Environmental Defenders Office

29 August 2025

Human Rights Branch
Attorney General's Department
Submitted via Consultation Hub

Dear Human Rights Branch,

Submission on the Draft National Report for Australia's fourth Universal Periodic Review (UPR).

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission on the Australia's fourth Universal Periodic Review of its human rights record and obligations.

This submission makes the following key recommendations:

1. A federal Human Rights Act (**HRA**) should be introduced and passed within this parliamentary term. The HRA should enshrine the right to a healthy environment, to bring Australia within the 80% of UN member states which have codified such a right. The right should also be incorporated with other Federal and state legislation and regulations where appropriate.

2. The principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**) should be incorporated into Australian national and subnational environmental and planning legislation, including to facilitate upholding the principles of self-determination and the obligation for free, prior and informed consent.

3. A review of laws which are stifling full public participation and the right to freedom of assembly at the national and subnational level should be undertaken, to assist in shining a light on where legislative amendments have breached these rights and should be repealed.

For further information, please contact revel.pointon@edo.org.au.

Yours sincerely,

Environmental Defenders Office

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Managing Lawyer, Policy and Law Reform

Recommendation 1: Implement a Federal Human Rights Act which entrenches a right to a healthy environment

The need for a Human Rights Act

Currently, Australia's human rights protections are incomplete and piecemeal. The Constitution contains limited human rights, whilst fragile common law protections have been subject to parliamentary abrogation. The culture of parliamentary scrutiny also does not substantially prevent legislation that infringes on fundamental human rights.[1] Furthermore, the relatively recent introduction of Human Rights Acts in various states and territories means that protection of human rights, and recourse for breaches, are entirely dependent on geographic location.[2]

Growing support for a Human Rights Act

The EDO strongly supports the growing calls of bodies such as the Australian Human Rights Commission (**AHRC**) and the Parliamentary Joint Committee on Human Rights (**PJCHR**) Inquiry to legislate a Commonwealth Human Rights Act. In 2022, the Australian Human Rights Commission released its position paper recommending the introduction of a Federal Human Rights Act, outlining a comprehensive model for reform.[3]

Right to a healthy environment

All human rights are fundamentally contingent upon a healthy environment; there is no human health without environmental health. The EDO therefore supports the AHRC recommendation that the Federal HRA includes a right to a healthy environment, which would provide that 'every person has the right to an environment that does not produce adverse health consequences'. Such a right includes the 'right not to be subject to unlawful pollution of air, water and soil', and the 'right to access safe and uncontaminated water, and nutritionally safe food'.[4] This right is reflected in the *International Covenant on Economic, Social and Cultural Rights* (**ICESCR**) obligations on the right to health (Article 12) and to an adequate standard of living (Article 11).[5] This right is also recognised in international customary law, as confirmed by the recent International Court of Justice advisory opinion.[6]

Growing international consensus and state practice also supports the importance of enshrining environmental protections into domestic law. In July 2022, the UN General Assembly declared that access to a clean, healthy and sustainable environment is a universal human right, with Australia one of 161 States in support of the resolution. However, this right has currently not been

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[1] Australian Human Rights Commission, *Position paper: A Human Rights Act for Australia* (Summary Report, 2022) 9 ('AHRC Summary Report').
[2] See, eg, *Human Rights Act 2004* (ACT); *Human Rights Act 2019* (Qld); *Charter of Human Rights and Responsibilities Act 2006* (Vic).
[3] Australian Human Rights Commission, *Position paper: A Human Rights Act for Australia* (Report, 2022) ('AHRC Full Report').
[4] Ibid 131, 372.
[5] International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).
[6] International Court of Justice, Advisory Opinion: *Obligations of States in respect of climate change*, 23 July 2025 , available here: https://icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf.

established in domestic legislation, making Australia an outlier to the ~80% of UN member States that recognise the right to a healthy environment in constitutions or statute.[7] This lack of recognition is not just symbolic; years of independent reviews and reports have consistently found that Australia's environmental laws are not fit for purpose and are not addressing the rapidly deteriorating state of Australia's unique and biodiverse natural environments.[8] Enshrining the right to a healthy environment would recognise the deep interconnection between the realisation of human rights and access to clean air, food, water, soil and climate, and would be a welcome and much-needed step in reversing a track record of decline.

Further to enshrining a right to a healthy environment under a Federal HRA, other laws on federal and state levels could also be introduced or strengthened to ensure that this right is realised in a broad, practical and enforceable manner. Such laws could include strengthening protections for the climate through consideration of climate impacts from new or expanded fossil fuel projects and other greenhouse gas emitting activities on health and wellbeing.[9] Furthermore, principles of climate and environmental justice, working in tandem with human rights protections, should be enshrined into state-based planning and environmental laws to address the disproportionate impact of environmental harms on already marginalised and disenfranchised communities.[10] It is critical that these principles are enforceable, actively guiding government decision-making and embedded into public service culture.

Recommendation 2: Enshrine the principles from the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into environment and planning decision-making processes

The EDO highlights that the principles and Articles enshrined in UNDRIP are currently not sufficiently embedded into environmental and planning decision-making processes in national and sub-national laws. This has a detrimental effect on the human rights of First Nations peoples, as set out in UNDRIP, and warrants legislative and regulatory reform.

Status of UNDRIP

Australia has endorsed UNDRIP in 2009. While UNDRIP is not legally binding, the rights (and consequential obligations on States) contained within it are derived from pre-existing human rights and international law developed under treaties to which Australia is a party and are binding on Australia. These include the *International Covenant on Economic, Social and Cultural Rights* (**ICESCR**), the *International Convention on the Elimination of All Forms of Racial Discrimination* (**ICERD**) and the *International Covenant on Civil and Political Rights* ('ICCPR'). UNDRIP does not

[7] Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment,* UN Doc A/HRC/43/53 (20 March 2020) [13].
[8] Ian Cresswell, Terri Janke and Emma L Johnston, *Australia state of the environment 2021: Overview* (Report, 2021); Graeme Samuel, *Independent Review of the EPBC Act* (Final Report, October 2020).
[9] See, eg, Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023 (Cth).
[10] For instance, section 8(5) of the *Climate Change (Net Zero Future) Act 2023* (NSW) provides that 'action to address climate change should be consistent with the right to a clean, healthy and sustainable environment.'

'create new rights for indigenous peoples, but rather provide[s] a contextualised elaboration of general human rights principles and rights as they relate to the specific historical, cultural and social circumstances of indigenous peoples'.[11]

Incorporating UNDRIP into Australian Law

The EDO recommends that the principles of UNDRIP be incorporated into Australian law to their fullest extent. A fulsome elaboration on the relevant UNDRIP principles as they apply to the protection of First Nations cultural heritage can be found at pages 9-15 of *EDO's Submission to the Inquiry into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia*. More broadly, updates to heritage, planning and environmental legislation and regulations in Commonwealth and sub-national jurisdictions should reflect the principles of UNDRIP, particularly the principles of self-determination and the obligation on States to obtain free, prior and informed consent of Indigenous Peoples.

Incorporating UNDRIP into the Federal Human Rights Act

Further to updates to existing laws, key UNDRIP principles can be incorporated within a Federal Human Rights Act. Meaningful consultation with First Nations is needed as to how the key principles of UNDRIP should be best reflected in a Federal HRA.

UNDRIP & Statements of Compatibility

As a starting point, requirements for Statements of Compatibility for Bills in passage through Parliament should include consideration of UNDRIP compliance, including steps taken to consult with First Nations peoples on how Bills impacting their rights will affect them.

Recommendation 3: Revise current national and subnational laws to ensure alignment with rights of freedom of assembly and public participation

The right to peaceful assembly and association was enshrined in the Universal Declaration of Human Rights, which Australia played a key role in drafting over sixty years ago. Australia is also a signatory to the *International Covenant on Civil and Political Rights* (**ICCPR**), having ratified it in 1980. The ICCPR provides the right to freedom of expression, peaceful assembly and the freedom of association, all of which feed into the right to protest. As a ratifying party, Australian governments have obligations to protect rights under the ICCPR.[12] The common law also recognises the right to protest as a fundamental pillar of democratic and responsible government,[13] however this is subject to Parliamentary override.

Despite these obligations, several state and territory jurisdictions have introduced legislation that limits protest activities over the past two decades. These have a chilling effect on public

[11] United Nations Human Rights Council (UNHRC) Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), *Study of the Expert Mechanism on the Rights of Indigenous Peoples - Free, Prior and Informed Consent: a human rights based approach*, UN Doc A/HRC/39/62 (10 August 2018) para 3.
[12] Human Rights Committee, *General Comment No. 37 (2020) on the right of peaceful assembly (Article 21)*, UN Doc CCPR/C/GC/37 (17 September 2020) para 4-8.
[13] South Australia v Totani (2010) 242 CLR 1 [30]-[39]; *Evans v New South Wales* (2008) 168 FCR 576.

participation in democratic and civil life, and stand in opposition to Federal efforts to uphold human rights.

The UN Special Rapporteur on Toxics and Human Rights, Dr Marcos Orellana, has raised concerns about the increasingly 'draconian' anti-protest laws that have restricted civic freedoms in Australia. On his visit to Australia in 2023, he stated that:

> 'Draconian restrictions on the right to protest in several states are also very troubling. Peaceful protests are a legitimate exercise of the right to freedom of assembly, and they enable citizens to mobilize their concerns and make them visible to public authorities.'[14]

In 2024, a *Human Rights Law Centre* report found that, over the past twenty years, 49 laws affecting protest have been introduced in federal, state and territory parliaments.[15] The report found that anti-protest laws most consistently target activists from the environmental, climate and animal rights movements.[16] Several of the most concerning examples are extracted below.

New South Wales introduced the highest number of anti-protest laws over the past twenty years, with several subject to successful challenges on constitutional or administrative law grounds.

1. ***Roads and Crimes Legislation Amendment Act 2022* (NSW):** This Act, introduced to target climate defenders, inserted section 214A into the *Crimes Act 1900* (NSW) to criminalise damage or disruption to a major facility. The amendments expanded previous legislation which covered disruption on major bridges or tunnels, to cover also major roads, train stations, ports and public and private infrastructure, and additionally incorporating significant penalties for breaches. The laws have been drafted loosely with broad room for interpretation, threatening anyone protesting in public space with up to two years in jail and/or up to a $22,000 fine if they do so without a permit.

   In *Kvelde v NSW*,[17] the NSW Supreme Court invalidated elements of s 214A that did not criminalise already unlawful conduct, because the subsections improperly limited the implied freedom of political communication under the *Constitution*.

2. ***World Youth Day Act 2006* (NSW) (as amended by the World Youth Day Amendment Act 2007)**: This law criminalised the entering of roads closed for the World Youth Day event. The Act additionally oversaw the sale, distribution or display of articles in declared areas, and administered extensive search powers to police and concurrently introducing fines for indistinct offences, like causing 'annoyance or inconvenience' to participants.

   The Federal Court invalidated parts of the Act in *Evans v NSW*,[18] because the offence

[14] Marcos Orellana, 'End of Mission Statement by the UN Special Rapporteur on Toxics and Human Rights, Marcos A. Orellana, on his visit to Australia, 28 August to 8 September 2023' (8 September 2023) <https://www.un.org/sites/un2.un.org/files/eom_-_08_sep_2023_-_final_.pdf>.
[15] The full report detailing examples of anti-protest laws and their effect over the past two decades can be found here: 2407-Protest-in-Peril-Report.pdf
[16] Human Rights Law Centre, *Protest in Peril: Our Shrinking Democracy* (Report, 2 June 2024) < https://www.hrlc.org.au/app/uploads/2025/04/2407-Protest-in-Peril-Report.pdf> 5.
[17] *Kvelde v New South Wales* [2023] NSWSC 1560.
[18] *Evans v New South Wales* [2008] 168 FCR 576.

provisions were so vague that they disproportionately imposed on the fundamental common law right to free speech without fulfilling the purpose of the Act.

3. ***Major Events Act 2009*** **(NSW):** This Act criminalises entrance to major events via closed roads, which are closed to vehicles or pedestrians, including entrance for the purpose of peaceful protest.

South Australia has introduced anti-protest laws with the harshest penalties out of all examined. The maximum penalty for directly or indirectly obstructing a public place was significantly raised by the *Summary Offences (Obstruction of Public Places) Amendment Act 2023* (SA). The penalty increased from a maximum fine of $750 to a maximum of $50,000, or a term of imprisonment of up to three months. The law is yet to be constitutionally tested, but has stifled protest activity and makes protestors potentially liable for the costs associated with law enforcement called to the scene.

Tasmania introduced the *Workplaces (Protection from Protestors) Act* in 2014. This Act was introduced to limit any actions taken by protesters which would result in the prevention, hinderance or obstruction of any business activities, and thus significantly impeded on the right to protest in Tasmania. Furthermore, the Act empowered police officers to order people to permanently leave the relevant business premises, to demand proof of identity and arrest protesters without a warrant. Several provisions of the law were successfully challenged in *Brown v Tasmania*,[19] as they imposed a significant and disproportionate burden on the freedom of political communication and were ultimately struck down due to being unconstitutional.

Queensland The *Dangerous Devices Act 2019* (Qld) was passed in response to a number of widely publicised protest actions by climate activists. The Explanatory Memorandum accompanying the Act further identified animal rights campaigners and opponents of coal mining as among the groups it intended to affect. The legislation makes it an offence to possess or use various protest tools – including monopoles, sleeping dragons and tripods – which are commonly associated with non-violent demonstrations, even where their use involves only minor disruption. Its provisions are drafted in broad and ambiguous terms, with key phrases such as “unreasonably interfere” and “reasonable excuse” left undefined. Under the Act, a protester who blocks access to a business premises or interferes with mining operations for as little as ten minutes may be subject to a prison sentence of up to twelve months. The law also empowers police to circumvent the standard court process by issuing immediate fines.

Because of the (albeit narrow) common law and constitutional protections of free speech and political communication, human rights lawyers suggest that it is likely that other similar legislation currently in force would be invalidated if tested by courts.[20] However, bringing suits to challenge government legislation is costly and time consuming for affected citizens, who may even be subject to countersuits exposing them to legal risk and public backlash. It is therefore vital that efforts are taken to minimise anti-protest laws, and to highlight their detrimental effect on public

[19] *Brown v Tasmania* [2017] 261 CLR 328.
[20] Human Rights Law Centre (n 16).

participation and human rights in the UPR submission. A review at a national level of laws which are stifling full public participation and the right to freedom of assembly at the national and subnational level is required, to scrutinise where legislative amendments have breached these rights and should be repealed.