



Environmental
Defenders Office

**Submission to NSW Legislative Assembly Committee on
Community Services on Inquiry into the Human Rights Bill 2025**

3 July 2026

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 40 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

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

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

www.edo.org.au

Submitted to:

Legislative Assembly Committee on Community Services

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Acknowledgement of Country

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 and present 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 colonisation.

EDO recognises the right to self-determination of First Nations peoples, including their right to freely determine their own political status and freely pursue their economic, social and cultural development. This 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.

First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.

The role of EDO & First Nations Peoples

EDO is a non-Indigenous community legal centre that works on behalf of First Nations peoples around Australia 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's recommendations for Western law reform in relation to First Nations matters are high-level, so as to support First Nations to protect their Countries and Cultural Heritage as they see fit. In making this submission, EDO cannot and does not speak on behalf of First Nations peoples or groups. The submission is based on our expertise in human rights, planning and environmental Western law and experience in seeking to protect First Nations Cultural Heritage through Western law.

CONTENTS

SUMMARY OF RECOMMENDATIONS.....	iv
1 – WHY DOES NEW SOUTH WALES NEED A HUMAN RIGHTS ACT?	1
2 – A COMPREHENSIVE HUMAN RIGHTS ACT FOR NEW SOUTH WALES: ANALYSIS OF KEY RIGHTS	13
3 – THE POTENTIAL IMPLICATIONS OF ANY ACT FOR MAKING OF LAWS, COURTS AND TRIBUNALS, PUBLIC AUTHORITIES AND OTHER ENTITIES	22
4 – A ROLE FOR COURTS: ENSURING ACCESS TO EFFECTIVE REMEDIES	28
5 – ESTABLISHMENT OF A NEW SOUTH WALES HUMAN RIGHTS COMMISSION.....	30

EXECUTIVE SUMMARY

The Environmental Defenders Office Ltd (**EDO**) welcomes the opportunity to contribute to the New South Wales Community Services Committee's Inquiry into the private members *Human Rights Bill 2025* (NSW) (**Bill**).

EDO strongly supports the enactment of a comprehensive Human Rights Act in NSW.

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 protect their human rights and fight for environmental justice.

In this submission EDO will make **12 recommendations** in support of the enactment of a comprehensive Human Rights Act and its articulation of specific rights, its imposition of specific duties, remedies and its operation and the establishment of a NSW Human Rights Commission.

Finally, as a member of the Human Rights Act for NSW Alliance (the **Alliance**) comprising of some 130 legal and community organisations, faith bodies and trade unions, EDO generally endorses the Alliance's 'Key Principles for a Human Rights Act' and its 'Recommendations' submitted in response to this inquiry,¹ subject to EDO's recommendations detailed in the submission below.

¹ Human Rights for NSW Alliance, 'Key Principles for a Human Rights Act — Human Rights for NSW' accessible at <https://humanrightsfornewsw.org/benefits-of-a-human-rights-act> & Recommendations.

SUMMARY OF RECOMMENDATIONS

1. The NSW Government should enact a comprehensive Human Rights Act.
2. A Human Rights Act should enshrine all rights protected under international human rights treaties ratified and endorsed by Australia, including the *Universal Declaration of the Rights of Indigenous Peoples* (**UNDRIP**).
3. A Human Rights Act 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. A Human Rights Act should enshrine all rights protected under UNDRIP, including provisions to recognise and protect the specific cultural rights of First Nations peoples, and a duty to ensure the participation of First Nations people in relation to decisions that directly or disproportionately affect their rights. **In addition**, any provision relating to the rights of First Nations Peoples must be co-designed with NSW First Nations peoples to ensure their Free, Prior and Informed Consent and that such provisions are culturally appropriate.
5. A Human Rights Act 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.
6. A Human Rights Act for NSW should provide a robust parliamentary scrutiny process to ensure all proposed laws are assessed for compatibility with human rights.
7. A Human Rights Act should include a participation duty. This duty should require public authorities to ensure the effective participation of all people who are most at risk of experiencing environmental harm, in particular 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.
8. A Human Rights Act should enshrine the environmental procedural rights that are protected under the Aarhus Convention, in addition to the participation duty of public authorities proposed at section 49(4)(c) of the Bill.
9. A Human Rights Act should include a positive duty on public authorities to act consistently with the human rights contained in the Human Rights Act.
10. A Human Rights Act should expressly state that, consistent with international law, the positive duty on public authorities extends to a duty to ensure that private entities act consistently with the human rights contained in a Human Rights Act. A Human Rights Act should also impose a duty on private entities to act consistently with human rights

and should include accessible remedies for harmful interference on human rights by private actors.

11. A Human Rights Act should ensure access to effective remedies for breaches of human rights including an informal complaints mechanism, access to judicial remedies, and adequate protections against adverse costs orders for individuals and groups who seek to defend their rights.
12. A NSW Human Rights Commission should be established. Consideration of environmental human rights issues should be included in its functions.

1 – WHY DOES NEW SOUTH WALES NEED A HUMAN RIGHTS ACT?

In this section, we address the human rights context in NSW and Australia more broadly and examine the inadequacy of human rights protection in NSW and why a comprehensive Human Rights Act is critical for addressing these issues. We also provide reference to key developments in human rights law internationally, Australia and in NSW as it relates to the environment, climate change and the protection of First Nations rights and Cultural Heritage. We include select case studies to illustrate the importance of having enforceable human rights mechanisms at the State level.

1.1 Current Ineffectiveness of Human Rights Protections in New South Wales

Australia is bound by international legal obligations to respect, protect and uphold human rights recognised and protected under international customary law and international human rights treaties, Australia has signed and ratified:

- *International Covenant on Civil and Political Rights (ICCPR)*,
- *International Covenant on Economic, Social and Cultural Rights (ICESCR)*,
- *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*,
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*,
- *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*,
- *Convention on the Rights of the Child (CRC)*,
- *Convention on the Rights of Persons with Disabilities (CRPD)*.

Australia has also endorsed the *United Nations Declaration on Rights of Indigenous Peoples (UNDRIP)*² and voted in support of the United Nations General Assembly resolution to recognise the right to a clean, healthy and sustainable environment (the ‘right to a healthy environment’).³

Despite the above, at a Commonwealth level, there is no human rights legislation or constitutionally entrenched Bill of Rights. Rather, human rights protection in Australia is dependent upon several narrow constitutional and common law limitations on legislative power, anti-discrimination legislation that provides some limited protection and promotion of individual human rights,⁴ and most importantly through human rights laws in specific states and territories.⁵

At a state level, NSW does not have specific human rights legislation. New South Wales stands apart from other state and territory jurisdictions where specific human rights legislation has been enacted, namely the ACT, Queensland and Victoria. Consequently, residents of NSW are denied the legal recognition and protection of their human rights that are afforded to the residents of these jurisdictions. Accordingly, in NSW there is no human rights legislation or parliamentary oversight, such as via a parliamentary committee, in which proposed laws and their impact on the

² *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) (**UNDRIP**). Regarding the importance of this endorsement for Australia’s domestic jurisdiction, see *Sampi v State of Western Australia (No 5)* [2026] FCA 517, [45]-[48].

³ UN General Assembly, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (28 July 2022); see also 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).

⁴ See, e.g., *Sex Discrimination Act 1984* (Cth); *Racial Discrimination Act 1975* (Cth); *Disability Discrimination Act 1992* (Cth); *Age Discrimination Act 1992* (Cth); *Fair Work Act 2009* (Cth).

⁵ Three Australian states and territories currently have human rights Acts: see *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic), and *Human Rights Act 2019* (Qld).

enjoyment of human rights can be scrutinised. Nor is there recourse to NSW Courts (with some limited exceptions) if NSW state legislation or the actions of NSW public authorities or private actors are likely to infringe upon, or have infringed on, the human rights of a person or group of people in NSW.

While NSW has enacted legislation which indirectly provides narrow human rights protections with respect to certain acts of unlawful discrimination,⁶ the current effectiveness of NSW legislation to protect human rights is extremely limited and must be urgently addressed. A snapshot of these issues as they relate to the environment, First Nations' rights and public participation are examined in greater detail below. EDO does not intend this analysis to be exhaustive and notes the multitude of human rights issues raised by members of the Alliance in their submissions to this inquiry.

(a) *Inadequate Protection of Rights Relating to Environment Harm and Human Health*

In providing the below analysis, EDO emphasises **that all human rights depend on a healthy environment**. It is recognised today that the triple planetary crises of climate change, biodiversity loss and pollution pose the '*single greatest challenge to human rights of our era*'.⁷ For this reason the protection and maintenance of a healthy environment is a key, if not *the* key human rights challenge facing New South Wales today and in coming decades.

Despite the plethora of environmental legislation in NSW, environmental harm and degradation continues to impact the health of NSW communities and residents. As NSW's 2024 *State of the Environment Report* highlights, the NSW environment is experiencing serious biodiversity loss with many species heading towards extinction, worsening soil conditions, worsening water availability and water quality of rivers and wetlands, declining coastal and marine environments and with communities experiencing ongoing exposure to incidents of poor air quality and pollution caused by transport, heavy industry and the use of toxic chemicals.⁸ Each of these issues will worsen with the impacts of climate change, which are already being experienced and will increase in severity as global temperatures increase.⁹

NSW is highly vulnerable to climate change with significant numbers of ecosystems under threat from the impacts of climate change.¹⁰ Similarly, communities in NSW have already experienced extreme weather events and disasters, such as the 2019/2020 Black Summer Bushfires and the 2022 Lismore flood disaster, made more severe and frequent from harm to the climate system caused by anthropogenic greenhouse gas emissions, primarily caused by the combustion of fossil fuels.¹¹ Each of these impacts has potential consequences for the enjoyment and protection of

⁶ *Anti-discrimination Act 1977* (NSW).

⁷ UN Office of the High Commissioner on Human Rights, 'Environmental Crisis: High Commissioner Calls for Leadership by Human Rights Council Member States' (Web Page, 13 September 2021) <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27443>>.

⁸ See summary of the 2024 NSW State of the Environment Report https://www.soe.epa.nsw.gov.au/sites/default/files/2025-06/NSW_SoE2024_ReportCards_File.pdf.

⁹ For a detailed discussion of these risks, see [Australian Government, Australian Climate Service, *Australia's National Climate Risk Assessment* \(Report, 2025\)](#).

¹⁰ *Ibid*.

¹¹ [Australian Government, Australian Climate Service, *Australia's National Climate Risk Assessment* \(Report, 2025\)](#) 81, 93-5.

NSW residents' rights, which NSW's current environmental legislation is failing to adequately protect.

Case Study: Air Quality Regularly Exceeds World Health Organization's exposure limits, Upper Hunter Region – Wonnarua Country

Coal mining critically affects surrounding communities, particularly in relation to air quality. A study conducted across Australia determined that particulate matter in the air was significantly elevated in coal mining regions of New South Wales compared to other parts of the state.¹² This local air pollution has proven genotoxic effects and increased risks for cancer, cardiovascular disease, and respiratory disease among community populations.¹³ According to a recent NSW government report, the air pollution in NSW is estimated to cause 603 premature deaths and increase health costs by \$4.8bn each year.¹⁴

In the Upper Hunter region, which is close to significant population centres, annual PM2.5 concentrations have regularly exceeded the maximum concentration standards set out in the National Environment Protection Measures (Air Quality) (**Air quality NEPM**) since 2011¹⁵ and in some areas are over double the recommended exposure limits set in the WHO guidelines.¹⁶

In response to community concerns about the effect of coal mining on air quality, the Upper Hunter Air Quality Network was established to monitor air quality in the region.¹⁷ However, where exceedances to the Air Quality NEPM,¹⁸ there are limited avenues for community members to seek recourse due to the cumulative nature of the issue and the impacts of poor air quality on their health. Coal mining and power stations in the area are significant contributors to poor air quality. However, individual environmental licences and development consents do not adequately mitigate the cumulative nature of the issue.¹⁹ Only some property owners identified in the development consent have rights to request that the mining proponent acquire their land if they are impacted by noise and dust²⁰ or that mitigation measures are implemented at their property such as air filters or double-glazing. Such measures are inadequate, ad hoc also and do not protect the community when they are outside the areas identified.

¹² Michael Hendryx, Nicholas Higginbotham, Benjamin Ewald and Linda Connor, 'Air Quality in Association with Rural Coal Mining and Combustion in New South Wales Australia' (2019) 35(4) *The Journal of Rural Health* 518.

¹³ Michael Hendryx, Mohammad Islam, Guang-Hui Dong and Gunther Paul, 'Air Pollution Emissions 2008–2018 from Australian Coal Mining: Implications for Public and Occupational Health' (2020) 17(5) *International Journal of environmental research and public health* 1570.

¹⁴ Department of Planning and Environment, *Sydney air quality study program report: Stage 2 – Health impact assessment* (Health Impact Assessment Report, 2 March 2023).

¹⁵ National Environment Protection (Ambient Air Quality) Measure (**Air Quality NEPM**); *ibid* 15–7, also fig. 5a.

¹⁶ Adam Morton, "Air pollution in NSW causes 603 premature deaths and costs \$4.8bn a year, study finds", *The Guardian* (Web Page, 15 March 2023).

¹⁷ *Protection of the Environment Operations (General) Regulation 2021* (NSW) r 85 ('PEO General Regulation').

¹⁸ Air quality NEPM.

¹⁹ For example, schedule 3, condition 16 of the Bengalla Mine development consent sets the NEPM maximum concentration standards as the limit and only requires that the Application has implemented all reasonable and feasible measures so that emissions generated by the development do not exceed these levels. Furthermore, the Bengalla's Environmental Protection Licence only requires the proponent to monitor PM10 particles: Notice of Variation of Licence No. 6538 from NSW EPA to Craig White, 28 February 2023 accessed at https://newhopegroup.com.au/wp-content/uploads/2023/03/230228-EPL-6538_Combined.pdf.

²⁰ For example, the Bengalla Mining Company Pty Limited Development consent accessible at < <https://newhopegroup.com.au/wp-content/uploads/2023/03/Bengalla-MOD-5-Consolidated-Consent-P.pdf>>, sch 3 condition 1.

Further, Individual licencing regimes are not effective at addressing pollution in hotspots where pollution is not easily attributed to a single point source. While the Upper Hunter has an Air-Quality Network, the regulator is only required to monitor and publish the results online. There is no mechanism for the local community or the regulator to enforce breaches of the NEPM standards when reported as part of the Upper Hunter Air Quality Network such as mandating collective penalties for operators. Our clients complained of inaccurate reporting where particular monitoring stations have failed to capture data for months at a time. Furthermore, in recent years, individual licences for coal mining projects in the Upper Hunter that will contribute to poor air quality continue to be approved for even though the current thresholds for air quality are already being exceeded on a regular basis. This is despite the requirement for an applicant to assess the cumulative impacts of a development including air quality.

Exposure to pollution, such a PM2.5 pose significant risks to human health and wellbeing, leading to a range of detrimental health effects including cancer, reproductive abnormalities, lung diseases, diabetes, and neurological development and learning disabilities.²¹

When exposure to air pollution causes or risks causing significant impacts to health or even causes premature death, particularly for people who are physiologically vulnerable and/or living in overburdened communities, this is a breach of fundamental human rights. Human rights that are impacted by pollution can include the right to life, health, a healthy environment, and a life of dignity, amongst others. However, with no NSW human rights framework, those residents impacted by dust and noise have no protection or recourse to remedy to protect these human rights.

While EDO notes the regulatory solutions to reducing the impacts of environmental harm including from pollution are multifaceted, we highlight comments of the then United Nations Special Rapporteur on Toxics and Human Rights, upon completing an official visit to Australia in September 2023, regarding the effects of environmental harm on human rights in Australia that:²²

“the most immediate and momentous opportunity for Australia is to incorporate the right to a healthy environment in its domestic legal order.”

(b) *Inadequate Protection of First Nations’ Rights, especially regarding Country, Cultural Heritage & Water*

Australia’s legal framework at both Commonwealth and NSW levels does not adequately recognise or give effect to the rights of First Nations peoples. This is particularly true of legislative regimes related to Country (including planning and environmental laws), Cultural Heritage and water. The NSW legislative framework falls well short of the standards set out in UNDRIP,²³ including, among other things:

²¹ [EDO, Toxic Transport: How Our Pollution Laws Are Failing to Protect Our Health \(Report, 2023\), 17.](#)

²² Marcos Orellana, *Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes on his visit to Australia* [106].

²³ *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).

- the right to self-determination (Art 3);
- the requirement for Free, Prior and Informed Consent (Arts 10, 19, 32);
- the right to participate in decision-making (Art 18); and
- rights to lands, territories and resources (Arts 25–26).

In particular, UNDRIP mandates that States engage in genuine consultation and cooperation with First Nations peoples and their representative organisations to secure their Free, Prior, and Informed Consent (**FPIC**). FPIC reflects the inherent collective right of First Nations peoples to participate in decision-making processes on issues and laws that affect their lives, lands, waters, skies and resources, and to grant or withhold consent where decisions affect them.²⁴

Despite Australia’s endorsement of UNDRIP in 2009 and various attempts by members of parliament to pass legislation to implement UNDRIP, Commonwealth and NSW Governments have largely failed to incorporate UNDRIP into Australian law relating to Country, Cultural Heritage and water, including environment and planning legislative regimes.

Any implementation of UNDRIP and FPIC in Australia has been piecemeal. Statutes related to Country, Cultural Heritage and water do not require decision-makers to act consistently with UNDRIP, and it has no direct legal force in approvals, planning, or resource management decisions in NSW. Outside of the *Native Title Act 1993* (Cth) and statutory land rights framework, First Nations rights are largely not legally enforceable within decision-making frameworks, often rendering First Nations’ roles tokenistic and culturally inappropriate.

Notwithstanding the failure of Commonwealth and NSW Parliaments to incorporate UNDRIP into domestic law, the recent decision of Mortimer CJ in *Sampi v State of Western Australia (No) 5* highlights the importance of Australia’s endorsement of UNDRIP and its role in statutory interpretation. Despite its lack of inclusion in domestic law, the provisions of UNDRIP are, as described by Her Honour, “*solemn objectives that Australia has committed to in international forums*”.²⁵

Yet it is plainly evident that Australia and NSW as a constituent polity of Australia, have failed to implement these objectives.²⁶ This is particularly evident due to a lack of mechanisms for meaningful Indigenous participation in decision-making, inconsistent with the right to self-determination recognised in UNDRIP that requires Indigenous governance and autonomy. NSW laws generally position First Nations peoples as stakeholders to be consulted, rather than as decision-makers or rights-holders with authority over Country.²⁷ Decision-making power remains vested in Ministers and government agencies, with only limited consultation opportunities and

²⁴ For a detailed discussion of the failure to recognise, implement and incorporate UNDRIP and FPIC into Commonwealth and NSW laws regarding Country, Cultural Heritage and water, see [EDO’s Submission to the UN Special Rapporteur on the Rights of Indigenous Peoples \(April 2026\)](#), 13-20.

²⁵ [2026] FCA 517, [45]-[48].

²⁶ This is despite clear recommendations of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs to ensure policies and legislation on matters relating to Aboriginal and Torres Strait Islander people be consistent with the articles of UNDRIP, to develop a National Action Plan to consider legislative and policy approaches to implement and assess compliance with UNDRIP across all jurisdictions, and to establish a truth-telling process to support healing and assist implementation of UNDRIP. See Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, [Report on the Inquiry into the UN Declaration on the Rights of Indigenous Peoples](#) (2023).

²⁷ Dr Anne Poelina notes that “Aboriginal custodians are considered stakeholders rather than decision-makers”. See Anne Poelina ‘[Martuwarra Fitzroy River Catchment– sustainable lifeways and livelihoods](#)’ (2026) *Australasian Journal of Water Resources*, 9.

where First Nations views are typically required to be only ‘considered’ by decision-makers. NSW environmental legislation does not even include a requirement to consider First Nations views.²⁸ The NSW Parliament also recently attempted watering down the *Aboriginal Land Rights Act 1983* (NSW) without prior consultation with the NSW Aboriginal Land Council (**NSWALC**) and other First Nations organisations, requiring the NSWALC to lodge a formal complaint with the Australian Human Rights Commission given limited avenues within NSW.²⁹ As such, projects with significant impacts on Country may proceed despite clear opposition from Traditional Owners, often with detrimental and severe ramifications for their rights, land, resources and Cultural Heritage.

The consequence of a failure to incorporate FPIC into NSW legislation and recognise First Nations rights is compounded by the inadequate recognition and protection of First Nations’ Cultural Heritage both under Commonwealth and New South Wales laws.³⁰ The right to the protection of Cultural Heritage is intrinsically tied to other human rights, such as rights to culture, the maintenance of a distinctive Indigenous identity, self-determination, rights to land and territory and spiritual and religious beliefs and to the principle of equality and non-discrimination. This failure to protect First Nations Cultural Heritage is therefore in clear breach of international law obligations, including UNDRIP, ICCPR, ICESCR and ICERD.³¹

Despite longstanding calls for reform and the Juukan Gorge disaster,³² and subsequent Federal Inquiry,³³ NSW remains without standalone Cultural Heritage legislation. A lack of a comprehensive Human Rights Act in NSW and the absence of standalone Cultural Heritage protection continues to enable, and otherwise fails to, prevent the destruction of Aboriginal Cultural Heritage. The devastating consequences of these failures are demonstrated in the following case study drawn from recent media reports regarding the destruction of significant Aboriginal Cultural Heritage in the Central West of NSW, Wiradjuri Country.

Case Study: Destruction of Aboriginal Heritage Rock Shelter – Central West, Wiradjuri Country

Destruction of Aboriginal heritage in NSW is occurring at high rates. Reporting in 2021, the Juukan Inquiry report noted an estimate of approximately 100 to 200 sites and objects of Aboriginal Cultural Heritage being destroyed each year.³⁴ According to the New South Wales Aboriginal Land Council (NSWALC), during the first half of 2020 approximately four Aboriginal

²⁸ See, for example, *Environmental Planning and Assessment Act 1979* (NSW); *Water Act 2014* (NSW).

²⁹ See the proposed *Crown Land Management Amendment (Statutory Review) Bill 2026* and [New South Wales Aboriginal Land Council Lodge Complaint With The Australian Human Rights Commission On Crown Lands Bill - NSW Aboriginal Land Council](#).

³⁰ Ibid; *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth).

³¹ For a detailed discussion of the inadequacies of First Nations’ cultural protection under Commonwealth and NSW legislation, see pages 26-31 of [EDO’s submission to the UN Special Rapporteur on Indigenous Rights \(April 2026\)](#).

³² In 2020, Rio Tinto destroyed 46,000+ year old rock shelters at Juukan Gorge, causing immeasurable cultural and spiritual loss and profound grief for the Puutu Kunti Kurrama and Pinikura peoples. See [EDO’s submission to the UN Special Rapporteur on Indigenous Rights \(April 2026\)](#).

³³ The Joint Standing Committee on Northern Australia Inquiry into Juukan Gorge Parliament of Australia, [A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge](#), (2021) xii. Recommendations of the resulting Joint Standing Committee on Northern Australia’s Juukan Gorge Inquiry in 2021, intended to prevent a similar disaster in the future, remain largely unaddressed.

³⁴ Parliament of Australia, [A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge](#), (2021), 106, [5.21].

Heritage Impact Permits (AHIPs) were being issued every week by the NSW Government. The NSWALC stated in its submission to the Juukan Gorge Inquiry:³⁵

“The high rates of destruction of Aboriginal sites, both ‘approved’ and illegal, continues to cause deep distress within our communities. The destruction of Aboriginal sites impacts on the ability of our peoples to maintain living cultures and create wellbeing and healthy communities. Our sites tell important stories and must be protected so Aboriginal peoples can strengthen and maintain our cultures now and in the future.”

Despite some five years having elapsed since the Juukan Gorge inquiry, destruction of Aboriginal Cultural Heritage in Australia and NSW continues at an alarming pace. This was most recently highlighted by the complete destruction of Aboriginal Cultural Heritage in Central West NSW earlier this year.

In March 2026, an Aboriginal Cultural Heritage site, including a recorded Aboriginal rock shelter was bulldozed and irreparably destroyed by contractors, Acerez, constructing a transmission line in the Orana Renewable Energy Zone. This occurred despite the site having been identified and acknowledged and included in the project’s Aboriginal Cultural Heritage Management Plan.³⁶ The destruction of the site - a likely shelter for countless generations,³⁷ preserving evidence of cultural use over thousands of years - has shocked and angered Traditional Owners.³⁸

Regardless of sufficient legislative regimes reflecting their rights under First Laws, First Nations are asserting their cultural rights. For example, First Nations in the Murray Darling Basin have called for the recognition of Cultural Flows in water law reform and governance to facilitate more robust participation by First Nations in water management. However, in the absence of a statutory human rights framework in NSW, there are limited pathways to realise and enforce such inherent cultural rights.

The Echuca Declaration on Cultural Flows

In 2007, delegates of the Murray Lower Darling Rivers Indigenous Nations (MLDRIN)³⁹ developed the [*Echuca Declaration*](#),⁴⁰ a groundbreaking statement that asserts the inherent rights of Rivers and the Traditional Owners as custodians. The *Echuca Declaration* also formalised the concept of Cultural Flows: water entitlements that are legally and beneficially owned and

³⁵ Parliament of Australia, [A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge](#), (2021), 106-7, [5.22].

³⁶ Petra Stock, “Gone forever’: political anger after NSW Aboriginal heritage site bulldozed for power lines’, *the Guardian* (webpage, 27 May 2026) < <https://www.theguardian.com/environment/2026/may/27/aboriginal-rock-shelter-destroyed-power-line-contractors-nsw-renewable-energy-zone-ntwnfb>>. Central-West Orana Renewable Energy Zone Transmission project | Environmental Impact Statement Table 11-3 <https://www.energyco.nsw.gov.au/sites/default/files/2024-12/EIS%20Main%20Report.pdf>

³⁷ <https://www.abc.net.au/news/2026-05-27/wiradjuri-community-say-acerez-shelter-destruction-inexcusable/106722794>.

³⁸ <https://www.gadgetreview.com/energy-developer-destroys-indigenous-heritage-site>

³⁹ MLDRIN is a confederation of Indigenous Nations and Traditional Owners in the Southern Murray Darling Basin, established in 1998. MLDRIN advocates for First Nations’ water rights and justice at the direction of its member Nations. See <https://mldr.in.org/>.

⁴⁰ MLDRIN, 2007, The Echuca Declaration, available at http://culturalflows.com.au/~culturalflowscom/images/documents/Echuca_declaration.pdf.

managed by First Nations for a range of cultural, social, environmental and economic purposes. In 2018, MLDRIN subsequently commissioned a seminal [report outlining a plan for Cultural Flows](#), developed by and for First Nations, together with the former Northern Basin Aboriginal Nations, and the North Australian Indigenous Land and Sea Management Alliance.⁴¹

The Murrumbidgee Catchment Nations Declaration

In May 2026, custodians of the community of Murrumbidgee Nations issued the [Murrumbidgee Catchment Nations Declaration](#) which asserts the Murrumbidgee River as a living entity, and sets out the principles by which Murrumbidgee should be understood, respected, and cared for. It reaffirms the enduring authority of Murrumbidgee Nations, acknowledges their rights, interests and obligations in terms of the river system, and establishes the foundations on which any planning, management or use of Murrumbidgee waters must proceed.

(c) Inadequate Environmental Procedural and Community Participation Rights

New South Wales has only limited community and environmental procedural rights protections for its residents. These rights, including the right to know, the right to participate and the right to challenge, were first recognised internationally in Principle 10 of the Rio Declaration for Environment and Development⁴² and subsequently recognised as crucial procedural elements for the protection of the right to a healthy environment. Notwithstanding the importance of these rights for the enjoyment and protection of other human rights impacted by the environment, including the right to a healthy environment, health, and the rights of children, NSW has inadequate protection of these environmental and community procedural rights within its environmental legislation.

In 2022, in partnership with the Wilderness Society,⁴³ EDO 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 *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*.⁴⁴ As set out at page 19 of this report, EDO's analysis found that NSW was found to be 'weak' on 8 out of 15 indicators used to analyse the strengths of protection of the three core rights, being: access to information, public participation and access to justice. NSW scored as having 'limited' protections for another 7 indicators, with only one indicator found to have strong protection. At Page 25, EDO noted NSW performed especially poorly due to laws that explicitly restricted community rights. Most concerning, was merits review rights of objectors, particularly in relation to fossil fuel projects and other matters designated as 'state significant development' is effectively removed when applications for these projects are heard by the

⁴¹ The report was written by academics at the University of Melbourne on behalf of the commissioning groups, by and for First Nations: [A Multi-Layer Plan for Cultural Flows in Australia: Legal and Policy Design](#), available at <https://mldrin.org/wp-content/uploads/2024/10/Law-and-policy-design-compressed.pdf>.

⁴² *Rio Declaration on Environment and Development*, 31 ILM 874 (12 August 1992).

⁴³ See: [Wilderness Society, Who holds the power? Community rights in environmental decision-making \(2022\)](#).

⁴⁴ *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)*; Wilderness Society, *Who holds the power? Community rights in environmental decision-making (2022)* [WhoHoldsThePowerReport.pdf](#).

Independent Planning Commission (**IPC**) at a ‘public’ hearing, despite these merit review rights remaining in place for proponents of the projects.⁴⁵

As at 2026 and despite recent reforms to the *Environmental Planning & Administration Act 1979* (NSW) (**EP&A Act**) community access to merits review versus proponents, almost always large corporations, remains a troubling feature of NSW environmental planning legislation.⁴⁶

The weak community and environmental procedural rights have been further impacted by the recent passage of legislation which may infringe of the rights of freedom of association and to peaceful assembly of environmental human rights defenders. In circumstances where community views are not required to be considered in planning and decision making, community protest is a crucial means for communities to exercise and protect their rights and has been expressly enshrined in regional human rights treaties, such as the at 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**), or has been found to be impliedly protected by Article 3(8) of the Aarhus Convention.⁴⁷

Case Study: Systemic Repression of Environmental Human Rights Defenders

EDO has witnessed an increase in proactive policing of environmental defenders 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.⁴⁸ While not limited to NSW,⁴⁹ this worsening systemic oppression of protestors and activists infringes on the internationally recognised rights to freedom of association and freedom of peaceful assembly under the ICCPR.⁵⁰

This worsening oppression is not only an infringement on rights protected under the ICCPR but have also been found to be unconstitutional. This is demonstrated by the partly successful challenge to similarly enacted legislation in NSW to the *Roads Act 1993* (NSW) and the *Crimes Act 1900* (NSW) (collectively, the **NSW Protest Laws**).⁵¹ In that challenge EDO represented ‘Knitting Nannas’ Dominique Jacobs and Helen Kvelde in a constitutional challenge to aspects of the

⁴⁵ *Environment Planning and Administration Act 1972* (NSW) (**EP&A Act**), s 8.6(3)(a).

⁴⁶ Ibid.

⁴⁷ For discussion, see: [Teresa Weber, ‘Are Climate Activists Protected by the Aarhus Convention? A note on Article 3\(8\) Aarhus Convention and the New Rapid Response Mechanism for Environmental Defenders’ \(2022\) 32\(1\) *Review of European Comparative & International Environmental Law* 67](#), 70-72 citing Aarhus Convention Compliance Committee (**ACCC**) ‘Findings and Recommendations of the Compliance Committee with Regard to Communication ACCC/C/2009/44 Concerning Compliance by Belarus’ UN Doc ECE/MP.PP/C.1/2011/6/Add.1 (28 June 2011) (ACCC/C/2009/44 Belarus); ACCC ‘Findings and Recommendations with Regard to Communication ACCC/C/2014/102 Concerning Compliance by Belarus’ UN Doc ECE/MP.PP/C.1/2017/19 (18 June 2017) (ACCC/C/2014/102 Belarus).

⁴⁸ 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>.

⁴⁹ See for example South Australia, another jurisdiction without a human rights act, passing of the amendments to the *Summary Offences Act 1953* (SA): *Summary Offences (Obstruction of Public Places) Bill 2023* (SA).

⁵⁰ ICCPR, arts 21 & 22.

⁵¹ *Road Amendment (Major Bridges and Tunnels) Regulation 2022* (NSW); *Roads and Crimes Legislation Amendment Act 2022* (NSW); *Crimes Act 1900* (NSW).

NSW Protest Laws, with the Court ruling that amendments to the Crimes Act 1900 (NSW) were unconstitutional on the basis it impermissibly burdened the implied freedom of political communication.⁵²

Since the Knitting Nannas' successful constitutional challenge, EDO has witnessed with concern, subsequent attempts by the NSW Government to curtail protest rights, of which each attempt has been found to be unconstitutional by the Courts.⁵³

Regarding the rights to freedom of association and freedom of peaceful assembly, we note that a Human Rights Act would incorporate important legislative tools, most prominently the inclusion of a limitation clause (see section 12 of the Bill) that applies the 'proportionality test'⁵⁴ which aids public authorities in better balancing rights, such as the rights of peaceful assembly against other concerns such as public safety, when exercising their functions and making decisions. Applied before legislation is enacted, public authorities can use this test to ensure that legislation they are enacting is both consistent with international human rights but also less likely to attract judicial challenges, as has been the case in NSW regarding its recent NSW Protest Laws.

1.2 A Human Rights Act will significantly improve human rights protections in NSW

Legislating a comprehensive Human Rights Act in NSW will lead to a significant improvement in human rights protection in NSW.

As discussed above, human rights protection is not expressly provided for in NSW legislation, with the Australian Constitution and the common law only providing a few limited rights for NSW residents. For this reason, it is essential that NSW implement a Human Rights Act. Virtually all modern democracies have considered the protection of human rights too important to be left as moral norms and have thus entrenched human rights in their constitutions, such that Australia is now the only Western democratic country that does not have explicitly protect human rights in a federal bill of rights, charter or Act.

As a federation of state and territories, Australian state and territory governments are a key level of government with legislative responsibility for many areas of government and services that can and do affect the enjoyment of human rights, including decisions relating to policing, health, education, environmental protection, and planning and development. There is an important role in ensuring human rights protection in these areas and others via the enactment of state human rights legislation.

Some state and territory governments in Australia are addressing this gap, with the ACT, Queensland and Victoria having enacted legislation to protect and promote the human rights of their residents. By enacting a NSW Human Rights Act, NSW has an important opportunity to legislate a much broader suite of human rights protections that expand the very limited rights protected under NSW's anti-discrimination legislation, the common law and the Australian

⁵² [Kvelde v State of New South Wales \[2023\] NSWSC 1560](#).

⁵³ See [Lees v State of New South Wales \[2025\] NSWSC 1209](#); [Jarret v State of New South Wales \[2026\] NSWCA 62](#).

⁵⁴ See for example, *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 7; *Human Rights Act 2004* (ACT), s 28; *Human Rights Act 2019* (Qld), s 13.

Constitution. Without enacting a Human Rights Act, NSW residents' human rights will remain without adequate or express protection that state and territory governments in the ACT, Queensland and Victoria have legislated to protect in their jurisdictions.

(a) *The Benefits of a Human Rights Act*

A comprehensive Human Rights Act enacted in NSW would position human rights at the centre of NSW's laws. A Human Rights Act establishes a framework wherein individuals and communities can legally assert their rights in circumstances where the protection of these rights is threatened or has been violated by the actions or decisions of public officials and actions of private actors, such as corporations, and is not reasonably justified.

This is particularly important for people and communities that suffer the impacts of systemic disadvantage and are particularly vulnerable to human rights violations. In relation to environmental harm, 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.⁵⁵ By enacting a Human Rights Act, NSW can ensure these communities are better able to assert and enforce their rights, and access remedies in situations where their rights have been breached.

Importantly, a Human Rights Act would also ensure that NSW's legislative and regulatory responses to systemic issues faced by these communities are more likely to be proactive, with lawmakers in NSW being able to rely on a Human Rights Act's human rights framework to guide the creation and drafting of legislation that is compliant with human rights norms. In circumstances where it may be necessary for the NSW Parliament to pass laws or take regulatory action to abrogate human rights, a Human Rights Act will ensure that there is careful scrutiny of the effects and proportionality of the proposed legislation. Positively, this means laws are less likely to be subject to judicial challenge at a later stage.

The importance of enhanced human rights deliberation is not only reflected in the enactment of human rights legislation in the ACT, Queensland, and Victoria, but has also been incorporated at the federal level by the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth),⁵⁶ though there are some limitations with this dialogue model.⁵⁷ Crucially, the impacts of enhanced lawmaking in jurisdictions with human rights legislation has seen tangible and practical improvements to how individuals rights are protected within legislation and by decision makers.

In identifying the strengths of a Human Rights Act, EDO considers it important to address the most common criticism of introducing human rights legislation in a jurisdiction: the potential for a 'flood of vexatious litigation' that inundates Courts and stymies effective government and legislating.

⁵⁵ 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) 17, [41].

⁵⁶ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

⁵⁷ See [Law Council of Australia, 'Submission to Australian Human Rights Commission's Free and Equal: An Australian Conversation on a Human Rights Inquiry' \(November 2019\)](#) 35.

As has been observed by multiple legal and judicial advocacy organisations, no such ‘flood’ has eventuated in response to the introduction of human rights legislation in Australia. The Law Council of Australia makes this clear by stating it has not seen a ‘flood’ of litigation in these jurisdictions’ Courts.⁵⁸ Similarly rebutting this criticism, we note the comments of the Commissioner for Human Rights in the ACT (in a submission to a South Australian inquiry into a human rights act in South Australia) confirming that:⁵⁹

[c]ontrary to the perception that a direct right of action may open the “flood gates” to human rights litigation, the direct right of action has been used in a relatively limited number of cases in the ACT. The reasons for this are varied.

(b) *Operation and effectiveness of Human Rights legislation in other jurisdictions*

As noted above, ACT, Queensland, and Victoria each have enacted human rights legislation in their jurisdictions. Despite some limitations to the existing human rights legislation, the Human Rights Law Centre has collated 101 examples of how human rights legislation in the ACT, Queensland and Victoria has benefited people’s lives in those jurisdictions.⁶⁰ These case studies highlight the need for human rights legislation in other jurisdictions, including in NSW.

We note that specifically in relation to the ACT, EDO prepared submissions to the ACT Government that address the effectiveness of the *Human Rights Act 2004* (ACT) and made recommendations for improvement. The first submission advocated for the inclusion of an accessible complaints mechanism, and for other amendments to improve access to justice for human rights matters in the ACT.⁶¹ The second submission advocated for the inclusion of the right to a healthy environment in the Human Rights Act 2004.⁶² In response to these inquiries,⁶³ the ACT Government committed to introducing both an accessible complaints mechanism to the ACT Human Rights Commission and the substantive right to a healthy environment. Both of which were subsequently incorporated into the *Human Rights Act 2004* (ACT).⁶⁴

For this reason, EDO considers the ACT *Human Right Act* as the preferred precedent legislation for NSW, particularly for the recognition of the right to a healthy environment.

⁵⁸ Ibid 6.

⁵⁹ [Social Development Committee of the Parliament of South Australia, Inquiry into the Potential for a Human Rights Act in South Australia \(49th Report, 29 April 2025\)](#) 69 citing Dr Penelope Mathew, *Written Submission No. 111* (21 February 2024) 5.

⁶⁰ Human Rights Law Centre, [101 Cases showing how a human rights laws make our lives better](#).

⁶¹ [EDO Submission to ACT Legislative Assembly in the Inquiry into Petition 32-21 \(No Rights Without Remedy\) \(April 2022\)](#).

⁶² [EDO Submission to ACT Government on its investigation into the right to a healthy environment in the ACT’s Human Rights Act 2004 \(August 2022\)](#).

⁶³ ACT Legislative Assembly Standing Committee on Justice and Community Safety, *Inquiry into Human Rights (Healthy Environment) Amendment Bill 2023* (Report 22, January 2024).

⁶⁴ *Human Rights Act 2004* (ACT), s 27C.

2 – A COMPREHENSIVE HUMAN RIGHTS ACT FOR NEW SOUTH WALES: ANALYSIS OF KEY RIGHTS

EDO strongly recommends that the New South Wales Parliament enacts a Human Rights Act. We further recommend that any such Human Rights Act or the Bill should include the following human rights as recommended in this submission.

Recommendation #1

The NSW Government should enact a comprehensive Human Rights Act.

2.1 Enshrine all rights protected under the international human rights treaties ratified by Australia

EDO strongly recommends that a Human Rights Act should enshrine all rights protected under the international human rights treaties ratified by Australia (**Recommendation #2**).

All human rights are interconnected and are therefore indivisible. It will not be possible for NSW to realise human rights unless all human rights are recognised and protected under NSW law. This includes all political, civil, economic, cultural, and social rights contained in the ICCPR and ICESCR, 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.

In recognising all rights protected under international treaties ratified by Australia, EDO strongly recommends that no distinction be made between the civil and political rights enshrined in the ICCPR, economic, cultural, and social rights enshrined in ICESCR and other international human rights treaties, and the right to a healthy environment. We note that any delineation between these sets of rights is artificial and unnecessary in determining whether and/or what aspects of a right are ‘immediately realisable’ by governments.⁶⁵

Instead, a NSW Human Rights Act can contain a provision similar to section 28 of the *Human Rights Act 2004* (ACT) in which all human rights protected under the Act may be subject to ‘*reasonable limits set by laws that can be demonstrably justified in a free and democratic society*’, and that in deciding whether a limit is reasonable, all relevant factors must be considered including the nature of the right affected, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose, and any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.⁶⁶

Recommendation #2

A Human Rights Act should enshrine all rights protected under international human rights treaties ratified and endorsed by Australia, including the UNDRIP.

⁶⁵ [EDO Submission to ACT Government on its investigation into the right to a healthy environment in the ACT’s Human Rights Act 2004 \(August 2022\)](#).

⁶⁶ *Human Rights Act 2004* (ACT), ss28(1) & 28(2).

2.2 The right to a healthy environment

A Human Rights Act should include the right to a clean, healthy and sustainable environment (the **right to a healthy environment**). The right to a healthy environment should be defined broadly, consistent with international law and adopt the wording of section 27C(1) of the *Human Rights Act 2004* (ACT).⁶⁷

Everyone has the right to a clean, healthy and sustainable environment.

EDO is strongly supportive of the inclusion of a right to a healthy environment in the Bill. However, EDO considers that the Bill's current definition and characterisation of the right must be amended to ensure consistency with international law.

Recognition of the right to a healthy environment is both a significant opportunity for the NSW Parliament to better protect the NSW environment and health and wellbeing of NSW's residents as well as to provide important leadership nationally as the second Australian jurisdiction to legislate a standalone right to a healthy environment should the Bill be passed on an alternative Human Rights Act be legislated.

Recommendation #3

A Human Rights Act should include the right to a clean, healthy and sustainable environment, which should be defined broadly, consistent with international law.

In support of **Recommendation #3**, we set out in the paragraphs below our analysis of: the development and recognition of the right to a healthy environment under international law; in Australian domestic jurisdictions; and why the right to a healthy environment should be defined, consistent with international law and the ACT's Human Rights Act.

(a) *Recognition of the right to a healthy environment under international law*

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,⁶⁸ after this right was explicitly recognised by the UN Human Rights Council in October 2021.⁶⁹ 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.

On 23 July 2025, the International Court of Justice (**ICJ**) published its Advisory Opinion on the Obligations of States in respect of Climate Change (**ICJ AO**). The ICJ AO is a unanimous opinion of the ICJ and proceeds from the premise that "it is scientifically established" that climate change is

⁶⁷ See *Human Rights Act 2004* (ACT), s 27C(1).

⁶⁸ UN General Assembly, *The human right to a clean, healthy and sustainable environment*, UN Doc. A/RES/76/300 (28 July 2022).

⁶⁹ 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).

caused by the accumulation of greenhouse gases in the atmosphere and that the increase in concentration of GHGs in the atmosphere is primarily due to human activities.⁷⁰

In relation to the right to the healthy environment, the ICJ AO recognises that the protection of the environment is a precondition for the enjoyment of human rights and that the adverse effects of climate change (including sea level rise, drought, desertification, and natural disasters) may impair the effective enjoyment of a wide range of human rights such as the right to life, right to privacy, family and home, rights of children and First Nations peoples.⁷¹ The Court concluded that under international law, the human right to a clean, healthy and sustainable environment is essential to the enjoyment of other human rights, and said that it is difficult to see how a country's obligations to protect human rights can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right.⁷²

While the ICJ AO is not binding it nonetheless an authoritative statement of countries' obligations with respect to climate change as they currently exist under international customary, treaty and human rights law. The ICJ AO was given in response to UN General Assembly Resolution 77/276, which Australia co-sponsored. UN General Assembly Resolution 80/263 (adopted on 20 May 2026) welcomes the ICJ AO and calls on States to comply with their respective obligations to protect the climate system and other parts of the environment from GHG emissions. Australia voted in favour of Resolution 80/263.

Noting that Australia voted in favour of recognising the right to a healthy environment, EDO considers that NSW should implement Australia's commitment to the international community domestically by including a definition of the right to a healthy environment in this Bill or otherwise be enacted in a comprehensive Human Rights Act.

(b) *Recognition of the right to a healthy environment Australian domestic jurisdictions*

As already noted in this submission, the ACT has recognised the right to a healthy environment in its *Human Rights Act 2004* (ACT).⁷³ Notably, the right has also been incorporated into the guiding principles of *Climate Change (Net Zero Future) Act 2023* (NSW) and as an objective in Victoria's *Environment Protection Act 2017* (Vic) under the 'Principle of Equity'.⁷⁴

EDO notes that for each of these examples, the right to a healthy environment is not justiciable in the way civil and political rights are under the *Human Rights Act 2004* (ACT) and believes New South Wales has an opportunity to take a step further than other state and territory jurisdictions and offer comprehensive protection of the right to a healthy environment of its residents, consistent with its international development and recognition.

(c) *Definition of the right to a healthy environment*

⁷⁰ International Court of Justice, Advisory Opinion, *Obligations of States in Respect of Climate Change* (ICJ AO) at [279].

⁷¹ ICAJO, pp 109, 111-112 [373], [377], [381]-[382], [386].

⁷² ICJAO, p 113 [393].

⁷³ *Human Rights Act 2004* (ACT), s 27C.

⁷⁴ *Climate Change (Net Zero Future) Act 2023* (NSW), s 8(5); *Environment Protection Act 2017* (Vic), s 21(1).

As noted above, the Bill includes the right to a healthy environment, which it has defined as follows:

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

(a) every individual has the right not to be subject to unlawful pollution of air, water and soil, and

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

(2) No unjustified retrogressive measures should be taken in relation to this right.

(3) No individual should be subject to discrimination regarding the realisation of this right.⁷⁵

EDO strongly supports the Bill's inclusion of the right to a healthy environment, however, EDO considers that the definition proposed is overly restrictive and should be amended.

In particular, EDO takes particular issue with the inclusion of 'unlawful' pollution of air, water and soil, which implies that lawful pollution is permissible even if it produces adverse consequences, including environmental degradation, for health, access to safe and clean air, water and food, and exposure to toxic pollutants. In our view, this contradicts the Bill's proposed definition of the right to a healthy environment as a right to an 'environment that does not produce adverse health consequences.'⁷⁶

Instead, EDO strongly recommends the right to a healthy environment must be defined broadly and consistently with international law. In particular, we recommend that the right to a healthy environment be defined to include the right to a '**clean**', '**healthy**' and '**sustainable**' environment, consistent with the United Nations General Assembly's resolution (and voted for by Australia) and should adopt the language in section 27C(1) of the *Human Rights Act 2004* (ACT):

Everyone has the right to a clean, healthy and sustainable environment.

Regarding the terms 'clean', 'healthy' and 'sustainable', we note these are drawn from the practice of various UN Member States, which have adopted these terms in constitutions and legislation, as well as regional human rights instruments. While there are similarities between these terms, they each make distinctive contributions:

- **Clean** is most frequently used in the context of air quality and water quality. Clean also is an important descriptor in the context of plastic pollution, waste and other forms of pollution that may detract from the aesthetic quality of the environment without necessarily affecting human health.
- **Healthy** is especially critical. It is the most widely used term in relation to the right, codified in more than 80 constitutions and more than 80 national laws. It is essential because it has an important dual meaning, as it refers to the health of both humans and ecosystems, so that it protects nature's health as well as human health. 'Healthy' does not mean pristine, or perfectly free of any pollutant or contaminants. It means free from levels

⁷⁵ *Human Rights Bill 2025* (NSW) s 44.

⁷⁶ [EDO Submission to UN Special Rapporteur on toxics and human rights](#) (May 2023).

of pollution or contaminants that could harm human or ecosystem health. For example, air quality NEPM sets Australia's air quality standards for fine particulate matter.

- **Sustainable** is essential because it emphasises prevention, namely ensuring that human activities do not deplete resources or degrade biodiversity and ecosystems. Although there is arguably some degree of overlap, each of these adjectives has independent utility and a strong historical foundation in regional human rights treaties, national constitutions, and domestic legislation. These terms have also been the subject of judicial consideration in regional human rights tribunals and domestic courts over the past three decades. Therefore, we recommend that if the right is included in the Human Rights Act, the right is defined to include the right to a 'clean, healthy and sustainable environment'.

In recommending a broad definition, 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.⁷⁷ 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.⁷⁸

2.3 Rights of First Nations Peoples

A Human Rights Act should include specific rights concerning First Nations. EDO recommends the incorporation into NSW human rights legislation of:

- **all rights of First Nations peoples recognised under UNDRIP,⁷⁹ including the right to self-determination and the principle of Free, Prior and Informed Consent (FPIC);** and
- other human rights contained in treaties such as the ICCPR and ICESCR, including substantive cultural rights for First Nations.

As such, EDO supports:

- the inclusion of First Nations specific cultural rights in proposed section 17 of the Bill, noting the drafting is adopted from section 28 of Queensland's *Human Rights Act 2019*;
- the inclusion of the right to a healthy environment (proposed section 44 of the Bill) which would support the implementation of Articles 25 and 29 of UNDRIP; and,
- that the draft Bill requires international human rights law, including UNDRIP, to be considered when interpreting statutory provisions to ensure they are compatible with human rights (per proposed s 45 and Schedule 1).

⁷⁷ For details, see [EDO Submission to the ACT Inquiry into Human Rights \(Healthy Environment\) Amendment Bill 2023 \(December 2023\)](#).

⁷⁸ 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).

⁷⁹ *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).

However, the Bill as proposed is insufficient to implement UNDRIP in full. The Bill should be amended to specifically incorporate these rights, especially:

- the right to self-determination (Art 3);
- the requirement for Free, Prior and Informed Consent (FPIC⁸⁰) (Arts 10, 19, 32);
- the right to participate in decision-making (Art 18) (see more below); and
- rights to lands, territories and resources (Arts 25–26).

A Human Rights Act should also respond to Framework Principles 3, 14 and 15 of the Special Rapporteur on Human Rights and the Environment's *16 Framework Principles on Human Rights and the Environment* (**Framework Principles**), outlined in **Attachment 1**.⁸¹ The Framework Principles essentially summarise obligations that States already have under international human rights treaties and other sources of international law in relation to the enjoyment of a clean, healthy and sustainable environment.⁸² Framework Principle 15 is that States should ensure they comply with their obligations to Indigenous peoples and members of traditional communities, including to:⁸³

- recognise and protect their rights to the lands, territories and resources that they have traditionally owned, occupied or used;
- consult with them and obtain 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.

EDO considers that the rights of First Nations peoples must be reflected as both individually and collectively held and exercisable rights within a NSW Human Rights Act, rather than merely an

⁸⁰ FPIC also requires that First Nations peoples and communities are equipped with: 1) access to information that is unfiltered, interpreted into First Nations ways of understanding and framing; 2) an understanding of their rights (inherent and recognised in Western law) and how infringements of or impacts on those rights can be managed; and 3) authority, autonomy and adequately resourced governance structures to respond.

⁸¹ 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). EDO outlined these Framework Principles on page 11 of **Attachment 1** and discuss the principles particular relevant to First Nations on pages 27-29 of **Attachment 1**, also available at [A Healthy Environment is a Human Right - Environmental Defenders Office](#).

⁸² 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>>.

⁸³ These obligations arise from international human rights sources including UNDRIP and art 27 of the ICCPR, which recognise the cultural, environmental and land rights of Indigenous peoples. See 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), 3 [8]; *Selected Sources for Framework Principles on Human Rights and the Environment*, Principle 15, pp 30-32; 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.

obligation and duty on authorities to uphold those rights. The collective nature of First Nations cultural rights should be reflected in the Bill, consistent with UNDRIP.⁸⁴

However, FPIC must be obtained before enacting any laws or policies that may impact First Nations peoples. Articles 18, 19 and 32 of UNDRIP 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. Consistent with these articles, any rights relating to First Nations Peoples in the Bill should be co-designed with First Nations Peoples, representative groups, and other First Nations stakeholders. Subject to this process, a Human Rights Act must ensure the participation of First Nations peoples in relation to decisions that directly or disproportionately affect their rights. This should include positive practical requirements to ensure First Nations' participation, including a 'participation duty' that accord with Articles 18, 19 and 32 of UNDRIP. We address these further in the section below.

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

Recommendation #4

A Human Rights Act should enshrine all rights protected under the *Universal Declaration of the Rights of Indigenous Peoples (UNDRIP)*, including provisions to recognise and protect the specific cultural rights of First Nations Peoples, and a duty to ensure the participation of First Nations people in relation to decisions that directly or disproportionately affect their rights. **In addition**, any provision relating to the rights of First Nations Peoples must be co-designed with First Nations Peoples to ensure their Free, Prior and Informed Consent and that such provisions are culturally appropriate.

2.4 Rights to protect environmental human rights defenders

EDO strongly recommends that a Human Rights Act be amended to 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, 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 a NSW Human Rights Act 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):

⁸⁴ See in particular the Preamble and Articles 1 and 7 of UNDRIP here: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf.

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 the Bill 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.

Recommendation #5

A Human Rights Act 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.

2.5 Limitation of Rights

EDO supports the inclusion of a limitation clause in the Bill, in circumstances where rights protected under the Human Rights Act are subject only to reasonable limitations that are demonstrably justifiable in a free and democratic society, based on human dignity, equality and freedom (see section 12 of the Bill).

In supporting the inclusion of a limitation clause, EDO notes that there are circumstances where rights may need to be permissibly limited recognising that circumstances may require that different rights be balanced against important public interests, and against one another. However, a limitation clause **must not** apply to rights that are absolute under international law.⁸⁵ EDO considers inclusion of a list of these rights should be included in a subsection in the broader limitation provision. In relation to the rights the limitation clause applies to, a determination of

⁸⁵ ICCPR, arts 7, 8(1)&(2), 11, 15 & 16.

whether a right should be limited should be based on the 'proportionality test' developed under international human rights law.

Recommendation #6

A Human Rights Act for NSW should specify that the human rights protected under the Act be subject only to reasonable limitations that are demonstrably justifiable in a free and democratic society, based on human dignity, equality and freedom.

3 – THE POTENTIAL IMPLICATIONS OF ANY ACT FOR MAKING OF LAWS, COURTS AND TRIBUNALS, PUBLIC AUTHORITIES AND OTHER ENTITIES

3.1 Enhanced oversight of legislation, regulatory and policy making

EDO is strongly supportive of the Bill’s inclusion of Part 4 establishing a Parliamentary Joint Committee on Human Rights and Part 5 requiring statements of compatibility for bills introduced to Parliament or by a Minister recommending the making of a statutory rule.⁸⁶

EDO recommends that a comprehensive Human Rights Act for New South Wales should provide a robust parliamentary scrutiny process to ensure all proposed laws are assessed for compatibility with human rights (**Recommendation #7**).

In recommending the above, EDO considers this will have significant positive impacts on the New South Wales legislature and policy makers engagement with human rights and require them to consider the impacts of legislation, regulation, and policy on human rights in NSW, and in circumstances where human rights must be abrogated, give careful consideration to the proportionality of such abrogation. The requirement of scrutinising bills can be found in each of the ACT, Queensland and Victoria’s state human rights legislation,⁸⁷ and at a Commonwealth level, pursuant to the requirements set out in the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).⁸⁸

EDO notes that the Bill and each of the examples in the ACT, Queensland and Victoria’s state human rights legislation each preserve Parliamentary sovereignty and therefore Parliamentary sovereignty is not raised as a legitimate reason *not* to pass the Bill or otherwise enact a comprehensive Human Rights Act in NSW.

Recommendation #7

A Human Rights Act for NSW should provide a robust parliamentary scrutiny process to ensure all proposed laws are assessed for compatibility with human rights.

3.2 Participation duties

EDO strongly supports the inclusion of a ‘participation duty’ in a Human Rights Act. While not described as such, section 49(4)(c) the Bill imposes some obligations consistent with a ‘participation duty’ which EDO supports. We consider it essential that a participation duty or equivalent obligations are enshrined in a Human Rights Act in NSW to ensure the participation of all people, including First Nations peoples, if they decide decisions directly or disproportionately affect their rights. The ‘participation duty’ draws on international human rights law standards and common law procedural fairness principles.⁸⁹

Importantly, EDO considers that the Bill offers NSW an opportunity to lead rather than lag behind other jurisdictions by adopting the recommendations of the Australian Human Rights Commission and the Federal Parliamentary joint Committee on Human Rights to include a procedural duty to

⁸⁶ *Human Rights Bill 2025* (NSW), Part 5.

⁸⁷ *Human Rights Act 2004* (ACT), ss 37 & 38; *Human Rights Act 2019* (Qld), ss 38-41; *Charter of Human Rights and Responsibilities Act 2006* (Vic), ss 28-30.

⁸⁸ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 8.

⁸⁹ Australian Human Rights Commission ‘*Free and Equal. A Human Right Act for Australia 2022*’ (Position Paper, 2022), 182.

engage in participation processes where a decision disproportionately affects a specific group or groups.

For this reason, **EDO recommends that sections 56 – 57, Part 5 (statements of compatibility) of the Bill be amended** to include a requirement for proponents of Bills and statutory rules to facilitate participation during the law-making process and to reflect what participation measures were undertaken in statements of compatibility. This would also be subject to scrutiny by the Parliamentary Joint Committee on Human Rights.

In making the above recommendation, while EDO agrees public authorities should offer to engage and accommodate the participation of First Nations peoples in decision-making, the decision on whether to engage in public consultation, including whether decisions of public authorities are ‘direct’ or ‘disproportionate’ on them, should ultimately be at the discretion of First Nations people.

Moreover, we recommend the duty as described in the Bill must extend to ensure the participation of people in society who not only require special protection under human rights legislation, namely children and persons with disability, **but also people who are most at risk of experiencing environmental harm**. 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.⁹⁰ EDO also considers that culturally and racially marginalised communities and LGBTIQ+ communities may require additional protections from environmental harm. However, similar to First Nations peoples, each of these groups should have the discretion to decide whether to participate in decision-making.

Finally, we recommend that these requirements be binding, so that failure to engage in or report on participation to Parliament *would* affect the validity of the instrument in question.⁹¹

Recommendation #8

A Human Rights Act should include a participation duty. 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.

⁹⁰ 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) 17, [41].

⁹¹ EDO similarly advocated for this duty at recommendation 11 in its submission to Joint Parliamentary Committee on Human Rights’ Inquiry into an Australian Human Rights Framework, accessible here: <https://www.edo.org.au/wp-content/uploads/2023/07/230623-Human-Rights-Framework-Inquiry-EDO-Submission.pdf>.

(a) *First Nations Peoples and Free, Prior and Informed Consent*

In relation to First Nations peoples, the participation duty must include the positive requirements to enable participation of First Nations peoples based on Articles 18 and 19 of UNDRIP.⁹² 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 (see **section 2.3** and **Recommendation 4** above for details).

While a participation duty will extend to First Nations, it is not sufficient to fulfill the requirements of FPIC for First Nations. The Bill will, **in addition**, need to consider additional duties that fulfil the requirements of FPIC for First Nations that involves obtaining FPIC before enacting any laws or policies that may impact First Nations peoples, and in particular, before undertaking any activities or processes on their lands and waters. FPIC also requires that First Nations peoples and communities are equipped with:

- access to information that is unfiltered, interpreted into First Nations ways of understanding and framing;
- an understanding of their rights (inherent and recognised in Western law) and how infringements of or impacts on those rights can be managed; and
- authority, autonomy and adequately resourced governance structures to respond.

(b) *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;
- the right to participate in decision-making; and
- access to justice.

It is essential to also include rights protected under the Aarhus Convention to ensure the right to a healthy environment, among others, can be implemented in practice.

For this reason, **EDO strongly recommends** the Bill should be amended to protect the broader participatory rights of all people. We consider that this could be achieved by legislating each of the procedural rights contained in the Aarhus Convention as separate and distinct rights in a Human Rights Act (in addition to the ‘participation duty’).

Recommendation #9

A Human Rights Act should enshrine the environmental procedural rights that are protected under the Aarhus Convention, in addition to the participation duty of public authorities proposed at section 49(4)(c) of the Bill.

⁹² Australian Human Rights Commission ‘Free and Equal. A Human Right Act for Australia 2022’ (Position Paper, 2022), 183.

3.3 A positive duty on State public authorities

EDO supports the Bill's inclusion of a positive duty on State public authorities to act compatibly with the human rights expressed in the Bill and to consider human rights when making decisions (section 49(1)).⁹³

EDO recommends that a Human Rights Act be enacted with a positive duty imposed on public authorities to act compatibly with the human rights expressed in a NSW Human Rights Act and to consider human rights when making decisions. In accordance with this public duty, there would be a specific 'positive duty' on the New South Wales executive to act compatibly with human rights and give 'proper consideration' to human rights when making decisions. Pursuant to this duty, New South Wales Government agencies and other entities, known as 'public authorities' would be bound by this duty (**Recommendation #10**).

The positive duty to act compatibly with human rights has procedural and substantive obligations. The requirement to give 'proper consideration' to human rights applies to making decisions and implementing legislation and policy – it is a procedural obligation. The requirement to 'act compatibly' with human rights is a substantive obligation on public authorities. Public authorities should also be required to engage in participation processes where the 'participation duty' is relevant, as part of the 'proper consideration' limb.⁹⁴ Compliance with the positive duty would be reviewable by Courts (and possibly by tribunals as discussed below in relation to administrative law remedies). The positive duty would require decision makers to consider human rights at an early stage, helping to prevent breaches from occurring.

Recommendation #10

A Human Rights Act should include a positive duty on public authorities to act consistently with the human rights contained in the Human Rights Act.

3.4 Application of a Human Rights Act 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.⁹⁵ Similarly, individuals must be able to access effective remedies against private actors as well as government authorities.⁹⁶ 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.⁹⁷

⁹² *Human Rights Bill 2025 (NSW)*, s 49.

⁹⁴ Australian Human Rights Commission, *Free and Equal: A Human Rights Act for Australia* (Summary Report, December 2022) 17.

⁹⁵ John Knox, *Framework Principles on Human Rights and the Environment*, UN Doc A/HRC/37/59 (24 January 2018) [5], pp 7-8.

⁹⁶ *Ibid*, [28] p 13.

⁹⁷ 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.

EDO notes that the Bill's application to private actors is significantly constrained by being included as an 'opt in' clause.⁹⁸ For clarity, **EDO does not support this clause as drafted in the Bill.**

In the environmental context, it is particularly vital for remedies to be available for violations of human rights. Private businesses are a major contributor to human rights breaches caused by the degradation of the environment. In the absence of clear laws that require businesses to protect the right to a healthy environment, businesses should endeavour to act consistently with human rights including the right to a healthy environment, and to take human rights into account when making decisions or taking actions that will have an impact on the environment. As noted in the *UN Guiding Principles on Business and Human Rights*, businesses play an important role as specialised organs of society performing specialised functions, and are required to comply with all applicable laws and to respect human rights.⁹⁹ Private entities ought to have regard to the *UN Guiding Principles on Business and Human Rights* for guidance on how to comply with these obligations.

For this reason, **EDO instead recommends** that the Bill should be amended to, or an alternative Human Rights Act enacted that, explicitly states 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 Bill or Human Rights Act. It should also impose a duty on private actors to act consistently with human rights and should include accessible remedies for harmful interference on human rights by private actors (see **Recommendation #11** regarding accessible remedies).

EDO notes that this recommendation is consistent with Pillars I-III of the United Nations Guiding Principles on Business and Human Rights.¹⁰⁰ 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.¹⁰¹ EDO considers that New South Wales has an important role in ensuring that Australia's broader obligations under these principles are upheld in its jurisdiction, and therefore must ensure that a New South Wales Human Rights Act applies to private actors and that possible breaches of the New South Wales Human Rights Act are capable of being remediated effectively in accordance with **Recommendation #11** of this submission (see section 4 below).

Recommendation #10

A Human Rights Act should expressly state that, consistent with international law, the positive duty on public authorities extends to a duty to ensure that private entities to act consistently with the human rights contained in a Human Rights Act. A Human Rights Act should also impose

⁹⁸ See definition of 'public authority' in *Human Rights Bill 2025* (NSW), s 8(1)(d).

⁹⁹ UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (United Nations, 2011), endorsed by the UN Human Rights Council, *Resolution 17/4 – Human rights and transnational corporations and other business enterprises*, UN Doc A/HRC/RES/17/4 (6 July 2011).

¹⁰⁰ 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**).

¹⁰¹ 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.

a duty on private entities to act consistently with human rights and should include accessible remedies for harmful interference on human rights by private actors

4 – A ROLE FOR COURTS: ENSURING ACCESS TO EFFECTIVE REMEDIES

To ensure that a New South Wales Human Rights Act promotes access to justice, it must ensure that all people have access to effective remedies, including an informal complaints mechanism and access to judicial remedies in circumstances where their rights may be or have been infringed (**Recommendation #11**).

EDO is strongly supportive of the inclusion of a direct right of action to the Supreme Court or tribunal for people who have experienced a breach of their human rights under the proposed Act by a public authority in contravention with the obligations on public authorities set out at section 49 of the Bill. While EDO is generally supportive of the Bill's direct right of action, EDO strongly recommends that it be extended to include causes of actions against private entities (see section above for discussion).

EDO advocates for the inclusion of an independent cause of action for a breach of human rights committed by a public authority or private actor, and that people must have access to a range of remedies for a breach. EDO supports the inclusion of broad standing provisions to enable representative standing by organisations and to facilitate First Nations organisations to bring proceedings for breaches of those rights held collectively. Such standing provisions have been recommended by the Australian Human Rights Commission in relation to a national Human Rights Act.¹⁰²

EDO supports the inclusion of an accessible complaints process as provided for in the Bill, whereby a person can make a complaint to an established NSW HRC. Similarly, EDO is supportive of the proposed provisions in the Bill that provide that if conciliation via a NSW HRC fails or is inappropriate, or if the matter is urgent, individuals with standing should have the right to initiate proceedings in the NSW Civil and Administration Tribunal (**Tribunal**). Access to a Tribunal is essential in providing access to remedy as a Tribunal provides for a less formal and expensive option to claimants than the Supreme Court, thereby increasing access to justice.

Notwithstanding access to a complaints mechanism to a NSW HRC and Tribunal, EDO strongly recommends that an individual or group of individuals with standing should be able to pursue a direct cause of action under a Human Rights Act, and that ordinary judicial review could be pursued as an alternative, or in addition to, this direct cause of action in the New South Wales Supreme Court. The available remedies should replicate the remedies available under discrimination laws which include monetary damages, amongst other remedies. **EDO strongly supports s 50(2)(d) of the Bill** that allows rights under the Bill to be “piggy-backed” onto causes of action in other legal proceedings (similar provisions exist in other jurisdiction's human rights acts¹⁰³). It is essential that any Human Rights Act in NSW contain a similar provision. Further, a Human Rights Act should include an additional means of enhancing access to justice by including protections against adverse cost orders for individuals or groups of individuals.

Finally, for clarity and as recommended earlier, EDO considers that each of these complaints' mechanisms must be applicable against private actors (see **Recommendation #10** above).

¹⁰² Australian Human Rights Commission 'Free and Equal. A Human Rights Act for Australia 2022' (Position Paper, 2022), 67, [3.8(d)].

¹⁰³ *Human Rights Act 2019* (Qld), ss 58-59; *Charter of Human Rights and Responsibility Act 2006* (Vic), s 39; *Human Rights Act 2004* (ACT), s 40C(2)(b).

Recommendation #11

A Human Rights Act should ensure access to effective remedies for breaches of human rights including an informal complaints mechanism, access to judicial remedies, and adequate protections against adverse costs orders for individuals and groups who seek to defend their rights.

5 – ESTABLISHMENT OF A NEW SOUTH WALES HUMAN RIGHTS COMMISSION

Part 6 of the Bill “establishes the New South Wales Human Rights Commission as a body corporate to handle human rights complaints, provide remedies for contraventions of the proposed Act and provide education about the rights of individuals under the proposed Act.”

EDO is strongly supportive of establishing a New South Wales Human Rights Commission.

EDO believes a New South Wales Human Rights Commission (**NSW HRC**) can play an important role in the protection and promotion of human rights, particularly in relation to ensuring environmental and climate justice in NSW.

As noted in a 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.¹⁰⁴ 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. EDO considers that this resolution is equally applicable to state and territory human rights institutions, particularly within the Australian context where under its federal system state jurisdictions (noted above) are a crucial level of government.

Given the significant human rights ramifications of environmental degradation and climate change and the inclusion of a right to a healthy environment in the Bill, it is essential that as part of its functions, a NSW HRC consider environmental human rights and have a significant role to play in seeking to mitigate the effects of the triple planetary crisis of climate change, biodiversity loss and toxic environments, on the enjoyment of human rights in NSW.

Recommendation #12

A NSW Human Rights Commission should be established. Consideration of environmental human rights issues should be included in its functions.

For further information about anything raised in this submission or in relation to our recommendations, please contact rachel.walmsley@edo.org.au or (02) 7229 0054.

¹⁰⁴ UN Human Rights Council, *National human rights institutions*, 51st Session, UN Doc. A/HRC/51/L.16/Rev.1 (5 October 2022).