 24 May 2020 in Western Australia, but also through continued failure of national cultural heritage and nature laws to protect

² Kate Crowley and Oshan Jayawardena, 'Energy disadvantage in Australia: policy obstacles and opportunities' (2017) International Conference on Improving Residential Energy Efficiency, IREE (<https://www.sciencedirect.com/science/article/pii/S1876610217334835>).

First Nations cultural heritage around Australia.³ Currently, no relevant cultural heritage, environment or development legislation in Australia adequately reflects the requirements of free, prior and informed consent obligations under our international law commitments.⁴

As a starting point, and at a minimum, any renewable energy project must adhere to the standard of free, prior and informed consent and facilitate self-determination for First Nations peoples. This must involve consultation with First Nations peoples that is early, iterative and meaningful. First Nations peoples must be empowered and resourced to engage in the design, delivery and benefits of projects, policies, and decision-making processes relating to transition minerals mining and renewable energy infrastructure, as they see fit. In Australia, under current state, territory and national regimes, this does not appear to be the case.

For more information, see **Attachment 1: [EDO submission on the First Nations Clean Energy Strategy Consultation](#)**.

2. Australia must adopt the right to a healthy environment

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. Relevantly, the right to a healthy environment, access to clean air and access to safe water are being threatened by extractive practices that fuel climate change, and as well as at risk from poor regulation and outdated laws which apply to energy transition projects as well.⁵ It is EDO's longstanding recommendation that the right to a healthy environment should be adopted into law in Australia to protect communities, and as a means to accelerate the transition to a renewable economy, and ensure a clean, healthy and sustainable future.

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,⁶ after this right was explicitly recognised by the UN Human Rights Council in October 2021.⁷ 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.

³ See, "It became apparent to the Committee that legislation designed to protect cultural heritage has, in many cases, directly contributed to damage and destruction." Joint Standing Committee on Northern Australia, *A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge* (October 2021) xii.

⁴ See further analysis in EDO, [Submission to the Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia](#) (August 2020).

⁵ See generally, EDO: [Reforming Australia's Nature Laws](#). An independent statutory review of Australia's national nature laws found that they are not fit for purpose and urgently need reform: [Independent Review of the EPBC Act](#) (October 2020).

⁶ UN General Assembly, The human right to a clean, healthy and sustainable environment, UN Doc. A/RES/76/300 (28 July 2022) (UNGA Resolution 76/300).

⁷ 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) (HRC Resolution 48/13).

The right is not currently recognised in law at the national level in Australia, although the Australian Capital Territory (**ACT**) moved to legislate the right at a sub-national level in 2023.⁸ With the amendment of the *Human Rights Act 2004* (ACT), the right to a healthy environment is now recognised as a standalone right in the ACT. In Queensland, the *Human Rights Act 2019* (Qld) recognises that ‘Aboriginal peoples and Torres Strait Islander peoples must not be denied the right ... to conserve and protect the environment and productive capacity of their land, territories, waters, coastal seas and other resources.’⁹ The cultural rights provided by this Act, similar in substance to the right to a healthy environment, in relation to First Nations peoples, were integral to the decision to prevent the climate harm and human rights impacts arising from the proposed Waratah Coal Galilee Coal Project, a thermal coal mine proposed in Queensland.¹⁰

At the national level, a Senate inquiry into Australia’s human rights framework recommended further consideration be given to the drafting of the right to a healthy environment, including ‘consultation with Aboriginal and Torres Strait Islander peoples on how best to recognise the relationship between the right to a healthy environment and the rights to culture, health and self-determination for Aboriginal and Torres Strait Islander peoples’, alongside a general recommendation to establish an Australian Human Rights Act.¹¹ However, the implementation of this recommendation may be dependant on the outcome of the 2025 Federal Election, as it was opposed by the Liberal/National Coalition, the current opposition party in Australia.

EDO believes it is well beyond time to enshrine the right of all Australians to live in a clean, healthy and sustainable environment in law in all jurisdictions. Doing so will not only accelerate the necessary energy transition, but also protect human rights during the process.

For more information, see **Attachment 2: [EDO Report: A Healthy Environment is a Human Right](#)**.

3. Importance of biodiversity protection in the context of the energy transition

Further climate harm must be prevented through a rapid transition to renewable energy to limit global temperature rises. However, it is important to note that the climate and biodiversity crises – and solutions – are intrinsically linked, and tackling emissions reductions to the detriment of biodiversity is not an ecologically sound approach. It also risks further exacerbating climate risk when all actions are needed to reduce emissions – including maintaining vegetation, ecosystems and carbon sinks. Australia and the global community cannot afford further unacceptable harm to the environment, particularly through the loss of biodiversity.

⁸ EDO, [ACT introduces Australia-first right to a healthy environment legislation](#) (October 2023).

⁹ Human Rights Act 2019 (Qld) s 28(2)(e).

¹⁰ See, *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors* (No 6) [2022] QLC 21.

¹¹ Parliamentary Joint Committee on Human Rights, Parliament of Australia, Inquiry into Australia’s Human Rights Framework (May 2024) available at https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/InquiryintoAustralia'sHumanRightsFramework.pdf.

Australia has significant reserves of many of the minerals used to produce low-emissions technologies, and already produces almost half of the world's lithium, is the second-largest producer of cobalt, and the fourth-largest producer of rare earth minerals.¹² However, questions about inflated demand projections for these minerals remain, as do concerns about how, and where, extraction takes place.¹³ Critical mineral projects will undoubtedly have environmental and social impacts. Despite their importance in supporting the roll out of low emissions and renewable technology, this does not mean governments and corporations should be free to ignore these possible consequences.

Similarly, any 'fast-tracking' of renewable energy projects, or over-reliance on biodiversity offsets which lack integrity, risk creating worse outcomes for biodiversity.¹⁴ Industry carve-outs historically have been to the detriment of nature, community and human rights, and will likely undermine community confidence in the social licence of the renewable transition. Instead, best practice principles for environmental approvals should apply.

In EDO's view, this means best practice principles for environmental assessment and approvals must apply to **all** types of projects (whether energy transition related or otherwise). This includes the principles of ecologically sustainable development, including the conservation of biological diversity and the principle of intergenerational equity. In practice, this means climate impact assessment must be undertaken for all projects, and that renewable energy projects, including critical minerals projects, should not be exempt from, or 'fast-tracked' through, environmental impact assessment processes just because of their role in the energy transition. Moreover, decision-making must be based on the best available science and apply the precautionary principle where there is a lack of scientific certainty.

To reduce the burden on communities (and decision-makers, in defending against inappropriate applications that jeopardise human rights or environmentally sensitive areas), pre-planning through regional planning processes or strategic environmental assessment should be utilised. Pre-planning should consider the most appropriate places for renewables energy infrastructure and critical mineral mining to be progressed, with siting of these projects based on best available science and First Nations knowledge, and broad consultation early and strategically. The protection of community rights including through early engagement and consultation, as well as rights to appeal decisions, will enable stronger social licence for renewable energy transition projects and will facilitate the more efficient roll-out of these projects in a way that is well-considered from the start.

In the first instance, proposals for renewable energy transition projects should be supported by best practice community engagement and consultation. The benefits of early and open engagement with communities about project siting, design, impacts and benefits include reduced land-use conflicts, delays and costs. This of course includes early iterative, culturally appropriate consultation. This community consultation should complement principles relating to ensuring FPIC of First Nations (see

¹² Australian Government, Australia's Critical Minerals Strategy: Discussion Paper (December 2022) 3.

¹³ Jubilee Australia, Greenlight or Gaslight? The Transition Minerals Dilemma for Australia (April 2023) available at <https://www.jubileeaustralia.org/storage/app/uploads/public/645/2cc/90a/6452cc90a05b2016702864.pdf>.

¹⁴ Maron, M., von Hase, A., Quétier, F. *et al.* Biodiversity offsets, their effectiveness and their role in a nature positive future. *Nat. Rev. Biodivers.* **1**, 183–196 (2025). <https://doi.org/10.1038/s44358-025-00023-2>.

above). There is also the need for community rights to be maintained to appeal decisions if they are not in the public interest, as a key check and balance on government decision-making – to ensure it is always in the public interest and protects both human rights and the environment.

Laws at both national and state/territory levels should apply these principles to all development, including renewable energy projects. Efforts to decarbonise should not displace or diminish communities and the environment, who are already facing climate impacts. In Australia, this requires significant and wholesale reform of our national nature laws, and reform of sub-national development processes.

For more information, see **Attachment 3: [EDO's Principles for renewable energy transition projects](#)**.

Please contact frances.medlock@edo.org.au if you need further information regarding EDO's submission or attached documents.

Yours sincerely,

Environmental Defenders Office



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