



Australian Human
Rights Commission

Human rights on a warming Earth

November 2025



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The Commission acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture. We pay our respects to their Elders past and present.

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Foreword

The evidence on the human threat posed by climate change is clear. The planet is getting hotter. Seas are rising. Rainfall patterns are changing. In Australia, our bushfire seasons are getting longer and more dangerous. The risk of drought, floods and heatwaves is increasing.

Climate change is already impacting a growing number of Australians, particularly in the bush. Predictions and modelling are becoming a reality. Lives and livelihoods are being lost to more frequent and severe disasters. Billions are being lost in property and infrastructure damage and lost productivity. Insurance will become increasingly unaffordable or simply unavailable in disaster-prone areas.

Things are projected to get much worse without concerted action. The Australian Government's recent National Climate Risk Assessment details the extreme and escalating risks climate change poses to our lives, our health, our economy, our housing, our food systems and more.

Climate change can sometimes sound abstract, technical and insurmountable. The purpose of this report is to squarely focus on the human impact of climate change and highlight how human rights can help to spur action from governments and business to protect people from harm.

Human rights are standards that governments have promised to uphold so that everyone of us can live well in dignity and safety. The Australian Government has committed under international law to protect people's rights in Australia. Parliaments in Victoria, Queensland and the Australian Capital Territory have passed Human Rights Acts which protect people's rights in those jurisdictions.

Climate change threatens the most fundamental of rights – our right to life. Extreme heat is already reported to cause more deaths in Australia than any other natural hazard. Climate change will affect our right to health and to a healthy environment. It will also impact our right to an adequate standard of living which covers access to food, water and adequate housing. Particularly for rural communities, climate change will affect our rights to work and property.

Of course, the impacts of climate change will not be felt equally. Those who are already disadvantaged are more vulnerable. People living in poverty, older people, people with a disability, First Peoples and rural communities will be hit harder.

By looking at the impacts of climate change through the lens of human rights, we can help to plan, adapt and respond. People's right to housing is not achieved if they are spending years living in caravans because of delayed insurance claims and rebuilding processes. Women's right to safety is not upheld if they are forced to share an evacuation centre with their abusive partner. Children's right to education is not achieved if their school is destroyed in a disaster, their schooling is disrupted for months or longer.

Human rights require that Australian governments and businesses act with greater urgency to prevent harm from climate change. Central to this is ensuring our rapid transition from fossil fuels to renewables. The International Court of Justice in its recent landmark decision confirmed that nations have a legal duty to prevent significant harm to the climate system and could be liable for harm caused by continued fossil fuel production, consumption and subsidisation.

Australia's rapid transition to renewables must be just and fair. Just as human rights require action to address climate change, they also provide a compass to help ensure we take the right action and avoid harms to others in the process. We must support those communities affected by the closure of mines and other fossil fuel projects. We must respect everyone's rights to freedom of expression, peaceful protest and property. We must respect First People's land and cultural rights and ensure their informed consent for projects affecting them.

This report sets out recommendations for Australian government and businesses to comply with their human rights obligations to protect people from the harm caused by climate change. Central to these is urgently phasing out fossil fuels. We also recommend that the Australian Government establish an Australian Human Rights Act. A Human Rights Act would

protect in Australian law our rights to life, health, an adequate standard of living, to a healthy environment and more. It would help to guide governments to make the right decisions to respond to climate change. It would give people and communities power to ensure government is accountable for its human rights obligations.

Climate change can only be fully addressed through concerted global action. This is why Australia's leadership is so vital to bring other nations with us. The pace at which we cut climate pollution from fossil fuels will determine how dangerous the future is. Australians already have the highest proportion of households with rooftop solar systems in the world. With abundant wind and sun, we have vast untapped potential to shift from being a major consumer and exporter of coal, oil and gas, to becoming a world leader in renewables.

This report highlights the connection between climate change and people's human rights. By focussing on the human impact, we can focus on the actions governments and businesses must take to protect current and future Australians. The message of the report is clear: if we want to protect our quality of life, we must address climate change with greater urgency.



Hugh de Kretser
President, Australian Human
Rights Commission

‘The effects of climate change are becoming more ferocious and more widely felt all over the world, every day.

We are quickly running out of time to change course – but solutions grounded in human rights offer us the surest path to a more sustainable and more equitable future.’

Volker Türk
United Nations High Commissioner
for Human Rights¹



1. Executive summary

The Australian Human Rights Commission (Commission) wrote this report to raise awareness of the connection between climate change and human rights and to outline the critical importance of addressing climate change to protect people's rights in Australia.

Since the mid-1700s, human activity, particularly the escalating use of fossil fuels (coal, oil and gas), has dramatically increased the amount of greenhouse gases in the Earth's atmosphere.² The high and increasing levels of greenhouse gases are causing global temperature rises that are changing the Earth's weather and climate systems.

Nation States around the world have committed under the Paris Agreement to take action to limit global average temperature increases to 1.5°C above pre-industrial levels.³ However, efforts to date are insufficient to achieve this aim.

After the hottest decade on record,⁴ 2024 became the hottest year in history, with an average temperature of 1.55 degrees Celsius above pre-industrial levels, the first year to be more than 1.5 degrees Celsius.⁵ Scientists predict that by the end of the century the global temperature increase will be 2.4-2.6 degrees Celsius.⁶

As climate change intensifies, the risk of crossing Earth system 'tipping points' increases – critical thresholds beyond which natural systems can no longer sustain their current state, triggering irreversible and widespread environmental damage.⁷ The world's leading climate scientists have said:

without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and well-being of current and future generations.⁸

Climate change is a global threat, but it will manifest differently across the world. In 2024, the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and the Bureau of Meteorology (BoM) reported Australia's climate had warmed by an average of 1.51 degrees Celsius.⁹ This follows decades of average temperature increases, more frequent hot weather,

shifting rainfall patterns and warming oceans.¹⁰ Environmental risks in Australia and globally from climate change impacts include:

- increased frequency and intensity of heatwaves
- increased severity of storms and rainfall events
- increased flooding
- increased drought
- increased bushfire risk
- increased air pollution
- rising sea levels
- loss of species – flora, fauna and ecological communities.¹¹

Food production, fresh water sources, low lying land, transportation networks, housing, infrastructure, employment, health, social services, peace and national security are all threatened by the impacts of climate change.

All of these issues are human rights issues. Climate change has been described by the UN Environment Programme (UNEP) as:

one of the greatest threats to human rights of our generation, posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living of individuals and communities across the world.¹²

The human right to a clean, healthy and sustainable environment has been recognised by the International Court of Justice (ICJ),¹³ United Nations General Assembly (UNGA)¹⁴ and Human Rights Council (UNHRC).¹⁵ It is an essential precondition for all other human rights.¹⁶ The human rights to life, food, water, health, work and an adequate standard of living are all directly impacted by climate change. For example, in relation to the right to life in Australia, the CSIRO reports that extreme heat causes more deaths locally than any other natural hazard.¹⁷ Researchers also suggest that deaths attributed to excessive heat could be far higher than what is currently being reported.¹⁸

Other human rights are indirectly impacted by climate change. For example, natural disasters, which are more commonly occurring because

of climate change, may destroy school facilities, impacting the right to education.

Economic, social and cultural rights that relate to self-determination, political status, social, economic and cultural development are directly and indirectly impacted by climate change in various ways. The rights of First Peoples and the rights of children are 2 areas uniquely impacted by climate change.

First Peoples, their cultures and their connection to Country are particularly vulnerable to climate change impacts, which are further exacerbated by the ongoing effects of colonisation.¹⁹ Children and young people will experience more severe and prolonged effects of climate change over their lifetimes, particularly if climate change is not adequately addressed today, with greater impacts on their physical and psychological development compared to adults.²⁰

Procedural rights enable people to realise other human rights and participate meaningfully in decisions that affect their lives, their communities and the environment. Grounded in both human rights and environmental law, these procedural rights include the right to information, right to participate in decision-making and the right to access justice.²¹ Lack of access to climate information has led to preventable deaths and negative health impacts. Excluding affected communities from meaningful participation can result in ineffective climate policies.²²

Protest is an important feature of climate justice movements.²³ However, Australian governments are increasingly restricting protest rights and environmental human rights defenders face increasing levels of intimidation and harassment.²⁴

People who already experience rights violations and discrimination such as migrants, people impacted by racism, women, people with disability and older persons are likely to face greater risks from climate change.²⁵ Nation States and communities that have contributed little to cause climate change, today face an existential threat due to rising sea levels. Climate justice recognises the disproportionate impact on people in vulnerable situations, marginalised groups and

less developed countries who are often the least responsible for the problem.

The ICJ has found that Nation States have extensive obligations under international law in relation to climate change, including a duty to prevent significant harm to the climate system,²⁶ which may be breached through continued fossil fuel production, consumption and subsidisation.²⁷ International human rights law in particular requires Nation States to respect, protect and fulfil human rights from the adverse impacts of climate change.²⁸ Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or failure to regulate activities contributing to such harm, could violate Nation States' human rights obligations.²⁹ UN treaty bodies and the UN Special Rapporteur on climate change and human rights have said to be human rights compliant, Nation States must, amongst other things, phase out fossil fuels projects, including by regulating the export of fossil fuels and phasing out fossil fuel subsidies.³⁰ Australia risks violating its human rights obligations by continuing to approve new fossil fuel projects,³¹ heavily subsidising the fossil fuel industry³² and exporting the majority of its fossil fuel production.³³

Australia has committed to and must report on its progress towards achieving the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs).³⁴ The 2030 Agenda is grounded in human rights instruments³⁵ and its 17 SDGs seek to realise the human rights of all.³⁶ SDG 13 specifically demands urgent action to combat climate change and its impacts.³⁷

The majority of historical global carbon dioxide emissions can be attributed to only 78 state and corporate entities known as the 'Carbon Majors',³⁸ including 5 Australian-based companies: BHP, Rio Tinto, Woodside Energy, Santos and Whitehaven Coal.³⁹ All businesses, including Carbon Majors, have a 'responsibility to respect' human rights under the UN Guiding Principles on Business and Human Rights (UNGPs).⁴⁰ To respect human rights, the former UN Special Rapporteur on the right to a healthy environment has said all businesses must reduce emissions from their activities and supply chains.⁴¹ The UN Special

Rapporteur on climate change and human rights has said fossil fuel companies in particular must urgently develop plans to phase out existing operations by 2030, amongst other things.⁴²

The Australian Government has led and co-sponsored UN resolutions recognising the vital role of National Human Rights Institutions (NHRIs), such as the Commission, in monitoring, reporting on and advising governments and businesses on climate change and human rights.⁴³ At the Global Alliance of National Human Rights Institutions (GANHRI) conference in 2020, NHRIs from around the world, including the Commission, pledged to advance rights-based climate action both individually and collectively.⁴⁴ GANHRI has emphasised that, while NHRI mandates vary, their shared objective should be to promote government and corporate measures to mitigate and adapt to climate change in ways that uphold human rights.⁴⁵ Mitigation refers to reducing the greenhouse gases that cause climate change, while adaptation means adjusting to its effects on our environment, society and economy.

The Commission's functions include promoting understanding, acceptance and public discussion of human rights, reviewing existing and proposed laws, policies and practices and providing expert advice on how they can better protect people's human rights.⁴⁶ In relation to climate change, those functions could include: public education on the human rights impacts of climate change; investigating and conciliating human rights and discrimination complaints that relate to climate change; advocacy for law reform such as a national Human Rights Act that protects the right to a healthy environment; intervening in climate change litigation; and monitoring and reporting on Australia's compliance with relevant international human rights obligations.

Australia's current federal human rights and environmental laws need to be strengthened to protect the human rights of Australians from the impacts of climate change. The Australian Parliament's human rights committee has recommended a national Human Rights Act be enacted, broadly reflecting the Commission's model proposed in its *Free and Equal* report, which includes the right to a healthy environment.⁴⁷ An Australian Human Rights Act would help to prevent human rights breaches from occurring by requiring government bodies to properly consider and act compatibly with human rights. If breaches of rights do happen, a Human Rights Act would give people the power to take action to address the breaches. These benefits are already being realised in Australia's state and territory jurisdictions where Human Rights Acts have been enacted. The Australian Capital Territory (ACT) recently became the first jurisdiction to explicitly recognise the right to a healthy environment in its *Human Rights Act 2004*.⁴⁸

Climate change is a global problem requiring collective action. Every country must take action. Wealthy countries like Australia that use and export large amounts of fossil fuels have a greater responsibility to act. The human impact of climate change will become more severe and widespread within the next few decades if urgent and significant action is not taken now. The window is rapidly closing to correct the course of climate change, to limit global warming to 1.5 degrees Celsius and prevent irrevocable damage.⁴⁹ A rapid and transformative shift away from fossil fuel production and consumption is required to alter the trajectory scientists have laid out.⁵⁰ This transformation should be guided by a human rights-based approach.⁵¹



1.1 Recommendations to address the human rights impacts of climate change

Nation States have the primary duty to uphold international human rights law. The responsibility to respect human rights is also a global standard of expected conduct for all businesses wherever they operate and whether or not the Nation States in which they operate are upholding human rights. This means that both the Australian Government and Australian businesses have human rights obligations in the context of climate change.

The Commission has outlined below a number of recommended priority actions for the Australian Government and Australian businesses to comply with their obligations to protect people's human rights from harm caused by climate change. These recommendations are drawn from international human rights law as well as authoritative guidance from international courts and tribunals, UN treaty bodies, UN Special Rapporteurs and Australian courts interpreting human rights laws. The relevant human rights reasons for the recommendations are explored in the body of this report.

1.2 Recommendations

For the Australian Government:

Recommendation 1:

The Australian Government should urgently phase out fossil fuels by adopting and enforcing measures to prohibit new fossil fuel projects and strictly regulate the import and export of fossil fuels.

Recommendation 2:

The Australian Government should phase out fossil fuel subsidies and instead provide climate finance that supports human rights-based climate mitigation and adaptation measures.

Recommendation 3:

The Australian Government should undertake stringent due diligence to identify and assess risks of serious harm to the climate system and consequent risks of serious harm to people's human rights.

Recommendation 4:

The Australian Government should enact a national Human Rights Act that includes the right to a healthy environment.

For Australian businesses generally:

Recommendation 5:

Australian businesses should reduce greenhouse gas emissions from their activities, subsidiaries, products, services and supply chains.

Recommendation 6:

Australian businesses should publicly disclose their emissions, climate vulnerability and the risk of stranded assets (fossil fuels and infrastructure that can no longer be used as the world transitions to renewables).

For Australian fossil fuel businesses in particular:

Recommendation 7:

Australian fossil fuel businesses should:

- urgently develop plans to phase out their existing fossil fuel operations
- finance the retraining of their workers
- fully cover the costs of closure and clean-up

2. The problem of climate change

Climate change is driven primarily by the burning of fossil fuels (coal, oil and gas) that release greenhouse gas emissions into the atmosphere.

These emissions are causing global temperatures to rise and contributing to more frequent and intense extreme weather events.

To avoid the worst impacts of climate change, immediate, deep and sustained emissions reductions are essential to limit global warming to 1.5 degrees Celsius.

Climate change is also deeply interconnected with the biodiversity and pollution crises, each compounding the effects of the others and threatening the health of people and the planet.

The world's leading climate scientists have unequivocally confirmed that global temperatures are rising primarily due to excessive greenhouse gas emissions caused by human activity, especially the burning of fossil fuels (coal, oil and gas).⁵²

The Intergovernmental Panel on Climate Change (IPCC), the world's leading source of scientific information and technical guidance on climate change, reported in 2023 that human-induced climate change is:

already affecting many weather and climate extremes in every region across the globe ... and vulnerable communities who have historically contributed the least to current climate change are disproportionately affected.⁵³

Climate change has increased the frequency and severity of extreme weather events. In 2024 alone, 152 'unprecedented' extreme weather events were recorded,⁵⁴ displacing over 800,000 people, the highest recorded number since 2008.⁵⁵

The World Meteorological Organisation (WMO) recorded 2024 as the hottest year on record with global average temperature reaching 1.55 degrees Celsius, the first year to be more than 1.5 degrees Celsius above pre-industrial levels.⁵⁶ The WMO Secretary-General said:

While a single year above 1.5 °C of warming does not indicate that the long-term temperature goals of the Paris Agreement are out of reach, it is a wake-up call that we are increasing the risks to our lives, economies and to the planet.⁵⁷

The IPCC report made a grim prediction that global warming would more than likely exceed the 1.5 degrees Celsius threshold before 2040.⁵⁸ This prediction aligns with Nation States' inadequate action to reduce greenhouse gases. To date, State action globally is inconsistent with modelled mitigation requirements and adaptation efforts are failing to strengthen resilience and reduce vulnerability.⁵⁹ State inaction is compounded by revelations that the limits which the Earth's natural environment can be sustainably exploited have already been exceeded.⁶⁰

In 2024, the BoM and CSIRO reported Australia's climate had warmed by an average of 1.51 degrees Celsius, which has led to an increase in climate extremes such as extreme heat, heavy rainfall, coastal inundation, fire weather and drought. The BoM and CSIRO predict Australia will continue to experience an increase in air temperatures, heavy rainfall, bushfires and sea level rise and warn that the severity of the impact on Australians and our environment will depend on the speed at which global greenhouse gas emissions can be reduced.⁶¹

The IPCC has warned that 'with every increment of global warming, changes in extremes continue to become larger'⁶² and that immediate, deep and sustained reductions in greenhouse gas emissions across all sectors are essential to limit global warming to 1.5 degrees Celsius.⁶³

2.1 Climate change, biodiversity loss and pollution

While greenhouse gas emissions released by humans are the largest cause of climate change, it is also influenced and worsened by:

- biodiversity loss from land clearing and urbanisation
- air, soil and water pollution from excessive waste and toxic substances.⁶⁴

Historically, these issues have been considered as separate planetary threats. Consequently, policy and legislative responses have approached these issues individually.⁶⁵

However, these issues are interconnected in a vicious cycle of environmental decline. Biodiversity loss and pollution weaken ecosystems and exacerbate climate change impacts. Climate change, in turn, contributes to biodiversity loss through habitat destruction and warming oceans.⁶⁶ Since 2020, the UNEP has adopted a strategy to address the 'triple planetary crisis' of climate change, biodiversity loss and pollution as interlinked issues.⁶⁷ The UN Special Rapporteur on

climate change and human rights, Elisa Morgera, has called for climate action beyond the 'carbon tunnel vision' to prevent biodiversity loss and toxic pollution.⁶⁸

As climate change intensifies, the likelihood of reaching Earth system 'tipping points' increases, meaning large parts of the natural world are unable to maintain their current state, leading to irreversible damage. Scientists warn that the window to prevent this outcome is rapidly closing, with some tipping points potentially unavoidable.⁶⁹ The UNEP advocates for an 'urgent and clear break' from current trends of environmental decline to ensure the Earth maintains its capacity to sustain the wellbeing of today's children and future generations.⁷⁰

The former UN High Commissioner for Human Rights, Michelle Bachelet, described the triple planetary crisis as the 'single greatest challenge to human rights in our era'.⁷¹ Recognising the link of these crises with human rights and adopting a human rights-based approach to jointly manage these intersecting environmental issues will allow for holistic responses that benefit humanity and the environment.



3. Human rights and climate change

Human rights are standards that governments around the world have promised to uphold to ensure that every person can live a decent, dignified life.

The connection between human rights and the environment is now widely recognised, with the ICJ and UN recently affirming the right to a healthy environment is a human right that is essential for the enjoyment of all human rights.

Climate change threatens many human rights. A human rights-based approach offers a practical way to take effective and fair climate action.

Human rights belong to all of us, no matter who we are, where we come from, what we look like or what we believe.

Human rights are the key to living well. They are about being treated fairly, treating others fairly and being able to choose how we live our lives. Human rights reflect values like equality, freedom, respect, dignity, kindness, thinking of others and looking out for each other.⁷²

The modern human rights movement started after the horrors of World War 2 when the international community came together and agreed to the Universal Declaration of Human Rights (UDHR). Article 1 of the UDHR states:

All human beings are born free and equal in dignity and rights.⁷³

Since then, international human rights treaties have been adopted and Nation States, including Australia, have enacted domestic laws, like anti-discrimination laws, to protect human rights.⁷⁴

The link between human rights and the environment was first articulated in an international agreement at the 1972 UN Stockholm Convention on the Human Environment.⁷⁵ Since then, as environmental and human rights advocacy and science have progressed, there has been increasing and evolving recognition of this nexus.

Research, advocacy, litigation and legislation concerning the link between the environment and human rights has grown rapidly, internationally and domestically. As early as 2007, the Commission warned that the effects of climate change may threaten a broad range of human rights.⁷⁶ In 2021 and 2022, the UNHRC and the UNGA both passed resolutions recognising the right to a clean, healthy and sustainable environment,⁷⁷ followed by the ICJ in its 2025 advisory opinion on Nation States' climate obligations.⁷⁸

Advocates in Australia are increasingly arguing for climate solutions that uphold the rights, needs and wellbeing of all communities.⁷⁹ Globally, governments, business and communities are being urged to collaborate to achieve meaningful and effective climate change responses.⁸⁰

Moving forward, climate change responses that fail to consider rights protection will lack legitimacy as they exacerbate existing issues or create new human rights challenges.⁸¹ Calls for human rights-based approaches to respond to climate impacts are now well developed within civil society.

What is a human rights-based approach?

A human rights-based approach transforms the human rights legal framework into effective practices, policies and everyday processes that inform decision-making. Adopting a human rights-based approach reinforces the practical value of human rights and empowers people to better understand and access their rights.

A human rights-based approach is framed around 5 key principles:

- **Participation:** everyone has the right to participate in decisions that affect their human rights. Participation must be active, free, meaningful and must take into account accessibility including access to information in a form which can be understood.
- **Accountability:** compliance with internationally accepted human rights standards and the effectiveness of remedies in response to human rights breaches, must be effectively monitored and reported.
- **Non-discrimination and equality:** all forms of discrimination must be prevented and eliminated. Active consideration must be given to groups who face the biggest barriers to their rights being realised.
- **Empowerment:** individuals and communities must be able to understand their rights and to participate fully in developing policy and practices which affect their lives.
- **Legality:** the law must recognise human rights and freedoms and must be consistent with human rights.⁸²

The UN High Commissioner for Human Rights, Volker Türk, has described climate change as a 'human rights emergency'⁸³ echoing his predecessor, Michelle Bachelet, who warned that 'the human implications of currently projected levels of global heating are catastrophic'.⁸⁴ Türk reiterated this view at the Commission's 2024 Free and Equal Conference, where he urged Australia to be part of the solution.⁸⁵



4. Human rights affected by climate change

Human rights most directly impacted by climate change include the rights to life, a healthy environment, health, an adequate standard of living, water, food, housing, work, First Peoples' cultural rights and children's rights.

Procedural rights, such as the rights to information, to participate in decision-making and access to justice, help people realise their human rights and participate meaningfully in decisions that affect their lives, their communities and the environment. First Peoples' right to free, prior and informed consent incorporates these procedural rights.

Environmental human rights defenders are essential in promoting sustainable development and a healthy environment, yet their fundamental freedoms are under increasing threat from intimidation, harassment and legal action.

Climate change disproportionately affects people in vulnerable situations. These groups are often subject to multiple and compounding forms of discrimination. Rights-based climate action requires an intersectional and systemic approach that addresses all forms of discrimination and inequality.

4.1 Human rights affected by climate change

Direct impacts to human rights from climate change occur from the immediate and long-term environmental changes which challenge and disrupt the ways in which people and communities live. These changes impact on people and communities' quality of life, undermine their ways of living and place them in situations of compounding harm.⁸⁶

Although all human rights are affected by climate change, some that are immediately and most directly affected by climate change issues include the right to:

- life
- a healthy environment
- health
- an adequate standard of living
- water
- food
- housing
- work.⁸⁷

Each of these rights are linked with each another, meaning that a threat to any one right may impede another right from being realised.

The destruction of homes and crops caused by increasing severity of cyclones is a **direct** human rights impact of climate change.

Other human rights such as the right to education, cultural life and social security are indirectly impacted by climate change.⁸⁸ These impacts may interrupt a person's ability to access services, safety and or infrastructure that support their lives.

Loss of education opportunities for children and young people resulting from destruction of school facilities due to extreme weather events is an example of an **indirect** human rights impact of climate change.

Increasing rates of intimate partner violence in communities experiencing increased stress due to extreme drought is an example of an **indirect** human rights impact of climate change.⁸⁹

(a) Right to life

The right to life is protected by article 6 of the International Covenant on Civil and Political Rights (ICCPR) which states that:

Every human being has the inherent right to life.

Environmental protection and the right to life are inseparable. A healthy environment is integral to protecting the right to life.⁹⁰

In its General Comment 36, the UN Human Rights Committee, responsible for promoting civil and political rights (ICCPR Committee), explained that article 6 requires Nation States parties to ensure existing laws and policies protect the environment from pollution and harm and any failure to do so may breach article 6.⁹¹

The ICCPR Committee commented that climate change is one of the most:

pressing and serious threats to the ability of present and future generations to enjoy the right to life.⁹²

In recognising environmental protection as a key element of the right to life, the ICCPR Committee further stated:

life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors.⁹³

Climate change as a cause of death

The World Health Organisation conservatively predicts that between 2030 and 2050, climate change impacts will cause approximately 250,000 additional deaths per year from malnutrition, malaria, diarrhoea and heat stress alone.⁹⁴

In Australia, the CSIRO reports that extreme heat causes more deaths locally than any other natural hazard,⁹⁵ however, the true scale of climate change as a cause of death remains unclear. Researchers suggest that deaths attributed to excessive heat could be far higher than what is currently being reported.⁹⁶ As climate change intensifies, all people, but particularly people in vulnerable situations, such as young children and older people, will be at heightened risk of death from its impacts.

(b) Right to a healthy environment

In October 2021, the UNHRC passed a resolution recognising that a clean, healthy and sustainable environment is more than a requirement to protect the right to life, but itself a human right.⁹⁷ In July 2022, the UNGA echoed this position, passing its own resolution acknowledging the universal right to a clean, healthy and sustainable environment.⁹⁸ UN Secretary General Antonio Guterres said that this resolution would:

help States accelerate the implementation of their environmental and human rights obligations and commitments.⁹⁹

Former UN Special Rapporteur on the right to a healthy environment David Boyd has said that international and domestic laws will be impacted by these resolutions:

Governments have made promises to clean up the environment and address the climate emergency for decades but having a right to a healthy environment changes people's perspective from 'begging' to demanding governments to act.¹⁰⁰

In 2025, the ICJ held that the right to a healthy environment is a precondition and essential to the enjoyment of all human rights.¹⁰¹



The right to a healthy environment ensures ‘an environment of a quality that permits a life of dignity and wellbeing.’¹⁰² The right is generally understood to include substantive and procedural elements. One substantive element is the right to a safe climate.¹⁰³ A failure to take adequate steps to mitigate or adapt to climate change can violate the right to a healthy environment.¹⁰⁴

The environmental content of the right to a healthy environment is different to other human rights. The Inter-American Court of Human Rights (IACtHR) has decided that the right to a healthy environment protects components of the environment, such as forests, seas, rivers and other natural features, as interests in themselves, even in the absence of harm to people.¹⁰⁵

The right to a healthy environment also has a collective and temporal dimension as it ‘constitutes a universal value that is owed to both present and future generations’.¹⁰⁶

(c) Right to health

The right to health is articulated under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which provides that all persons have the right:

to the enjoyment of the highest attainable standard of physical and mental health.¹⁰⁷

The right to health may be realised progressively,¹⁰⁸ but Nation States have a:

specific and continuing obligation to move as expeditiously and effectively as possible towards [its] full realisation.¹⁰⁹

Progressive realisation recognises that a Nation State’s capacity to fully implement economic, social and cultural rights may be hampered by its access to available resources. However, Nation States must take immediate steps within their means towards fulfilment of these rights.¹¹⁰ These steps must be ‘deliberate, concrete and targeted as clearly as possible’.¹¹¹ Nation States must also adhere to the principle of non-regression, meaning Nation States must not unjustifiably reduce or weaken the protection of economic, social and economic rights once they reach a certain level of protection.¹¹²

Article 12.2 of the ICESCR sets out the specific actions a State must take to achieve the full realisation of the right to health, including ‘the improvement of all aspects of environmental and industrial hygiene’.¹¹³

The right to health is more than access to timely and appropriate healthcare. It includes protection of the underlying determinants of health, such as environmental conditions which may be harmful to human health. This includes access to safe water, adequate sanitation, habitable housing, adequate food, nutrition and a healthy environment.¹¹⁴ In this way, a person’s right to health intersects with a State’s ability and obligation to protect the environment.

Right to life, health and a healthy environment

In 2018 the Supreme Court of Justice in Colombia ruled in favour of 25 children and young people who pursued legal action seeking to demonstrate the relationship between the right to health and the right to a healthy environment.¹¹⁵ The Colombian Supreme Court found that:

the fundamental right to life, health, basic necessities, liberty and human dignity are substantially linked and determined by the environment and ecosystem.¹¹⁶

Drawing on article 12 of the ICESCR, the Court urged the Colombian Government to improve all environmental conditions which are instrumental for the realisation of the highest attainable level of physical and mental health.¹¹⁷

(d) Right to an adequate standard of living

The right to an adequate standard of living is provided by article 25 of the UDHR, as well as article 11 of the ICESCR.

It means everyone should enjoy the rights of minimum subsistence – that is, realisation of rights including the right to adequate food, water, housing, clothing, medical care, necessary social services and the right ‘to the continuous improvement of living conditions’.¹¹⁸ Climate and environmental factors impact all of these elements.

(e) Right to water

In General Comment 15, the UN Committee on Economic, Social and Cultural Rights (ICESCR Committee) explained that the right to clean water is an essential element to fulfilling the right to an adequate standard of living.

The ICESCR Committee stated:

The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival.¹¹⁹

Ensuring access to safe water and adequate sanitation is also a core obligation of article 11 of the ICESCR – the right to health.¹²⁰

In 2010, the UNGA adopted a resolution, recognising the right to safe and clean drinking water and sanitation in its own right, stating that it was essential for the full enjoyment of life and all human rights.¹²¹

Climate change impacts the availability of safe and clean drinking water in various ways. Rising sea levels and growing storm frequency and severity increase the risk of seawater intrusion into drinking water sources, particularly in low lying coastal areas. During inundation, waste and pollutants heighten the risk of disease and illness.¹²² Drought also challenges access to safe and clean drinking water, with increased frequency and severity of drought exacerbating that challenge.

The right to access water must be respected, protected and fulfilled without discrimination.¹²³ Nation States should:

adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations.¹²⁴

Nation States should proactively develop a strategy to protect the right to safe drinking water and sanitation, which includes:

assess[ing] the impacts of actions that may impinge upon water availability and natural ecosystems watersheds, such as climate change, desertification and increased soil salinity, deforestation and loss of biodiversity.¹²⁵

(f) Right to adequate food

Food production is fundamentally linked to the weather and so realising the right to food can be severely impacted by the effects of climate change. Extreme weather events caused by climate change (such as droughts, fires, storms and floods) reduce food production and contribute to world hunger.¹²⁶

The right to an adequate standard of living includes the right to adequate food for all individuals, families and communities – a ‘fundamental right of everyone to be free from hunger’.¹²⁷

Nation States must take necessary action to mitigate and alleviate hunger¹²⁸ and to ensure food is accessible for both present and future generations.¹²⁹ This is so even in times of natural or other disasters.¹³⁰

Food availability is impacted by the environment because providing adequate food largely depends on the ‘prevailing social, economic, cultural, climatic, ecological and other conditions’.¹³¹ Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups are at greater risk of inadequate food supply.¹³² The ICESCR Committee has called for priority consideration to be given to such groups to ensure that their right to food is adequately and continuously fulfilled.¹³³

Complex impacts of climate change on food supply chains

In Australia, climate-induced natural disasters will have direct impacts that adversely affect crops and livestock production and indirect social and health repercussions on people.¹³⁴

Research shows that rural areas and fruit, vegetable and livestock sectors will be most affected by climate change. Non-food sectors will also be impacted, with natural disasters and crop failure likely to negatively impact:

- local, regional and international transportation networks
- food processing systems
- value-add industries (such as packaging, branding and marketing, distribution and retail industries)
- consequential employment beyond affected regions
- the overall availability and variety of food.

The overall resilience of food systems is weakened by every climatic stressor. Reduced food availability and variety exacerbate human health and diet-related conditions which are already among the leading causes of death and disability in Australia.¹³⁵

Failure to realise the right to adequate food impacts on the right to an adequate standard of living, health, employment and life. These rights are all directly threatened by climate change.



(g) Right to an adequate standard of housing

Adequate housing is essential to fulfilling the right to an adequate standard of living. For housing to be of adequate standard it:

must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health...¹³⁶

Ensuring housing is adequate and habitable is particularly important in the context of climate change. With temperatures increasing at an unprecedented rate, homes and places of accommodation must be adequately built to ensure protection from exposure to extreme heat, natural disasters and environmental factors.

The right to housing is not limited to ensuring the provision of shelter, but to ensuring housing is adequate so that it protects people from the health implications that may arise from extreme weather. Australian courts have considered the standard which must be met for housing to be 'habitable', finding that it extends beyond health and safety to reasonable comfort.¹³⁷

Right to humane treatment in prisons

Climate change exacerbates poor living conditions in prisons and other places of detention. 'Poor insulation and inadequate heating and cooling systems' and a failure of some prisons to 'meet basic standards of climate control, ventilation and natural light' are all negatively affected by increases in extreme weather.¹³⁸

Failing to provide adequate accommodation in prisons is a human rights violation which exacerbates risks to the rights to health and life. These issues can disproportionately impact groups who are overrepresented in prisons, including First Peoples and people with disability.¹³⁹

The right to housing must be ensured in the context of natural disasters and disaster recovery.¹⁴⁰ In Australia, inadequate housing options have led to an increasing number of unhoused people following extreme weather events such as the 2022 Northern Rivers flooding in New South Wales¹⁴¹ and the 2019-2020 bushfires across Australia's East Coast.¹⁴² As such incidents increase in frequency and severity, the risk is that more people will be forced to live in substandard housing, or face the prospect of no housing at all.

(h) Right to work in just and favourable conditions

The right to work is guaranteed by article 6 of the ICESCR and includes the right of everyone to freely choose or accept their work.¹⁴³ Climate change will have an enormous impact on employment, jobs and the labour market. While all economic sectors will be affected by climate change, some sectors, including agriculture, fisheries and tourism, are more sensitive to climate change and weather-related events.¹⁴⁴

For example, globally, farmers are being displaced from their land because of climate-induced droughts, floods and storm surges.¹⁴⁵

The UNHRC has acknowledged that a just transition to a green, rights-based economy is 'the only viable path to limit the impact of the ongoing climate catastrophe and to safeguard human



rights, including the right to work'.¹⁴⁶ While the renewable energy transition is necessary to reduce emissions and global warming,¹⁴⁷ it may cause employment and livelihood issues for coal, oil, gas and carbon-based workers, many of who live in remote or regional areas.¹⁴⁸

The just transition movement calls for policies and practices that prioritise the rights of workers, communities and people in vulnerable situations to ensure they are not unfairly burdened by the transition away from a carbon economy.¹⁴⁹

In Australia, the Electrical Trades Union (which represents members working in coal fired power stations) advocates for a just transition as a means of protecting its members' employment rights. While coal-based workers have historically fought against de-carbonisation as a means of job protection, it is now recognised that a just transition can enable job security as well as environment protection for the benefit of future generations.¹⁵⁰

Policy outcomes that may lessen the human rights impacts of decarbonisation include ensuring coal, oil, gas and carbon-based workers are adequately trained and skilled for jobs in new energies and that new energy job opportunities are created in regional and remote areas traditionally supported by a carbon intensive economy.¹⁵¹

Article 7 of the ICESCR further elaborates that everyone has a right to work in just and favourable conditions, particularly in safe working conditions.¹⁵² However, decarbonising the economy has modern slavery implications. Modern slavery is when people are forced to work, marry or do other things against their will through threats, violence, coercion or other exploitation.¹⁵³ As the world moves away from carbon intensive systems and infrastructure, the use of low emissions technology is gaining pace. Solar panels, wind turbines and batteries for electric vehicles are prominent technological advancements that assist the necessary transition away from fossil fuels.

These innovations are largely reliant on natural materials, minerals or elements that are often rare and found in only a few locations.¹⁵⁴ Rigorous investment in their growth has occurred only in a few source nations, concentrating global supply for new energy sources, their processing and parts manufacturing.¹⁵⁵ This causes dependency on limited supply chains, increasing risks of unscrupulous business practices and rights violations, particularly arising from substandard worker conditions. This includes the risk of modern slavery.

Australia's *Modern Slavery Act 2018* (Cth) requires Australian businesses to take action to identify and avoid modern slavery in their supply chains. This is consistent with Australia's obligations under the 2014 International Labour Organisation Protocol to the 1930 Forced Labour Convention, which obliges Australia to:

take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation and to sanction the perpetrators of forced or compulsory labour.¹⁵⁶

Supply chain issues are a global phenomenon. The renewable energy sector is not uniquely at risk of modern slavery. But in Australia, this risk is prominent. This is because as a large emitter, Australia must rapidly pursue decarbonisation and transition to renewable energies to meet targets.¹⁵⁷ However, until recently, Australia has remained reliant on carbon intensive energies with little investment in renewable energy production, making it reliant on international supply chains.¹⁵⁸

(i) First Peoples' rights

In 2000, then UN Special Rapporteur of the Working Group on Indigenous Populations, Erica-Irene A. Daes, reported on the distinct and inseparable relationship between Indigenous Peoples and their cultures and traditional lands. Indigenous expression of identity, culture, language and self-determination are informed by the natural environment. The UN Special Rapporteur urged non-Indigenous societies to foster an understanding of this unique relationship to ensure the continuous survival and vitality of Indigenous communities.¹⁵⁹

This intrinsic connection between Indigenous Peoples throughout the world and the natural environment was formally recognised in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which was adopted by the UNGA on 13 September 2007.¹⁶⁰ UNDRIP established:

a universal framework of minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of Indigenous Peoples.¹⁶¹

UNDRIP requires the individual, society and traditional land to be considered holistically, as one, without delineation.¹⁶² This includes jointly considering environmental issues with Indigenous Peoples and communities' health, well-being and human rights.

In Australia, the deep connection between First Peoples law, culture and sovereignty and the natural environment was outlined in the 2017 Uluru Statement from the Heart.¹⁶³

UNDRIP recognises First Peoples' rights to manage, conserve and use their land,¹⁶⁴ and directs Nation States to implement assistance programs for Indigenous Peoples regarding the conservation and protection of the environment.¹⁶⁵ Protection of the environment is inseparable from First Peoples' right to self-determination. Under UNDRIP, First Peoples have the right to own, use and develop their traditional lands, territories and resources,¹⁶⁶ and any project that could affect their lands requires their free, prior and informed consent.¹⁶⁷

In June 2025, the Minister for Climate Change and Energy said the Australian Government intends to engage in reconciliation with First Peoples through the renewable energy transition.¹⁶⁸ As the transition will require access to large areas of land and sea Country, the First Nations Clean Energy Network recommends medium to large renewable projects follow its 10 best practice principles to ensure economic and social benefits, mutual respect, clear communication, cultural and environmental considerations, business employment opportunities and free, prior and informed consent.¹⁶⁹

Other rights of First Peoples under UNDRIP include the rights to:

- maintain and strengthen their spiritual relationship with their traditional lands, territories and water¹⁷⁰
- practice culture and ceremonies¹⁷¹
- conserve vital medicinal plants, animals and minerals¹⁷²
- maintain, control, protect and develop cultural heritage, traditional knowledge and traditional cultural expressions¹⁷³
- maintain, protect and have access to religious and cultural sites.¹⁷⁴



First Peoples' rights and climate change

Climate change's impact on Indigenous rights is already apparent in several parts of the world, including in Australia. Increasing and changing coastal tides pose significant risks to culturally significant sites and practices for Torres Strait islanders. Communities have reported having to relocate ancestral remains due to sea level rise unearthing grave sites close to the coast. Communities have also reported concern about difficulties sharing cultural practices, such as fishing, with younger generations due to habitat changes and loss of local species. This has resulted in a loss of language and culture.¹⁷⁵

First Peoples have a long history of rights-based advocacy. They have played a crucial role in holding Nation States accountable to their obligations under international law, including on environmental protection. Their advocacy has increased understanding about the impact of colonisation on environmental systems.



Billy et al v Australia (Torres Strait Islanders Petition) (2022)¹⁷⁶

In October 2022, the ICCPR Committee ruled that the Australian Government violated the human rights of Torres Strait Islanders by failing to take adequate action on climate change.

A group of Torres Strait Islanders had complained to the ICCPR Committee that their rights to be free from arbitrary interferences with their private life, family and home and their right to culture had been breached due to government inaction responding to climate change.¹⁷⁷

The ICCPR Committee found that:

[Australia's] failure to adopt timely adequate adaptation measures to protect the [the Torres Strait Islander complainants] collective ability to maintain their traditional way of life, to transmit to their children and future generations their culture and traditions and use of land and sea resources discloses a violation of [Australia's] positive obligation to protect the [Torres Strait Islanders'] right to enjoy their minority culture.¹⁷⁸

The decision was the first time a UN body found that a State had violated its international human rights obligations because of its inadequate climate policy.

It was also the first time that Indigenous Peoples right to culture was found to be at risk from climate impacts by the ICCPR Committee.

(j) Children's rights

Climate change is one of the most important human rights issues for children and young people in Australia. When consulted about their rights and wellbeing, children and young people are increasingly listing environmental impacts and climate change impacts amid their main concerns.¹⁷⁹ A national survey conducted by the Australian Conservation Foundation in 2023 found that 75% of young Australians believe climate change will make life harder for them in the future.¹⁸⁰

Children's rights are uniquely affected by climate change in 2 ways:

- Climate change's increasingly severe impacts will naturally affect current and future children more than today's adults, because climate change impacts will be more extreme and more persistent for a greater portion of their lives.
- The stages of physiological and psychological development experienced by children whilst exposed to climate change impacts increases their risk of death, disease and trauma, compared to adults.¹⁸¹

Policy and legislative decisions that contribute to climate change affect the health and wellbeing of children and young people. Climate change is driving an increase in mental health issues and poorer wellbeing amongst Australian children and young people compared to previous years.¹⁸²

These fears are compounded for Australian children who live in rural and remote areas. These children are disproportionately affected by extreme weather events and are more likely to be poorly serviced by mental health services.¹⁸³ Children often feel they are less able to participate in decisions that affect their lives, exacerbating feelings of hopelessness. This too is heightened in rural and remote areas compared with children living in major cities.¹⁸⁴

Children, wherever they live, have a right to express their views and be involved in decisions that affect them.¹⁸⁵ Globally, many children and young people are increasingly advocating for their right to be heard and to participate in decision-making, often through mass protest movements.¹⁸⁶ There is growing acceptance and recognition of children's right to demand government accountability for the environment in which they exist and will inherit.¹⁸⁷ Where government action fails to consider children's opinions, children and young people are increasingly turning to legal action as a means of securing their rights and achieving climate justice.

***Sacchi et al. v. Argentina et al.* [2021] ¹⁸⁸**

In 2019, 16 children complained to the UN Committee on the Rights of the Child (CRC Committee) that Argentina, Brazil, France, Germany and Türkiye had violated their rights under the Convention on the Rights of the Child (CRC) by failing to sufficiently reduce their greenhouse gas emissions, therefore exacerbating climate change.¹⁸⁹

The children argued that Nation States should be held responsible for climate change's negative impacts on children's rights, both within and outside a State's boundary.¹⁹⁰

The respondent Nation States all opposed the complaint, in part because climate change's collective, global nature prevents any one State from being held responsible for its adverse effects.¹⁹¹

The CRC Committee ruled the complaint inadmissible because the children had not yet exhausted the possibility of domestic remedy.¹⁹² However, in its decision the CRC Committee stated that:

- Nation States bear responsibility for cross-border impacts of climate change.
- There is a foreseeable and causal link between the actions or omissions of the Nation States and the harm alleged by the children.

- The children managed to establish their 'victim' status as a result of the real and significant harm they have experienced from the impacts of climate change.¹⁹³

The CRC Committee's decision echoed a 2017 IACtHR advisory opinion on the environment and human rights which provided that Nation States can be held responsible for transboundary environmental harm.¹⁹⁴ The findings will likely influence future complaints and litigation.

The CRC Committee then dedicated its next General Comment 26 to the rights of children and the environment, with a special focus on climate change. General Comment 26 is a landmark text which recognises children's right to a healthy environment as part of the CRC.¹⁹⁵ It also confirmed that the principle of intergenerational equity and the interests of future generations inform the content of Nation States' human rights obligations.¹⁹⁶

Australian children and young people are also utilising international human rights mechanisms to complain about the Australian Government's lack of climate action.



Generation Justice’s complaint to the UN Special Rapporteur on climate change and human rights [2025]¹⁹⁷

On 1 April 2025, 8 Australian children and young people – comprised of First Peoples, people of colour, people with disability and people from rural and remote communities – complained to the UN Special Rapporteur on climate change and human rights.

The group claim that Australia is violating their rights to life, health, First Peoples’ cultural rights and children’s rights, including their best interests, right to be heard and the right to a healthy environment.¹⁹⁸ They say the following conduct contravenes Australia’s international human rights obligations:

- Australia’s failure to set a 2030 Nationally Determined Contribution (NDC) target which aligns with best available science and which protects from future climate harms.
- Australia’s ongoing promotion, subsidisation and expansion of its fossil fuel industry.
- Australia’s failure to ensure that people and communities who are impacted by climate change have access to effective remedies.¹⁹⁹

If the complaint is accepted, the UN Special Rapporteur on climate change and human rights will write to the Australian Government and seek clarifications on the allegations or, where necessary, request that the Australian Government take actions to prevent or stop the violations, investigate it and or provide effective remedies.²⁰⁰

(k) Gender and climate change

When looking at the impact of climate change on children, it is important to recognise how it also disproportionately affects women, particularly in relation to housing, poverty, caregiving responsibilities and safety. Women are overrepresented among low-income earners and single-parent households and are more likely to rely on government-supported housing. As climate-related events such as heatwaves become more frequent, inadequate cooling in public housing presents serious risks to health, safety and dignity.²⁰¹

Women carry a disproportionate responsibility for caring for children and managing household wellbeing. Climate-fuelled natural disasters - such as bushfires, floods and droughts disrupt food supplies and clean water systems, increase living costs, and reduce access to essential services. These impacts fall most acutely on women as well as those they care for, and particularly in rural and remote communities where infrastructure and support services may be limited.²⁰²

Climate-related stress and displacement also increase the risk of gender-based violence.²⁰³ Economic hardship, housing insecurity and the breakdown of community support systems during emergencies and extreme weather events can exacerbate existing patterns of abuse. Women in unstable housing situations may have limited options to leave unsafe environments, especially when emergency services and frontline support services are under-resourced or inaccessible.²⁰⁴

A human rights-based response to climate change must be intersectional, and both recognise and address these gendered impacts or risk worsening gender inequality. This includes investing in climate-resilient public housing, supporting women-led households, and ensuring access to services that prevent and respond to gender-based violence. Climate adaptation and disaster recovery strategies must be inclusive, gender-responsive and grounded in the principles of dignity, equality and safety for all.²⁰⁵

4.2 Procedural human rights affected by climate change

Procedural rights are rights that help people access or claim their substantive rights and are essential for achieving sustainable development and a healthy environment, including a safe climate.²⁰⁶

(a) Procedural rights and the right to free, prior and informed consent

Procedural rights ensure people can meaningfully participate in decision-making processes that affect their lives, communities and environment. Under international environmental law, procedural rights include the:

- right to access to environmental information
- right to participate in environmental decision-making
- right to access environmental justice and effective remedies.²⁰⁷

The ICCPR Committee and the ICJ have said that human rights obligations should be informed by international environmental law and vice versa.²⁰⁸ Under international human rights law, these procedural rights are grounded in the:

- right to freedom of expression, including the right to receive and impart information²⁰⁹
- right to participate in public affairs²¹⁰
- right to access effective remedies.²¹¹

Under UNDRIP, First Peoples have the right to free, prior and informed on certain matters that may affect them.²¹² Free, prior and informed consent incorporates the 3 procedural rights and also requires the approval or withdrawal of First Peoples' consent prior to any project affecting their lands, territories or resources proceeding.²¹³

A 2022 study by The Wilderness Society found Australians do not enjoy the full range of procedural rights in any Australian jurisdiction, leading to a lack of transparency and accountability in environmental decision-making.²¹⁴ Further, a lack of access to climate information has led to preventable deaths and negative health impacts, while excluding affected communities from meaningful participation has resulted in ineffective climate policies.²¹⁵

(b) Right to protest and freedom of speech

Protest movements are critical to climate and environmental justice movements.²¹⁶ Global protests calling for increased action to mitigate climate change have grown over the past decade, supported and promoted by activists such as Greta Thunberg and David Attenborough.²¹⁷

In response, many governments have introduced measures and legislation to limit climate protests. Critics consider this to be a deliberate attempt to reduce influence, limit the level of participation and deflect responsibility for climate change's impacts.²¹⁸

Laws restricting protests have the potential to undermine the freedoms of expression, association and assembly enshrined in the ICCPR.²¹⁹ Freedom of expression is 'the foundation stone for every free and democratic society'.²²⁰ In Australia, there is no express right to freedom of speech at the national level, only a limited implied right to freedom of political communication in the Australian Constitution.²²¹ Laws that unreasonably limit protest rights may breach this implied freedom and be invalid.²²² For example, in 2023, the Supreme Court of NSW found parts of anti-protest amendments to the *Crimes Act 1900* (NSW) were invalid because they unjustifiably infringed on the implied freedom of political communication.²²³

Under international law, freedom of expression is not absolute. Any restrictions on it must be necessary and proportional in pursuit of a legitimate aim and no more restrictive than necessary.²²⁴

(c) Environmental human rights defenders

Environmental human rights defenders advocate for the promotion and protection of human rights when it comes to environmental issues and developments. They are defined by the UN as:

individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights in relation to the environment, including water, air, land, flora and fauna.²²⁵

Environmental human rights defenders focus on both environmental issues and human rights impacts while also calling for human rights to be respected through processes. Their advocacy emphasises procedural rights and free, prior and informed consent.

In Australia and around the world, environmental human rights defenders face increasing levels of intimidation, harassment and legal action against them.²²⁶ In October 2016, the former UN Special Rapporteur on human rights defenders, Michel Forst, visited Australia to assess the situation of human rights defenders against Australia's international obligations.²²⁷ The former Special Rapporteur found that Australian authorities' combined actions were having a 'chilling effect' on environmental human rights defenders, journalists and civil society. The Australian Government was subsequently urged to reverse this 'worrying trend'.²²⁸

However, a 2021 report detailed a multitude of punitive actions taken by governments, businesses and law enforcement across Australia to stifle and silence advocacy, with no evidence that the situation for environmental human rights defenders in Australia had improved.²²⁹ More recently, a study released in 2024 found that Australia is increasingly suppressing and criminalising climate and environmental protests.²³⁰

4.3 Inequality compounds the impact of climate change

Nation States have an obligation to protect the human rights of all people without distinction.²³¹ However, because climate change disproportionality affects certain groups, it may give rise to direct and indirect forms of discrimination.

The UNHRC has recognised that while environmental harm, including the impacts of climate change, threatens all people, its effects are most felt by those in vulnerable situations.²³² This may be because they are more exposed to environmental risks, or because they are denied their human rights, or both.²³³ The former UN Special Rapporteur on the right to a healthy environment, John Knox, identified those at greater risk of environmental harm for either or both reasons includes Indigenous Peoples, women, children, persons living in poverty, older persons, persons with disabilities, ethnic, racial or other minorities and displaced persons.²³⁴

These populations are subject to multiple and compounding forms of discrimination (based on characteristics such as disability, ethnicity, socio-economic status, age and gender).²³⁵ They often lack access to equitable justice systems

and have reduced access to climate protection and adaptation tools that may offset adverse consequences to their human rights. These populations also often have little political power, making them less able to assert their rights to an adequate standard of living and a healthy environment, amongst others.

Conversely, people privileged within unequal systems tend to have greater political power and better access to resources, often at the expense of others in society. This reduces their exposure to climate change impacts and makes response tools and strategies more accessible to them when required.²³⁶

Consequently, those in wealthier countries and households tend to have a reduced perception of the seriousness of climate change, compared to lower income households and countries.²³⁷ This buffer against climate change's harmful effects that wealth and other privileges provide may contribute to reticence in recognising the urgency and interconnectedness of the issues.

Effective climate action requires a systemic approach that understands how inequality and discrimination are compounded by a deteriorating environment. People in vulnerable situations or who belong to marginalised groups are likely to face greater exposure to climate change risks.²³⁸ This disproportionate impact is highlighted amid increasingly frequent and severe natural disasters.

These disparities must be addressed not as individual issues but through a single lens that seeks to benefit all of humanity. This requires transparent recognition of the intersecting systemic, structural and institutionalised patterns of power and privilege. As emphasised by UN treaty bodies in a joint statement on climate change and human rights, 'when reducing emissions and adapting to climate impacts, Nation States must seek to address all forms of discrimination and inequality'.²³⁹

The IPCC has recognised that colonisation contributes to climate change and the vulnerability of Indigenous Peoples to climate harms.²⁴⁰ Similarly, the former UN Special Rapporteur on contemporary forms of racism, E. Tendayi Achiume, has highlighted the enduring impacts of colonisation and natural resource extraction as foundational to the current climate crisis.²⁴¹ As a result, First Peoples face heightened risks from climate change, not only due to these ongoing colonial legacies but also because of their deep spiritual and cultural relationship to Country.

Research shows that First Peoples communities are already experiencing disproportionate exposure to climate extremes such as heat, rainfall and drought, with these risks projected to increase in coming decades.²⁴²

Women, particularly older and pregnant women, children and people with disability are over-represented in heatwave mortality statistics in Australia.²⁴³ The Committee on the Elimination of Discrimination Against Women (CEDAW Committee) recognises that in addition to a heightened risk of death in disaster responses, women also face challenges to their right to education, health, free movement and to be free from violence, amongst others.²⁴⁴ This arises because of systemic and cultural issues, unequal carer responsibilities and power relations which render women with less say in decisions that impact their lives.²⁴⁵

In Australia, during the 2019-2020 ‘Black Summer’ bushfires, people with disability and other people in vulnerable situations, such as infants and older people, experienced difficulty evacuating from fire-zones. Mobility limitations were a major issue, with efficient transport out of danger zones and access to safe spaces, such as evacuations onto sandy beaches, impeded. Many evacuation centres were inaccessible or ill-equipped to cater for those requiring mobility assistance.²⁴⁶ This culminated in a heightened risk of injury and death for people in

vulnerable situations who were unable to access the same level of emergency care and response efforts as the rest of the population.

Rural, regional and remote communities, including farming communities, that rely on natural resources for their livelihoods and lifestyles are more sensitive to climate change impacts. There is further disadvantage for those that are already marginalised on the basis of race, class and gender within these groups.

The importance of supporting First Peoples women and girls

The Commission’s *Wiyi Yani U Thangani (Women’s Voices)* report (2020) explores how First Peoples women have been marginalised through colonisation and ongoing patriarchal systems. Consequentially, they continue to be at greater risk of human rights violations.

First Peoples hold a deep ancestral relationship with their land, waters and skies. Negative impacts on these environments undermines First Peoples communities’ wellbeing by severing their connections to culture and language and limiting access to natural materials for food and healthcare.

First Peoples women are the backbone of Indigenous society providing unpaid and underpaid caring responsibilities for family, community and Country to maintain culture.²⁴⁷ They also provide support as teachers, carers, support workers and nurses where formal services are inaccessible or inadequate. This responsibility, particularly without financial reward, undermines women’s economic and financial security and wellbeing and challenges their ability to carry out their cultural and caring responsibilities.

The Women’s Voices project centres on the needs and aspirations of First Peoples women and girls, including to ensure they have access to adequate support and resources and the opportunity to engage effectively on issues affecting their lives and communities. Despite First Peoples women holding ancestral knowledge and practices that safeguard Country and communities, their voices are often limited in climate change decision-making.²⁴⁸



5. Australia's international human rights and climate change obligations

Recent developments have clarified Nation States' legal obligations in the context of climate change. In its landmark 2025 advisory opinion, the ICJ unanimously held that Nation States have obligations under a broad range of international law, including climate change treaties, international human rights law and international customary law. The ICJ affirmed that Nation States must prevent significant harm to the climate system and could be liable for harm caused by continued fossil fuel production, consumption and subsidisation, a finding with significant implications for high-emitting countries such as Australia.

Australia has committed to limiting global warming to 1.5 degrees Celsius under the Paris Agreement, which also requires Nation States to respect and consider human rights in their climate responses. Under international human rights law, Nation States must respect, protect and fulfil human rights, including those threatened by climate change.

The Australian Government has due diligence obligations to take positive measures to protect Australians against reasonably foreseeable threats like climate change. Failure to do so may constitute a breach of human rights obligations. Australia must adopt and implement policies that reduce emissions, such as phasing out fossil fuels projects and fossil fuel subsidies, regulating export emissions and promoting renewable energy. Businesses also share responsibility by ensuring their operations respect human rights, including through efforts to cut their own greenhouse gas emissions.

5.1 Advisory opinions on climate change

There have been 4 requests for advisory opinions on State obligations in relation to climate change from the ICJ,²⁴⁹ the International Tribunal for the Law of the Sea (ITLOS),²⁵⁰ the IACTHR²⁵¹ and the African Court on Human Peoples' Rights.²⁵²

On 23 July 2025, the ICJ delivered its historic advisory opinion on Nation States' climate obligations under international law. As the principal judicial organ of the UN, the ICJ's advisory opinion constitutes the most authoritative statement on Nation States' legal obligations in the context of climate change.

ICJ advisory opinion on Nation States' climate obligations

Following a multi-year campaign initiated by Pacific Island law students and youth advocates²⁵³ and diplomatic efforts spearheaded by Vanuatu,²⁵⁴ in 2023 the UNGA adopted a resolution, co-sponsored by 132 nations including Australia,²⁵⁵ requesting the ICJ provide an advisory opinion setting out Nation States' legal obligations concerning climate change.²⁵⁶

On 23 July 2025, the ICJ issued a unanimous opinion, finding climate change is 'an existential problem of planetary proportions that imperils all forms of life and the very health of the planet'.²⁵⁷

The ICJ rejected arguments from a small number of high-emitting Nation States, including Australia,²⁵⁸ that Nation States' climate obligations were limited to climate change treaties such as the UNFCCC and the Paris Agreement (further discussed in section 5.2 below).²⁵⁹ Instead, the Court found that Nation States also have climate obligations under international human rights law, customary international law, the law of the sea and other environmental treaties.²⁶⁰ Further, the ICJ held that these areas of

international law inform and complement each other.²⁶¹

These extensive obligations include a duty prevent significant harm to the climate system,²⁶² which may be breached through ‘fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies’.²⁶³ To fulfil their duty to prevent significant harm to the climate system, Nation States must act with ‘stringent’ due diligence,²⁶⁴ including adopting appropriate rules and measures designed to achieve ‘deep, rapid, and sustained reductions of GHG emissions’.²⁶⁵

Echoing findings of UN human rights treaty bodies (further discussed in section 5.3 below), the ICJ recognised that the adverse impacts of climate change may significantly impair the enjoyment of a wide range of human rights, including the rights to life, health, an adequate standard of living and privacy, family and home, and the rights of women, children and Indigenous Peoples.²⁶⁶ The Court also found people displaced by climate change should not be returned to their home country if there is a real risk of irreparable harm to their right to life.²⁶⁷

The ICJ held that the right to a healthy environment is a precondition to the enjoyment of all human rights and therefore Nation States’ human rights obligations cannot be fulfilled without also fulfilling the right to a healthy environment. The Court concluded that under international law, the right to a healthy environment is essential to the enjoyment of all human rights.²⁶⁸ The separate opinions of Judge Aurescu,²⁶⁹ Judge Bhandari²⁷⁰ and Judge Tladi²⁷¹ went further and found that the right to a healthy environment is a norm of customary international law.²⁷² Judge Charlesworth further outlined its substantive and procedural elements,²⁷³ and held that Nation States have a particular obligation to protect the human rights of groups in vulnerable situations, which requires ‘close attention to the potentially discriminatory effects of measures to respond to climate change’.²⁷⁴

In order to guarantee the effective enjoyment of human rights, Nation States must take necessary measures to protect the climate system. These measures may

include, amongst other things, taking rights-based mitigation and adaptation measures, the adoption of standards and legislation, and the regulation of the activities of private actors.²⁷⁵

Where Nation States breach their extensive obligations under international law, they could be liable to provide full reparation – including restitution, compensation and or satisfaction – to Nation States harmed by climate change.²⁷⁶ This means Australia, as a high-emitting developed country and one of the largest exporters of fossil fuels, could pay climate reparations in the future to developing countries harmed by climate change.²⁷⁷

The ITLOS²⁷⁸ and the IACtHR²⁷⁹ have also provided their advisory opinions in 2024 and 2025, respectively. The IACtHR built on its previous 2018 advisory opinion on human rights and the environment which recognised the right to a healthy environment as a fundamental human right.²⁸⁰

IACtHR advisory opinion on Nation States’ climate obligations

On 9 January 2023, Chile and Colombia requested an advisory opinion from the IACtHR concerning Organisation of American States (OAS) Member States’ climate obligations under international human rights law.²⁸¹

On 29 May 2025, the IACtHR issued its opinion in relation to the American Convention on Human Rights (American Convention) and Protocol of San Salvador, having regard to other sources of international law and the best available science.²⁸²

The IACtHR found that the current situation constitutes a climate emergency that represents a severe threat to humanity, which can only be adequately addressed through urgent and effective rights-based mitigation and adaptation measures framed within the concept of ‘climate resilience’.²⁸³ The Court found that adverse climate impacts affect a wide range of human rights, including the rights to a healthy

environment, life, health, private and family life, property, culture and education.²⁸⁴

The IACtHR held, amongst other things, that to comply with the general obligation to guarantee rights under the American Convention, Nation States must adopt effective measures to prevent severe or irreversible damage to the climate system and to the resulting human rights violations. Therefore, Nation States must guarantee human rights when they are, or should be, aware of the possibility that the acts or omissions of its agents or private actors may create a risk of severe or irreversible damage to the climate system, within or outside their territory, even in the absence of certainty of this damage.²⁸⁵ Further, the Court established an 'enhanced' due diligence standard to prevent human rights violations, which it found proportionate to the extreme gravity of climate impacts and risk of irreparable harm to individuals.²⁸⁶

The Court reaffirmed its previous findings that the right to a healthy environment is an autonomous right that is also intrinsically linked to other human rights. It confirmed the right has individual and collective dimensions, is owed to present and future generations and it protects components of the environment in and of themselves without harm to individuals.²⁸⁷ In this advisory opinion, the IACtHR went further by recognising nature as a subject of rights, stating the protection of nature is essential to guarantee the right to a healthy environment.²⁸⁸ Rights of nature place a positive obligation on Nation States to guarantee the protection, restoration and regeneration of ecosystems.²⁸⁹

The IACtHR made a groundbreaking recognition of an autonomous right to a healthy climate, which is derived yet distinct from the right to a healthy environment and protects the global climate system.²⁹⁰ The Court defined a healthy climate as a 'climate system free of anthropogenic interferences that are dangerous for human beings and nature as a whole'.²⁹¹

The Court found the specific duties of Nation States arising from the right to a healthy environment and the right to a healthy climate are to take actions to

address the causes of climate change, in particular, mitigation of greenhouse gas emissions, protect nature and its components, and gradual progress towards sustainable development.²⁹²

Nation States must strengthen the democratic rule of law as an essential framework to ensure the full exercise of procedural rights²⁹³ – the rights to access information, political participation and access to justice.²⁹⁴ The Court elaborated that the content and scope of procedural rights include the right to science and local, traditional and Indigenous knowledge.²⁹⁵

Nation States have a special duty to protect environmental human rights defenders, including investigating and punishing attacks, threats or intimidation against them,²⁹⁶ and countering the criminalisation of their work.²⁹⁷

Nation States must adopt measures to address how the climate emergency aggravates inequality and disproportionality impacts persons within the framework of a just transition.²⁹⁸ Nation States also have specific obligations towards individuals and groups vulnerable to climate impacts including women, children, Indigenous Peoples, local and subsistence communities, older persons and persons with disabilities, and persons who do not belong to a traditionally protected category but become vulnerable for dynamic and contextual reasons such as multidimensional poverty.²⁹⁹

These advisory opinions are important because they provide authoritative guidance on the interpretation of human rights norms, strengthen international cooperation and support holding governments accountable to their international climate commitments. They will also assist Nation States, NHRIs, affected communities and other stakeholders to understand Nation States' human rights obligations and help inform legal, policy and advocacy actions.



5.2 International climate change law

The 2 main international climate agreements, the UN Framework Convention on Climate Change (UNFCCC)³⁰⁰ and the Paris Agreement,³⁰¹ recognise that climate change will have serious impacts on people. The Paris Agreement also encourages countries to respect and uphold human rights when taking climate action. As confirmed by the ICJ, these agreements help shape how Nation States understand their human rights obligations in the context of climate change but do not reduce or replace those duties under international human rights law.

The aim of the UNFCCC is the ‘stabilisation of greenhouse gas emissions in the atmosphere that would prevent dangerous anthropogenic interference with the climate system’.³⁰² The UNFCCC first directly acknowledged the link between human rights and climate change in its 2010 Conference of the Parties (COP16) decision,³⁰³ noting climate change will directly and indirectly impact the enjoyment of human rights and will be felt most acutely by persons in vulnerable situations.³⁰⁴

The Paris Agreement, which was adopted under the UNFCCC in 2015, was the first international environmental agreement to specifically refer to human rights. In the preamble, Nation States parties acknowledge that when taking action to address climate change, they should:

respect, promote and consider their respective obligations on human rights, the right to health, the rights of Indigenous Peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development.³⁰⁵

The Paris Agreement’s overarching goal is to hold ‘the increase in the global average temperature to well below 2°C above pre-industrial levels’ and pursue efforts ‘to limit the temperature increase to 1.5°C above pre-industrial levels.’ The ICJ has confirmed that 1.5 degrees Celsius is the primary temperature goal under the Paris Agreement.³⁰⁶ It acknowledged that rising temperatures had already caused widespread and substantial damage to nature and people³⁰⁷ and that this will escalate with every increment of global warming.³⁰⁸

Under the Paris Agreement, Nation States must communicate NDCs that outline their domestic mitigation measures, reflecting their highest possible ambition and progressing over time, with the aim of the achieving the objectives of the agreement.³⁰⁹ The ICJ held this means NDCs must, individually and collectively, be capable of limiting the global average temperature increase to 1.5 degrees Celsius.³¹⁰ However, consistent with the principle of common but differentiated responsibilities and respective capabilities, individual Nation States must take into account their historical emissions, level of development and national circumstances.³¹¹

5.3 International human rights law

(a) State obligations

As a signatory to 9 of the core international human rights treaties,³¹² Australia must respect, protect and fulfil the human rights of all people in its territory or jurisdiction.³¹³ These obligations extend to all areas of governance and policymaking, as well as to non-State conduct under Australia's jurisdiction or control, including the activities of businesses.³¹⁴ If, by its acts or omissions, Australia fails to comply with these obligations, it must provide an effective remedy to victims of rights violations.³¹⁵

In 2020, 5 UN treaty bodies issued a joint statement on climate change and human rights, which said a failure to take measures to prevent foreseeable harm to human rights caused by climate change, or failure to regulate activities contributing to such harm, could violate Nation States' human rights obligations.³¹⁶

The treaty bodies noted with concern that Nation States' current commitments under the Paris Agreement are insufficient to limit global warming to 1.5 degrees Celsius and that many Nation States are not on track to meet their commitments.³¹⁷ Australia has committed to reducing its domestic greenhouse gas emissions by 43 per cent below 2005 levels by 2030 according to its 2022 NDC under the Paris Agreement.³¹⁸ However, Climate Action Tracker has rated Australia's current target and climate policies as 'insufficient' and not aligned with the Paris Agreement's 1.5 degrees Celsius temperature limit. Further, if all countries followed Australia's approach, global warming would reach over 2 degrees Celsius and up to 3 degrees Celsius by the end of the century.³¹⁹

The treaty bodies warned that Nation States, like Australia, are exposing their populations and future generations to significant threats to human rights associated with global warming.³²⁰ Australia is due to submit its next NDC this year, in 2025,³²¹ which represents an opportunity for it to adopt more ambitious climate policies aligned with the Paris Agreement and human rights.³²²

The treaty bodies said for Nation States to comply with their human rights and Paris Agreement obligations, they must adopt and implement policies aimed at reducing greenhouse gas emissions that reflect the highest possible

ambition and foster climate resilience.³²³ In order to reduce emissions, Nation States should:

- phase out fossil fuels
- promote renewable energy
- combat deforestation
- regulate private actors
- discontinue financial incentives or investments in fossil fuels.³²⁴

In relation to phasing out fossil fuels, the UN Special Rapporteur on climate change and human rights further recommended Nation States:

- adopt and enforce explicit time-bound legislative measures to:
 - prohibit new fossil fuel exploration and exploitation, as well as any expansion of fossil fuel infrastructure
 - revoke licenses for existing fossil fuel exploration and exploitation
 - strictly regulate the import and export of fossil fuels
 - immediately prohibit fracking, oil sands and gas flaring and offshore exploration and exploitation.³²⁵

However, Australia continues to approve new fossil fuel projects and risks violating its human rights obligations. A 2023 study by The Australia Institute found 116 fossil fuel projects that are expected to begin production in Australia before 2030.³²⁶ More recently, on 28 May 2025, Australia announced it had given preliminary approval for the North West Shelf Project in the Burrup Peninsular, Western Australia to continue operations until 2070.³²⁷ The facility is the largest liquefied natural gas plant in Australia and is surrounded by an area called Murujuga, a World Heritage listed culturally significant site to First Peoples for its ancient rock carvings.³²⁸ Human Rights Watch has called on the Australian Government to revoke the extension in order to fulfil its human rights obligations in relation to First Peoples cultural rights and the right to a healthy environment.³²⁹

In relation to phasing out fossil fuel subsidies, the UN Special Rapporteur on climate change and human rights has said these subsidies are contrary to Nation States' obligations to devote the 'maximum available resources' to progressively fulfil economic, social and cultural rights under the ICESCR and should be redirected to climate finance.³³⁰ However, Australia continues to subsidise the fossil fuel industry and again risks violating its human rights obligations. A 2024

study found that fossil fuel subsidies from all Australian governments totalled \$14.5 billion in 2023-2024, an increase of 31% in subsidies from the previous year.³³¹

As a party to the ICCPR and other human rights treaties, Australia has a positive duty to protect all human rights,³³² as well as specific positive obligations for certain rights. For example, the ICCPR Committee has said the duty to protect the right to life includes a due diligence obligation to take positive measures to protect against reasonably foreseeable threats, like climate change.³³³ The ECtHR has said that the positive duty of the right to private and home life (similar to Article 17 of the ICCPR) includes developing a timely and effective regulatory framework that protects human rights against the impacts of climate change.³³⁴

KlimaSeniorinnen v Switzerland **[2020]³³⁵**

On 9 April 2024, the ECtHR declared that a contracting State's failure to act on climate change can violate the European Convention on Human Rights (ECHR). In particular, Switzerland had breached its positive obligations under Article 8 (the right to private and family life) for failing to develop and implement in a timely and effective manner a legislative and administrative framework to provide effective protection of human health and life against the existing and future effects of climate change.

In the climate context, the Court held that a State's primary duty is to adopt and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible effects of climate change.³³⁶ These measures must be in line with the international commitments made by Nation States, notably the UNFCCC

and the Paris Agreement, by reaching net neutrality by 2050 and limiting the increase in the global average temperature to 1.5 degrees Celsius above pre-industrial levels.³³⁷ To avoid a disproportionate burden on future generations, immediate action needs to be taken and adequate intermediate reduction goals set.³³⁸ These mitigation measures must be supplemented by adaptation measures and procedural safeguards.³³⁹

Applying these principles to the present case, the Court found that Switzerland had failed to put in place the relevant domestic regulatory framework, including a failure to quantify, through a carbon budget or otherwise, national greenhouse gas emissions limitations. Further, Switzerland had failed to meet its past greenhouse gas emission reduction targets that were in any event inadequate to meet the 1.5 degrees Celsius limit. By failing to act in good time and in an appropriate manner with regards to developing and implementing the relevant regulatory framework, the Court found Switzerland had breached its positive obligations under Article 8.³⁴⁰

Notably, when considering Switzerland's carbon budget and greenhouse gas emission reduction targets, the Court highlighted the principle of 'common but differentiated responsibility' under the UNFCCC and the Paris Agreement, which requires Nation States to act on the basis of equity and in accordance with their own capabilities.³⁴¹ Consistent with the IPCC's recommendations of greenhouse gas reduction targets for 'developed countries', the Court held this requires Switzerland to take more responsibility for their total historical emissions which are disproportionately high compared to 'developing countries'.³⁴²

Australia's greatest contribution to worsening climate change is the emissions from its fossil fuel exports, which are more than 3 times its domestic emissions but for which it has no cap, reduction targets, plan or policies.³⁴³ The fact that only domestic emissions must be included in Australia's reporting under the Paris Agreement does not affect its positive duty to protect human rights in its territory, including the duty to undertake due diligence and take effective steps to protect human rights. In *KlimaSeniorinnen v Switzerland*, the ECtHR included the 'embedded emissions' in Switzerland's imports within the scope of Switzerland's responsibility to reduce emissions,³⁴⁴ suggesting that Australia's protective obligations under international human rights law similarly extend to its exported emissions and their contribution to climate-related human rights harms. The ECtHR explained that a State's positive obligation will be triggered where it has the capability to reduce the risk of harm.³⁴⁵ While climate change protection requires collective action, this does not absolve a State of its individual responsibility that derives from its positive human rights law obligations.³⁴⁶

(b) Business responsibilities

Of the world's 180 largest fossil fuel companies since the industrial era, 70% of historical global carbon dioxide emissions can be attributed to 78 State and corporate entities known as the 'Carbon Majors'.³⁴⁷ The Carbon Majors include 5 Australian-based companies: BHP, Rio Tinto, Woodside Energy, Santos and Whitehaven Coal.³⁴⁸ More recently, half of global carbon dioxide emissions in 2023 were attributed to only 36 Carbon Majors.³⁴⁹

Globally, including in Australia, Carbon Majors have generated extremely large profits while being heavily subsidised.³⁵⁰ Yet a 2025 study revealed that the 5 Australian-based Carbon Majors have cost over \$900 billion in climate harms over 3 decades since 1991.³⁵¹ There is also extensive documentation of the sector's strategies to obstruct climate action for the past 6 decades, including through funding counterfeited climate science to cast doubts on independent scientific findings, buying media and influence, lobbying climate spaces like COP and spreading misinformation through advertising.³⁵²

While it is primarily Nation States' responsibility to regulate corporate conduct to prevent human rights abuses,³⁵³ businesses also have responsibilities under international human rights law.

UN Guiding Principles on Business and Human Rights

The UNGPs explain that all businesses have a 'responsibility to respect' human rights.³⁵⁴ The OHCHR and the former UN Special Rapporteur on the right to a healthy environment have confirmed that the UNGPs apply to climate-related human rights harms.³⁵⁵

The former Special Rapporteur has said the 5 main responsibilities of businesses in relation to climate change are:

- reduce greenhouse gas emissions from their own activities and their subsidiaries
- reduce greenhouse gas emissions from their products and services
- minimise greenhouse gas emissions from their suppliers
- publicly disclose their emissions, climate vulnerability and the risk of stranded assets (fossil fuels and infrastructure that can no longer be used as the world transitions to renewables that may end up a liability)
- ensure that people affected by business-related human rights violations have access to effective remedies.³⁵⁶

The UN Special Rapporteur on climate change and human rights has further recommended that fossil fuel companies in particular:

- urgently develop plans to phase out existing operations by 2030
- finance the retraining of workers
- fully cover the costs of closure and clean-up
- refrain from shifting liabilities through divestment
- publicly disclose profits and taxes across all jurisdictions
- refrain from influencing policy-making processes.³⁵⁷

OECD Guidelines for Multinational Enterprises

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) establish responsible business conduct standards that multinational enterprises are expected to observe.³⁵⁸ Since 2023, they have included climate change recommendations.³⁵⁹ While the content on climate change is not expressed through a human rights lens, the OECD Guidelines contain human rights principles and objectives, including those established by the Rio Declaration on Environment and Development, the Paris Agreement and other international instruments.³⁶⁰

The OECD Guidelines also provide a non-judicial grievance mechanism, known as the National Contact Point (NCP). The NCP enables enforcement of, and remedy for, business-related human rights violations.³⁶¹ In recent years there has been an increase of complaints being made against organisations alleging environmental harms impacting individuals and communities.³⁶² For example, the NCP has investigated a mine in Bougainville, Papua New Guinea operated by the British-Australian mining giant Rio Tinto following complaints of pollution adversely impacting the environment and human rights.³⁶³

UN Global Compact

The UN Global Compact is the world's largest corporate sustainability initiative, with over 2,000 businesses and close to 4,000 non-business organisations globally.³⁶⁴ Business leaders have endorsed the UN Global Compact to support companies align their strategies and operations with the Ten Principles of the UN Global Compact (relating to human rights, labour, environment and anti-corruption)³⁶⁵ and advance the SDGs.

The UN Global Compact Network Australia is the Australian, business-led network of the UN Global Compact, bringing together Australian businesses, civil society and academia to advance responsible business and sustainable development.³⁶⁶ The UN Global Compact Network Australia has acknowledged climate change's impact on human rights and the need to transition to a low carbon economy. In 2023, it released a publication outlining guidance for small to medium businesses in respecting human rights through the transition process.³⁶⁷





5.4 Sustainable Development Goals

In 2015, all UN member Nation States, including Australia, adopted the SDGs and are required to report progress against them.³⁶⁸ The SDGs are 17 global goals encompassing a range of social, economic and environmental issues and are accompanied by 169 targets. They seek to address the world's most pressing issues by 2030 through what is known as the '2030 Agenda for Sustainable Development'.

The 2030 Agenda is grounded in the UDHR and other international human rights instruments³⁶⁹ and its 17 SDGs seek to realise the human rights of all.³⁷⁰ Many SDGs reflect the content of international human rights standards.³⁷¹ For example, SDG 1 (no poverty), SDG 2 (zero hunger), SDG 3 (good health and well-being), SDG 4 (quality education), SDG 6 (clean water and sanitation) and SDG 8 (decent work and economic growth) reflect the content of economic, social and cultural rights. SDG 16 (peace, justice and strong institutions) reflects key aspects of civil and political rights, including the right to liberty and security of persons,³⁷² access to justice³⁷³ and fundamental freedoms.³⁷⁴

Two SDGs are particularly important for rights-based climate action: SDG 13 (climate action) and SDG 16 (peace, justice and strong institutions).

SDG 13 demands urgent climate action, requiring nations to:

- integrate climate change measures into national policies, strategies and planning
- strengthen resilience and adaptive capacity to climate-related hazards
- improve climate change education and awareness.

SDG 16 is focused on promoting 'peaceful and inclusive societies for sustainable development, provid[ing] access to justice for all and build[ing] effective, accountable and inclusive institutions at all levels.'³⁷⁵ SDG 16 promotes environmental rule of law and helps to protect environmental human rights defenders, procedural rights and protest rights.³⁷⁶ Independent NHRIs as 'accountable and transparent institutions' are an indicator for the achievement of SDG16 and can play a pivotal role in climate action.³⁷⁷

The Voluntary National Review (VNR) is a process through which countries assess and present national progress made in implementing the 2030 Agenda, including its 17 SDGs. VNRs are an accountability and monitoring mechanism and as the 2030 Agenda is grounded in human rights, important links can be made between the implementation of the country's human rights obligations and assessing progress in achieving sustainable development.³⁷⁸ Australia submitted its first VNR in 2018, acknowledging human rights are at the core of SDGs.³⁷⁹

6. National human rights institutions and climate change

NHRIs are independent bodies mandated to promote and protect human rights. The Australian Government has led and co-sponsored UN resolutions highlighting the critical role of NHRIs in assisting governments and business to implement rights-based climate action.

NHRIs from around the world, including the Commission, have pledged to work individually and collectively to promote human rights-based climate action. However, it is for each NHRI to determine how its work relates to climate change, having regard to their respective mandates.

The Commission can promote human-rights based climate action by undertaking the following work consistent with its statutory functions:

- public education on the human rights impacts of climate change
- advocacy for law reform such as a national Human Rights Act that protects the right to a healthy environment
- investigating and conciliating human rights and discrimination complaints that relate to climate change
- intervening in climate change litigation
- monitoring and reporting on Australia's compliance with relevant international human rights obligations.

While civil society, experts and the UN widely acknowledge the undeniable connection between climate change and human rights, the presence and influence of NHRIs in formal climate change responses is evolving.

NHRIs are independent State authorities with a constitutional or legislative mandate to promote and protect human rights.³⁸⁰ They act as a conduit between government, civil society and the international system. There are around 118 NHRIs globally.³⁸¹

Until recently, the majority of international rights-based climate advocacy has been driven by environmental human rights defenders and civil society. But NHRIs are increasingly present in climate spaces, including through securing formal accreditation at the annual COP of the UNFCCC.

NHRIs are uniquely qualified to articulate the link between climate change and human rights. Their independent and authoritative status offer an essential voice to help mainstream a human rights-based approach to climate change mitigation and adaptation initiatives,³⁸² including by drawing attention to State and corporate responsibilities to respond to human rights threats that result from climate change.

The Australian Government has led and co-sponsored UN resolutions highlighting the critical role of NHRIs in assisting governments and other stakeholders implement rights-based climate action.

The UNHRC and UNGA resolutions on NHRIs and climate change

In 2022, a resolution on NHRIs and climate change was led by Australia and adopted by the UNHRC.³⁸³ It welcomed the critical contributions of NHRIs in monitoring, reporting and advising governments and other stakeholders on rights-based climate action.³⁸⁴ The resolution highlighted the important role of NHRIs in assisting Nation States to adopt effective frameworks to protect the human rights of all individuals, without discrimination,³⁸⁵ and recognised Indigenous Peoples are particularly vulnerable to the impacts of climate change.³⁸⁶

A similar resolution was co-sponsored by Australia and adopted by the UNGA in 2023.³⁸⁷ It recognised the important contribution of NHRIs in achieving the 2030 Agenda for Sustainable Development, including by taking urgent action to combat climate change and its impacts.³⁸⁸ Again, the resolution highlighted the critical role of NHRIs in monitoring, reporting and advising government and other stakeholders in relation to rights-based climate action,³⁸⁹ and that NHRIs can help Nation States ‘fast-track vital protection and other services to those left behind’.³⁹⁰

At the 2020 GANHRI Annual Conference, NHRIs from around the world pledged to work individually and collectively to promote human rights-based climate action. In the joint statement, signed by the Commission, NHRIs recognised that:

Climate change and its impacts are one of the greatest challenges of the day, directly and indirectly impacting on the full enjoyment of human rights, including social, economic and cultural rights as well as civil and political rights, the right to development and the right to a healthy environment. We recognize the importance of protecting the environment and biodiversity for present and future generations...

We are concerned that climate change disproportionately affects the most vulnerable reinforcing existing disparities and creating new economic and social inequalities. Moreover, we are concerned that the policy

measures taken to combat, mitigate and adapt to climate change may not be sufficient to reduce negative impacts on human rights, but might even exacerbate the situation for the most vulnerable people, if not developed and implemented based on human rights and environmental laws and standards.³⁹¹

In 2022 GANHRI published detailed policy guidance for NHRIs to assist them in their human rights-based action on climate change, setting out a wide range of actions within NHRIs remit of their standard powers and authority.

GANHRI guidance on promoting rights-based climate action for NHRIs

GANHRI makes the following recommendations to NHRIs as suitable actions:

- Report to and advise government and other stakeholders on a human rights-based approach to climate mitigation and adaptation measures.
- Promote sound policy measures related to climate change and the environment which consider human rights issues.
- Promote and monitor environmental, social and human rights risk and associated impact assessments, prior to the start of a project.
- Advocate for climate action policies that integrate the expertise of local communities and traditional knowledge of Indigenous Peoples.
- Include climate change and environmental perspectives into complaints management (where relevant).
- Incorporate into advocacy and policy advice research and findings connected with complaints investigations that have considered climate change and environmental issues.
- Support individuals who are negatively impacted by climate change or mitigation measures to ensure they have an effective access to remedy.
- Advocate for environmental human rights defenders to be adequately protected from all forms of violence, prosecution and unjust punishments.

- Assume a 'bridging' role to support the exchange of information between policymakers, civil society and other stakeholders, including groups most affected by climate change.
- Engage in national, regional and international processes to promote human rights-based action on climate change, including in relation to NDCs under the Paris Agreement.³⁹²

GANHRI has said that in undertaking rights-based climate action, NHRIs promote climate justice.

GANHRI's Practical Guidance for NHRIs on Addressing Human Rights and Climate Change details how NHRIs around the world have incorporated climate change into their workstreams, listing examples of proactive work undertaken by 41 NHRIs.³⁹⁴ They demonstrate how the inquiry and reporting powers common to most NHRIs, including the Commission, have been used extensively to build awareness of the relationship between climate change and human rights. Many NHRIs have also been involved in providing guidance to governments on draft laws and regulations related to climate change.³⁹⁵

Climate justice means that efforts to address climate change must leave no one behind. Specifically, climate justice means:

- Addressing the climate crisis with a human rights-based approach while making progress towards a just transition to a zero-carbon economy.
- Ensuring that decisions on climate change are participatory, non-discriminatory and accountable, with the benefits and burden of climate action shared equitably.
- Those most affected by climate change have access to effective remedies, including financial support.³⁹³



Philippines Commission on Human Rights National Inquiry on Climate Change

In 2018, the Philippines Commission on Human Rights (CHR) initiated a National Inquiry on Climate Change (National Inquiry) to:

- investigate the impact of climate change in the Philippines
- consider how Filipinos' human rights are affected by climate change
- determine whether the Carbon Majors³⁹⁶ could be considered responsible for identified climate change impacts in the Philippines
- assess the Philippines Government's compliance with international treaty obligations.³⁹⁷

The first of its kind inquiry by a NHRI was instigated after 'typhoon victims, human rights groups, and concerned citizens' submitted a petition to the CHR 'seeking to frame climate change as a human rights issue'.³⁹⁸

The National Inquiry was intended as a fact-finding exercise, with Carbon Majors invited to participate. Some asserted that the CHR lacked jurisdiction to investigate allegations of liability, especially with respect to transnational corporations not domiciled in the Philippines and that climate change fell beyond the realm of civil and political rights.³⁹⁹

In response, the CHR asserted its duty to investigate the petition, arising from its constitutional mandate to investigate and inquire into allegations of human rights violations suffered by Filipino people,⁴⁰⁰ and because civil, political, economic, social and cultural human rights are interconnected, interdependent and indivisible.⁴⁰¹

In explaining the CHR's role, National Inquiry Chair, CHR Commissioner Roberto Cadiz, explained:

the challenge to National Human Rights Institutions is to test boundaries and create new paths; to be bold and creative, instead of timid and docile; to be more idealistic, and less pragmatic; to promote soft laws into becoming hard laws; to be able to see beyond legal technicalities and establish guiding principles that can later become binding treaties. In sum, to set the

bar of human rights protection to higher standards.⁴⁰²

In May 2022, the CHR published its National Inquiry report, finding that climate change is an urgent and serious human rights issue.⁴⁰³ The report found that the Carbon Majors:

- have contributed significantly to climate change
- have been aware of their products' environmental impact at least since 1965, but possibly as early as the 1930s
- have engaged in 'wilful obfuscation' of climate science and obstructed global initiatives towards decarbonisation and that these actions could be the basis for liability claims.⁴⁰⁴

Additionally, Nation States were found to have:

- a positive duty to act to protect human rights impacted by climate change – and failure to act could be categorised as a human rights violation
- a responsibility to provide strong protection for environmental human rights defenders.⁴⁰⁵

The CHR considers the manner in which it undertook the investigation and the National Inquiry's findings and recommendations to be useful for clarifying corporate reporting responsibilities and standards regarding climate change impacts. The National Inquiry decision may serve as a model for determining future complaints concerning climate change and human rights.⁴⁰⁶

NHRIs active in climate advocacy, education and policy work are increasingly becoming involved in climate litigation using their *amicus curiae* intervention functions as a means of helping to clarify Nation States legal obligations, hold Nation States accountable and raise awareness of those obligations amongst civil society. For example, the New Zealand Human Rights Commission has said that 'climate change poses enormous human rights challenges in the Pacific and within Aotearoa New Zealand'⁴⁰⁷ and subsequently intervened in a Court of Appeal matter that considered whether New Zealand's climate change legal framework violated human rights.



***Smith v Attorney-General* [2024]⁴⁰⁸**

- In 2022, Michael Smith, a Māori elder, landowner and climate change activist, brought a claim against the New Zealand government, alleging ‘inadequate action in relation to climate change’.⁴⁰⁹ He argued that successive New Zealand governments had failed to adequately address the effects of climate change on New Zealand and its citizens, especially Māori.⁴¹⁰
- The claim was based on fundamental rights protected under New Zealand’s Bill of Rights Act, specifically the rights to life and culture, as well as the Treaty of Waitangi and common law duties.⁴¹¹
- The New Zealand Human Rights Commission appeared as intervener, arguing that the adverse effects of climate change raise serious issues of domestic and international human rights law, as well as obligations under the Treaty of Waitangi.
- Chief Commissioner Paul Hunt said, ‘human rights can be progressed in many ways and one way is through important human rights court cases like this one Mr Smith has brought. It underscores New Zealand’s obligation to respond to climate change as part of a universal effort to uphold human rights’.⁴¹²

NHRIs can also take part in international, regional and national processes to promote human rights-based action on climate change. For example, Samoa’s NHRI, the Office of the Ombudsman, has:

- Raised the issue of climate change in its stakeholder submission for the consideration of Samoa under the Universal Periodic Review (UPR) process.⁴¹³
- Raised concerns about the impact of climate change on the full enjoyment of the rights of Samoan people, particularly people belonging to marginalised groups such as women, in its shadow report to the CEDAW Committee during Samoa’s periodic reporting.⁴¹⁴
- Worked with the Asia Pacific Forum of National Human Rights Institutions on a project to build collaboration and strengthen engagement between NHRIs and Inter-Governmental Mechanisms, with a focus on the right to a healthy environment.⁴¹⁵
- Advised the Samoan government on its internal relocation guidelines in response to climate change.⁴¹⁶

6.1 The potential role of the Australian Human Rights Commission

GANHRI has said that it is for each NHRI to determine how its work relates to climate change, having regard to their respective mandates.⁴¹⁷

The Commission's mandate includes promoting understanding, acceptance and public discussion of human rights, reviewing existing and proposed laws, policies and practices and providing expert advice on how they can better protect people's human rights.⁴¹⁸

Despite the variance in NRHI mandates, GANRHI has said that principal objectives for NHRIs to engage with climate change are:

- encourage governments and businesses to mitigate and adapt to the effects of climate change
- ensure such measures are consistent with human rights.⁴¹⁹

The following are examples of work the Commission could undertake to achieve such objectives, consistent with its statutory functions.

(a) Promote and raise awareness of the interrelationship between climate change and human rights

The Commission's functions include promoting an understanding and acceptance, and the public discussion, of human rights in Australia,⁴²⁰ and undertaking educational programs for the purpose of promoting human rights.⁴²¹ This report, for example, contributes to public understanding around the impact of climate change on human rights in Australia. The Commission can continue raising awareness of the impact of climate change on human rights and Australia's human rights obligations in response.

(b) Law reform and policy advocacy

The Commission's functions include reviewing existing and proposed laws and policies to ascertain whether they recognise and protect human rights.⁴²² The Commission has previously made submissions to parliamentary inquiries and other public consultations in relation to environmental legislation.⁴²³ As early as 2009, the then Aboriginal and Torres Strait Islander Social Justice Commissioner, Tom Calma, made a submission to the first independent review

of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act), recommending matters of national environmental significance should extend to climate change, amongst other things.⁴²⁴

During the Parliamentary Inquiry into Australia's Human Rights Framework in 2023, the Commission recommended the right to a healthy environment be included in a federal Human Rights Act.⁴²⁵ The Commission can also advocate for its recognition in existing and new state human rights legislation.

In 2023, the Commission also made a written submission to the Senate inquiry into the Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023. The Commission argued the Bill was not consistent with children's rights under Australia's international obligations and made recommendations for the Senate Committee's consideration.⁴²⁶ The Commission can continue its law reform advocacy on topics related to climate change and human rights, including reforming environmental legislation.

(c) Investigate and conciliate human rights and discrimination complaints

The Commission has the power to investigate and conciliate complaints of unlawful discrimination⁴²⁷ and these may involve discrimination complaints that intersect with climate change. The Commission may be able to report on deidentified complaint trends.

The Commission also has the power to investigate, conciliate and report on human rights complaints.⁴²⁸ A person may complain to the Commission about an act or practice of the Australian Government. This could include inadequate climate mitigation and adaptation measures that are inconsistent with human rights.

(d) *Amicus curiae* interventions in court cases

The Commission has the power to intervene, with leave of the court, in court cases that involve human rights issues.⁴²⁹ The Commission may intervene in court cases if the human rights issue is significant to the proceedings and will not be adequately or fully argued by the parties to the proceedings.⁴³⁰ The Commission can assist courts interpret the provisions of statutes in accordance with international human rights principles.

The Commission has previously intervened in matters before the High Court of Australia, Supreme Courts and Coroner Courts relating to the rights to life, adequate housing, freedom of association and freedom of political speech.⁴³¹ The Commission could similarly intervene in climate change cases that involve human rights issues.

(e) Monitor and scrutinise Australia's performance in meeting its international obligations

As the accredited NHRI for Australia,⁴³² the Commission has a responsibility under the Paris Principles to engage and cooperate with UN human rights mechanisms and to promote and protect human rights both in Australia and within the international human rights arena.⁴³³ The *Australian Human Rights Commission Act 1986* (Cth) (AHRC Act) also empowers the Commission to engage with international bodies.⁴³⁴

The Commission monitors when Australia's human rights performance is reviewed by UN human rights agencies and participates in review processes. The UPR is a process undertaken by the UNHRC, which involves Nation States conducting a peer review of the human rights record of other Nation States. Australia will next be reviewed in 2026. Australia's upcoming UPR will likely involve examination of Australia's compliance with human rights obligations related to climate change. The Commission has made a submission to the UNHRC for Australia's UPR that recommends action on climate change to address human rights implications.

The Commission can engage with UN treaty bodies during periodic reporting processes. In April 2025, the Commission made a submission to the ICCPR Committee identifying key issues that the Commission considers should be included in Australia's next periodic report to the Committee. The Commission recommended that the Australian Government provide information on the status of the proposed Environmental Protection

Agency and what urgent efforts it is taking to limit global warming to 1.5 degrees Celsius.

The Commission can respond to submissions and requests for information from UN agencies. In 2022, the Children's Commissioner, Anne Hollonds, made a submission to the UN Committee on the Rights of the Child's consultation on General Comment 26 on children's rights and the environment, with a special focus on climate change.⁴³⁵ The Commissioner outlined how Australian children and young people are currently being impacted by environmental issues and climate change and made recommendations to the Committee on how the General Comment could be improved to better protect children's rights.⁴³⁶

The Commission can engage in climate conferences, such as the annual UNFCCC COPs. The Commission could also join GANHRI's Caucus on Human Rights and Climate Change. The Caucus is comprised of 34 NHRIs from around the world interested in working together on human rights and climate change. The purpose of the Caucus is to facilitate the exchange of knowledge, experiences and good practices among NHRIs across all regions in addressing climate change from a human rights-based approach.⁴³⁷

(f) National inquiries

The Commission may undertake national inquiries into human rights issues in Australia.⁴³⁸ The Commission has previously led national inquiries into, for example, sexual harassment in Australian workplaces,⁴³⁹ the First Peoples Stolen Generations,⁴⁴⁰ children in detention⁴⁴¹ and employment and disability.⁴⁴² The Commission could similarly lead a national inquiry into human rights and climate change, similar to the Philippines CHR's National Inquiry.⁴⁴³

7. Australia's legislative framework

Australia's current federal human rights and environmental laws are piecemeal and ineffective in protecting the human rights of Australians and the Australian environment from the impacts of climate change.

One way to better protect human rights and the environment in Australian law is through a national Human Rights Act. The Australian Parliament's human rights committee has recommended establishing a national Human Rights Act broadly reflecting the Commission's model proposed in its *Free and Equal Report*, which includes the right to a healthy environment.

The right to a healthy environment is gaining traction in state and territory laws, including the *Human Rights Act 2004 (ACT)*, *Environment Protection Act 2017 (Vic)* and *Climate Change (Net Zero Future) Act 2023 (NSW)*.

One way to better protect human rights in Australian law is through a national Human Rights Act. Australia is the only OECD country and the only liberal democracy without a national Human Rights Act or similar instrument.⁴⁴⁶ Australia is also one of the few Nation States that fails to recognise the right to a healthy environment at the national level, despite voting in favour of the UNGA resolution recognising it as a universal right.⁴⁴⁷

The Commission has proposed a model for a Human Rights Act. The Australian Parliament's human rights committee drew heavily on this model when it recommended a federal Human Rights Act in its Inquiry into Australia's Human Rights Framework in 2024.⁴⁴⁸

An Australian Human Rights Act would protect the rights of all Australians, promote better understanding of those rights and give people the power to take action if their rights are breached. Under the Commission's model, a Human Rights Act would apply to Australian Government bodies like government departments, Ministers, public servants and agencies like Centrelink, Medicare and the National Disability Insurance Agency.

A Human Rights Act would require governments and public servants to properly consider and act compatibly with human rights when making decisions, delivering services and developing laws and policies. Requiring governments to think about people's rights before they act fosters a better understanding of rights and builds a culture that prevents human rights breaches.

The lack of legal protection for human rights, including the right to a healthy environment, makes it harder to address the impact of climate change on people's lives in Australia.⁴⁴⁹

7.1 Federal laws

(a) Human rights and anti-discrimination

Australia has promised to protect and promote human rights by ratifying a number of international human rights treaties.⁴⁴⁴ In Australia, the ratification of international treaties by the Australian Government has no direct effect on domestic law until the Australian Parliament enacts legislation implementing those obligations.⁴⁴⁵ The Australian Parliament has yet to comprehensively protect the human rights under these treaties in Australian law. This limits the ability of people in Australia to protect their human rights.

Parliamentary Inquiry into Australia's Human Rights Framework

Commencing in March 2023, the Parliamentary Joint Committee on Human Rights inquired into the scope and effectiveness of Australia's 2010 Human Rights Framework and the 2012 Human Rights Action Plan. It considered how Australia's Human Rights Framework could be improved and or re-established.⁴⁵⁰

In its final report, published May 2024, the Committee found the current piecemeal approach to human rights protection is inadequate. It explained that non-legislative approaches to rights protection failed to establish a culture of respecting human rights.⁴⁵¹

The Committee recommended, amongst other matters, that a Human Rights Act should be established, broadly reflecting the Commission's model proposed in its *Free and Equal Report*.⁴⁵² This echoed the findings of the 2009 Report on Consultation into Human Rights, which also recommended Australia enact a Human Rights Act.⁴⁵³

The Committee expressly recommended that the right to a healthy environment be protected in a Human Rights Act.⁴⁵⁴ The Committee considered the right to a healthy environment is indispensable to other rights realisation.⁴⁵⁵ It recommended the drafting of this right be developed through consultation with First Peoples to ensure the link with their right to self-determination and their rights to culture and health.⁴⁵⁶ The Committee's report noted that this required a broad right to a healthy environment, aligned with international obligations.

Australia's existing human rights protections rely heavily on discrimination laws, which are 'very limited and reactive in focus'.⁴⁵⁷ Australia has 4 federal anti-discrimination acts dealing with discrimination concerning age, disability, race and sex.⁴⁵⁸ The Commission inquires into and seeks to resolve discrimination complaints through conciliation. Complainants unable to resolve their discrimination issue through this process may apply to the Federal Court of Australia or Federal Circuit and Family Court of Australia for redress.

Discrimination laws and climate adaptation

Professor Beth Goldblatt recently wrote about ways Australia's anti-discrimination laws might be used to enhance both equality and climate adaptation.⁴⁵⁹

In the northern NSW town of Moree, First Peoples comprise 21.5% of the population (compared to 2.8% nationally). Many live in poorly maintained public housing with no air-conditioning. In Moree, the mean maximum January temperature is 34.3 degrees Celsius and the past decade has seen increased drought, fire and floods.⁴⁶⁰

Public swimming facilities offer respite in hot weather, as well as health and exercise, recreation and educational learn-to-swim opportunities.⁴⁶¹ Like other public cool spaces such as libraries and community centres, they are a climate adaptation tool amid increasing temperatures and more frequent heatwaves.⁴⁶²

But in Moree, the local pool is prohibitively expensive for many local First Peoples families. This forces them to swim in the dangerously polluted river to cool down in extreme heat, increasing their health risks.⁴⁶³ In this way, environmental degradation and warming temperatures emphasise the relationship between race, economic inequality and climate injustice - which may give rise to indirect discrimination.

Australia's Race Discrimination Act 1975 (Cth) (RDA) prohibits direct and indirect discrimination on the grounds of race. Professor Goldblatt wrote that the lack of access for First Peoples to the Moree pool could amount to indirect discrimination that impacts the rights to health, education, recreation, cultural activities and access to a place or service.

Ensuring more equal access to public cool spaces is a rights-focused climate adaptation strategy. Ways to achieve this might include discounted or free pool entry and swimming education.

The AHRC Act establishes the Commission as an independent statutory body and gives it a range



of functions intended to promote human rights in Australia.⁴⁶⁴ The AHRC Act references some, but not all, international instruments ratified or approved by Australia, such as the ICCPR.⁴⁶⁵ Australia's federal discrimination and employment laws incorporate some matters contained in those international instruments, but many human rights protected by these instruments are not otherwise incorporated into Australia's federal domestic law.

Neither the Commission nor any other entity have power to enforce the rights protected by the international instruments referenced in the AHRC Act. People aggrieved by a breach of their human rights protected by those instruments can formally complain to the Commission and the Commission can investigate and find that their rights were breached. But the Commission has no power to order any remedy for the breach. The Commission can only make non-binding recommendations for redress.

Under the Commission's proposed model for a Human Rights Act, Australian government

agencies and public servants would have legally binding obligations to properly consider and act compatibly with human rights. A person could complain about a breach of their human rights directly with a government body or with the Commission for conciliation. If the complaint cannot be resolved at that level, people would have the power to take action in court and seek an enforceable order to stop or remedy the breach.

(b) Environmental protection

In 1997, the Australian Government, all Australian state and territory governments and the Australian Local Government Association signed a Heads of Agreement (1997 COAG Environment Agreement) regarding each government's environment law making responsibilities. It stipulated that the Australian Government would focus on legislating on matters of national significance, as defined within that agreement.⁴⁶⁶ This included laws to reduce greenhouse gas emissions.⁴⁶⁷

Australia's primary environmental protection legislation, the EPBC Act, legislates matters identified as being of national environmental significance, which are primarily based on Australia's international environmental obligations and the 1997 COAG Environment Agreement. The EPBC Act seeks to promote ecologically sustainable development and conserve Australia's biodiversity and cultural heritage, amongst other things.⁴⁶⁸

The EPBC Act makes no mention of climate change and does not require the reduction of greenhouse gas emissions. Multiple EPBC Act reviews have identified significant flaws in the environment protection framework it provides.⁴⁶⁹ Most recently, a 2020 independent statutory EPBC Act review found that it failed to address climate change issues as a priority or in a coordinated manner.⁴⁷⁰ It concluded that the EPBC Act is ineffective and inefficient to protect the environment or address current and future challenges, including climate change and should be entirely reformed.⁴⁷¹

The review fell short of recommending a 'climate trigger', which would require projects emitting significant levels of greenhouse gases to be assessed under the EPBC Act, as advocated by many environmental organisations.⁴⁷² However, it did recommend standards be developed to require development proposals to consider the effectiveness of their climate change mitigation measures and disclose the full emissions of the development.⁴⁷³ The review further agreed with

the Australian Government's position to adopt specific policy mechanisms to reduce emissions outside of the EPBC Act.⁴⁷⁴

Alongside the EPBC Act are other federal legislative and policy instruments that concern environmental matters such as energy, water, pollution, biodiversity, cultural heritage, planning and development and land management.⁴⁷⁵ Like the EPBC Act, they do not expressly incorporate human rights considerations into environmental protection, although there are some protections and entitlements for First Peoples in relation to Indigenous culture and connection and ownership of Country.

(c) Climate change

In response to Australia's international commitments under the Paris Agreement to restrict greenhouse gas emissions, in 2022 the Australian Government introduced the Climate Change Act 2022 (Cth) (CCA).

The CCA sets out 4 key objectives:

- Advance an effective and progressive response to the urgent threat of climate change drawing on the best available scientific knowledge.
- Set out Australia's greenhouse gas emissions reduction targets to contribute towards global goals of reducing the global average temperature.
- Promote accountability and ambition, by establishing ministerial responsibility to prepare an annual climate change statement that is presented to the Australian Parliament.
- Ensure that both the climate change statement and Australia's greenhouse gas emissions reduction targets are informed by independent advice from the Climate Change Authority, an independent statutory Australian Government agency established to advise the Australian Government regarding climate change policy.⁴⁷⁶

The CCA confirms Australia's greenhouse gas emission reduction targets are a 43% reduction from 2005 levels by 2030 and net zero by 2050.⁴⁷⁷ A range of Australian Government policies prioritise renewable energy investment as a means of achieving these targets, underpinned by an 82% renewable electricity target by 2030.⁴⁷⁸

However, analysis of these targets indicates that a 43% emissions reduction by 2030 will be insufficient to enable net zero to be achieved by 2050. Research suggests Australia needs a 70% reduction in net emissions by 2030 and decrease its reliance on carbon sequestration from the land sector to reach net neutrality by 2050.⁴⁷⁹ Further, new renewable energy capacity must increase beyond the current levels for the 82% target to be achieved.⁴⁸⁰

The Climate Change Authority has begun development of its 2035 emissions reduction target under the CCA and Paris Agreement, with preliminary advice in April 2025 suggesting a range of 65-75% below 2005 levels by 2035.⁴⁸¹ Following the ICJ's advisory opinion, Australia must set a greenhouse gas emissions reduction target that limits global warming to 1.5 degrees Celsius.⁴⁸²

The *National Greenhouse and Energy Reporting (Safeguard Mechanism) Rule 2015 (Cth)* (Safeguard Mechanism) seeks to reduce the direct emissions from Australia's largest industrial facilities in line with Australia's emission reduction targets in the CCA. It sets baselines on the greenhouse gas emissions of these facilities, which fall every year to 2030,⁴⁸³ and incentivises relevant facilities to mitigate or offset their pollution to meet these baseline targets. However, the Safeguard Mechanism has been criticised for being unconnected to the EPBC Act approvals process and only regulates emissions after the project has been approved. Further, it does not regulate Australia's largest emissions – export (scope 3) emissions.⁴⁸⁴ The Safeguard Mechanism only interacts with the EPBC Act to the extent that after a project has been approved, the Minister for Environment must share information with the Minister for Climate Change about the relevant project's direct (scope 1) emissions. The Minister for Climate Change is only required to act if the total scope 1 emissions are expected to breach the baseline targets.⁴⁸⁵

The CCA does not establish enforcement mechanisms to ensure that the Australian Government achieves Australia's emissions reduction targets. It does not require decision-makers to consider human rights in any way when making decisions concerning climate change, emissions or the environment. Significantly, the CCA does not interact with the EPBC Act or any federal instrument that concerns rights protection.

Minister of the Environment v Sharma [2022]⁴⁸⁶

In September 2020, 8 children in Australia commenced court proceedings against Australia's Minister for the Environment in *Sharma & Ors v Minister for the Environment (Sharma)*.⁴⁸⁷ The children argued that the Minister had a duty of care to protect children in Australia from climate change impacts when making decisions about the approval of projects with large greenhouse gas emissions.

The children were initially successful. The Federal Court ruled that the Minister had a duty to take reasonable care to avoid causing personal injury or death to children in Australia when exercising decision-making powers in certain circumstances under the EPBC Act.⁴⁸⁸ However, on appeal the Full Federal Court unanimously overturned the decision and rejected the existence of a common law duty of care, although for different reasons.⁴⁸⁹

Chief Justice Allsop rejected an implied duty of care for human safety from the text of the EPBC Act and said it raised 'core policy questions unsuitable... for judicial determination', amongst other things.⁴⁹⁰

The Full Federal Court accepted that climate change and global warming established risks, including possible global catastrophe. This issue was not challenged by the Minister on appeal.⁴⁹¹

In August 2023, Independent Senator David Pocock, introduced a Private Members Bill seeking to amend the CCA to close the legislative gap identified by the Full Federal Court in the *Sharma* decision.⁴⁹² The Commission made a submission to the parliamentary committee inquiry into the Bill supporting its objectives:

Legislative change to promote intergenerational equity as a means of protecting the human rights of current and future generations of people in Australia from the impacts of climate change.⁴⁹³

The Commission's submission recommended changes to the Bill to better protect children's rights.

In June 2024, the committee recommended that the Bill not be passed and instead urged the Australian Government to utilise the Commission's child rights impact assessment tool to assist in policy development and decision-making.⁴⁹⁴



7.2 State and territory laws

(a) Human rights

The ACT, Victoria and Queensland have each enacted human rights acts (in Victoria the legislation is called the Charter of Human Rights and Responsibilities). These laws are similar across these jurisdictions. Primarily, they protect a range of civil and political rights and a few social, economic and cultural rights.⁴⁹⁵

These state and territory human rights acts require public entities and some private entities that undertake public functions to properly consider human rights and to act compatibly with the protections set out in the legislation.⁴⁹⁶

The laws allow individuals to take legal action to protect their rights,⁴⁹⁷ however, in Queensland and Victoria, action can only be commenced jointly with another legal claim.⁴⁹⁸ Compensation is not available as a remedy in any jurisdiction, even if a court determines that a person's human rights have been breached.

Each jurisdiction requires that all new bills introduced into its parliament be accompanied by a statement of compatibility with the rights protected in that jurisdiction.⁴⁹⁹

The ACT is the first and only jurisdiction to explicitly recognise the right to a healthy environment in human rights legislation.

The right to a healthy environment in the *Human Rights Act 2004* (ACT)

- In response to community feedback, in October 2023, the ACT Government introduced a Bill to its parliament seeking an explicit right to a healthy environment, with environmental impact to be assessed using a rights-based approach, to be incorporated into its *Human Rights Act 2004*.⁵⁰⁰
- The Bill was passed by the ACT Parliament on 28 August 2024, making the ACT the first Australian jurisdiction to address climate change impacts through a human rights protection instrument.
- ACT public authorities now have the same obligation to properly consider and act compatibly with the right to a healthy environment as other rights in the *Human Rights Act 2004*.⁵⁰¹ However, a direct cause of action to the ACT Supreme Court does not apply to this right.⁵⁰² This means if a public authority breaches a person's right to a healthy environment, the person will have limited options for bringing a complaint to enforce the right.⁵⁰³
- There is a mandatory 5-year statutory review period for the new insertions in the *Human Rights Act 2004*, including the statutory limit on bringing a direct action to the ACT Supreme Court.⁵⁰⁴



(b) Environmental protection

Each state and territory has its own environment legislation that establishes controls and mitigation strategies, as well as monitoring and reporting obligations. These laws are intended to effectively manage a healthy environment, safeguard against environmental degradation and promote ecologically sustainable development.⁵⁰⁵ These laws work in conjunction with the federal *National Environment Protection Council Act 1994* (Cth) which seeks to ensure all Australians are equally protected from pollution and to establish consistency in the implementation of environment protection matters throughout Australia.⁵⁰⁶ Additional protections exist in some jurisdictions from issue specific legislation, such as waste management laws.⁵⁰⁷

The right to a healthy environment in the *Environment Protection Act 2017* (Vic)

The first legislation to recognise, albeit implicitly, the right to a healthy environment in Australia was the Victorian *Environment Protection Amendment Act 2018*. This law amended the *Environment Protection Act 2017* (Vic) to include the 'principle of equity'.⁵⁰⁸ According to this principle, all people are entitled to live in a safe and healthy environment, people should not be disproportionately affected by environmental harm and the present generation should maintain the environment for the benefit of future generations.⁵⁰⁹

In making certain decisions under the *Environment Protection Act 2017* (Vic), including determining whether to issue development licences, the Victorian Environment Protection Authority and Minister for Environment must take into account the environmental principles in the act, including the principle of equity.⁵¹⁰

(c) Climate change

State and territory laws that set emissions reductions targets for their respective jurisdictions, aligned with the CCA, have been enacted in the ACT, South Australia, Tasmania, Victoria and New South Wales.⁵¹¹

The right to a healthy environment in the *Climate Change (Net Zero Future) Act 2023* (NSW)

The New South Wales *Climate Change (Net Zero Future) Act 2023* sets its greenhouse gas emissions targets at 50% and 75% reduction from 2005 levels by 2030 and 2035, respectively, and to reach net zero by 2050.⁵¹²

Importantly, it is the first climate change legislation in Australia that recognises the right to a healthy environment. One of its guiding principles is for climate action to be consistent with the right to a healthy environment.⁵¹³

Consequently, in October 2024, the NSW Government released its Climate Change Adaptation Action Plan 2025-2029, which incorporates the right to a healthy environment as one of its guiding principles.⁵¹⁴



8. Climate legal action

Climate legal action is an important accountability tool.

Around the world, including Australia, people and communities are using legal action to challenge inadequate climate responses. Australia's weak federal environmental legislation provides limited pathways for climate litigation. State and territory Human Rights Acts have been used to protect people's rights from climate impacts.

Litigation is often a measure of last resort, pursued when governments or businesses fail to take adequate action on climate change. A national Human Rights Act could help prevent such failures by embedding human rights, such as the right to a healthy environment, into law and decision-making processes from the outset. This proactive approach would ensure that human rights are considered early, reducing the likelihood of harm and the need for litigation.

Legal action is often a measure of last resort, pursued only after other avenues for accountability have been exhausted. Enacting a national Human Rights Act would embed human rights considerations, including climate change impacts, into law and decision-making processes from the outset. This would help ensure that the rights of individuals and communities are considered early, before harm is done, helping to create a culture of prevention. Rather than relying on courts to address violations after they occur, a Human Rights Act would enable public authorities to proactively consider and balance human rights in law and policy development.

When governments and business do not take adequate and timely action to address climate change, legal action is an important accountability tool for people and communities affected by climate change. Given the multitude of ways climate change impacts every area of life, laws such as corporations law, tort law and consumer law have often been relied upon.

8.1 Barriers and limitations to legal action

While litigation can help to prompt action to address the human rights impacts of climate change, there are significant barriers to it. Like climate change's impacts, these barriers disproportionately impact people in vulnerable situations or people belonging to marginalised groups.⁵¹⁵

Major barriers to climate litigation that often make it difficult for individuals, groups of individuals or communities to bring claims include:

- cost
- inconvenience
- lack of access to justice
- lack of access to resources
- lack of exposure to or knowledge of the legal system
- intimidation by greater resourced parties.

Public interest cost orders can reduce cost or intimidation barriers for people bringing legal action against government or private enterprise. For example, in June 2025, the Federal Court of Australia made a maximum cost order limiting the amount that the respondents, the National Offshore Petroleum Safety and Environmental Management Authority and Woodside Energy, could seek in legal costs if the applicants, Doctors for the Environment (DEA), were unsuccessful in their public interest climate change litigation. DEA, represented by the Environmental Defenders Office (EDO), had sought judicial review of the approval of the Scarborough Gas Project's environmental plan. Although DEA ultimately lost the matter,⁵¹⁶ the maximum cost order significantly reduced their financial risk and ensured they were able to bring the case. As EDO explained at the time:

Today's decision ensures our client has access to justice, a core tenet of democracy and the rule of law. The courts should not only be accessible to those with deep pockets, but to all Australians. It should always come down to merit, not money.⁵¹⁷

Even when these barriers are overcome, legal claims may be complicated by issues such as establishing causation; that is, proving that a party's action or inaction caused the alleged consequence.⁵¹⁸

Other complicating issues include the use of Strategic Litigation Against Public Participation (SLAPP) suits. SLAPP proceedings seek to censor, intimidate or silence public opposition.⁵¹⁹ It is frequently engaged by entities with greater resources, such as governments and corporations, as a tool to dissuade or frustrate climate action. It is also characterised by disproportionate responses to alleged wrongdoings, often utilising costly, abusive or delaying tactics intended to frustrate litigation.⁵²⁰ This may include additional litigation against climate advocates to suppress their right to free speech – for example, by pursuing defamation claims against minor comments.

Globally, SLAPP tactics are being increasingly used by governments and private enterprises. Media attention on the use of SLAPP tactics in Australia led to legislative reforms being proposed in 3 jurisdictions.⁵²¹ Only one Australian jurisdiction, the ACT, has enacted legal protections for public participation,⁵²² however, there has been criticism of these protections on the basis that they are ineffective.⁵²³

8.2 Climate legal action in Australia

At the federal level, climate legal action in Australia is grounded predominately in environmental protection laws, however the absence of strong environmental protection laws that consider climate change and its effects limits pathways for climate litigation. In the 2024 'Living Wonders' climate case, the Federal Court of Australia dismissed an appeal that argued the Minister for the Environment is legally required to consider the export (scope 3) emissions of fossil fuel projects when assessing their environmental impact of a project under the EPBC Act. This decision highlights the inadequacy of the EPBC Act in addressing climate change as it lacks explicit provisions requiring the consideration of a project's contribution to climate change.⁵²⁴ The CCA also does not allow people and communities to enforce Australia's emissions reduction targets.

Climate legal action in Australia typically has been brought using other laws, such as consumer law, tort law, corporations law and administrative law. These actions have increased government accountability around the impacts of climate change. For example, in settling a class action that accused the Australian Government of misleading and deceptive conduct for not disclosing the risks of climate change to government or (sovereign) bond investors,⁵²⁵ the Australian Government in 2021 released a public statement that confirmed that:

Climate change is a systemic risk that presents significant risks and opportunities for Australia's economy, regions, industries and communities.⁵²⁶

Similarly, climate litigation has helped increase corporate accountability. In May 2025, settlement of a landmark 'greenwashing' case over Energy Australia's 'Go Neutral' carbon offsetting project resulted in the company apologising to its more than 400,000 customers, acknowledging that:

Offsets do not prevent or undo the harms caused by burning fossil fuels for a customer's energy use. Even with carbon offsetting, the emissions released from burning fossil fuels for a customer's energy use still contribute to climate change... Storing carbon in plants is not equivalent to keeping it stored in fossil fuels (by not burning those fossil fuels in the first place).⁵²⁷

Climate action has also been brought under the common law. However, decisions of the Federal Court of Australia have found that under the current common law tort of negligence, the Australian Government and the Minister for the Environment do not owe a duty of care to Torres Strait Islanders⁵²⁸ or Australian children,⁵²⁹ respectively, to protect them from the impacts of climate change. These decisions highlight the need to enact a federal Human Rights Act and stronger environmental and climate change laws to better protect Australians from climate change.

In Australian jurisdictions where human rights protection instruments have been enacted – Queensland, Victoria and the ACT – legal action is being used to protect peoples' human rights from the impact of fossil fuel projects that would have significant climate implications. This has required courts to assess the interaction of human rights laws with environmental laws.

Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors [2022]⁵³⁰

In 2020, a group of people, comprising a First Peoples-led group of young Queenslanders, conservationist landholders and others, took legal action in the Queensland Land Court concerning an application by Waratah Coal for a mining licence and environmental authority to mine coal in Queensland's Galilee Basin.

The group argued that the application should not be approved because it would negatively impact a unique nature refuge and would violate human rights protected by the *Human Rights Act 2019* (Qld).⁵³¹

The case was the first time a court considered how the Queensland Human Rights Act operates in connection with climate change and resource project decisions.

The Queensland Human Rights Act does not include the human right to a healthy environment. The group's human rights arguments in the case thus focused on the project's impact on other human rights that are protected in the legislation, including the right to life, First Peoples' cultural rights, children's rights, the right to property, the right to privacy and home, and the right to enjoy human rights equally.⁵³²

The Court accepted that, based on science, climate change would adversely impact these rights and found that:

- the mining project would negatively impact on local landholders' rights to property and privacy due to its environmental damage and nuisance
- the project's human rights impacts were significant and not justified or sufficiently offset by its purported advantages.⁵³³

Particular attention was given to the fact that First Peoples and their children will be more significantly affected.

The Court rejected a defence that the project's greenhouse gas emissions were not relevant because they would be produced by another project if this project did not proceed.⁵³⁴ This defence is referred to as the 'perfect substitution' or 'drug dealers' defence and while commonly

argued by fossil fuel companies and the Australia Government, it has been rejected in the NSW Land and Environment Court as being 'flawed'.⁵³⁵ In this proceeding the argument failed due to insufficient evidence.⁵³⁶ As the economic viability of coal and other fossils fuels are questioned and policy commitments continue to align with the temperature limit under the Paris Agreement, this defence may become increasingly difficult to argue.

The Court recommended that the mining licence and the environmental authority applications be refused. In 2023, the relevant Minister formally refused the applications.⁵³⁷

The Waratah Coal case decision highlights what can be achieved through a robust human rights' legal framework, including when a rights-based approach is applied to environmental decision-making.

It also demonstrates tangible community interest in climate change mitigation and adaption issues, yet simultaneously highlights how communities, especially First Peoples and young people,⁵³⁸ shoulder the burden of advancing the issue.

This proceeding was the first time the Queensland Land Court took evidence on-Country. This was made possible because the Queensland Human Rights Act requires laws to be interpreted consistently with human rights.⁵³⁹ The Court considered it an essential move for the cultural identity and beliefs of First Peoples witnesses to be respected.⁵⁴⁰ In doing so, the Waratah Coal case showcased how a Human Rights Act can help reduce barriers to climate litigation by upholding human rights, enabling impacted communities to hold governments to account.

Waratah Coal Pty Ltd opposed the claimants being permitted to give evidence on-Country, to which the Court observed:

I have balanced the collective right to enjoy and maintain culture⁵⁴¹ against the public and private interests in minimising the inconvenience and cost of litigation. Confining the First Nations witnesses to the written statements is a limit to their right, and that of their community, to maintain their culture about how they transmit traditional knowledge. I am not persuaded that limit is reasonable and demonstrably justifiable in the circumstances of this case.⁵⁴²

The success of *Waratah Coal* has led to multiple challenges to Queensland coal mines based on human rights grounds. On 20 March 2025, the Queensland Land Court recommended that the mining lease for the Ensham coal mine extension ‘not be approved unless and until the applicants show real and significant progress towards mitigating their [greenhouse gas] emissions’.⁵⁴³ The Court identified the potential impact on the right to life and children’s rights from *Waratah Coal*, even in the absence of active objectors and found the rights were engaged and breached by the mine.⁵⁴⁴ There are currently at least 3 other court cases that challenge the approval of coal mines in Queensland based on human rights grounds (Lake Vermont,⁵⁴⁵ Winchester South⁵⁴⁶ and Rolleston⁵⁴⁷). It is likely the jurisprudence of rights-based climate litigation in Queensland will continue to expand and evolve over time.

8.3 International climate legal action

There is a growing body of jurisprudence that establishes acceptable global norms for government and private sector conduct in the face of climate change and its impacts. Early climate litigation often concerned administrative challenges to government decisions under environmental and planning laws, generally seeking to incorporate climate change considerations within the scope of decision-making of a project or development.⁵⁴⁸ More recent climate litigation has trended towards holding governments and corporations to account, particularly with respect to government frameworks, greenwashing and contribution of emissions.⁵⁴⁹ Major corporate climate change decisions in 2025 affirmed that companies have a duty to contribute to combatting climate change and can be held liable for climate-related harm.⁵⁵⁰

Rights-based climate litigation asserts that insufficient climate mitigation or adaptation violates the human rights of the people bringing the claim. People, communities and non-governmental organisations have typically commenced rights-based climate action, often against governments.

***Urgenda Foundation v The Netherlands* [2015]⁵⁵¹**

In 2015, a Dutch environmental group, the Urgenda Foundation and 900 Dutch citizens commenced proceedings asserting that the Dutch Government’s emissions reduction target was insufficient to mitigate climate change’s severe consequences. They argued, amongst other things, this breached their right to life and right to private and family life under the ECHR.

The matter was appealed through the Dutch court system, up to the Supreme Court of Netherlands. Each court, at every level, confirmed rights violations, having regard to both Dutch domestic law and the ECHR. The decisions clarified that the ECHR imposes a positive obligation on Nation States to take appropriate measures to prevent climate change. It was found that the Dutch Government had not properly exercised this obligation. The Court referenced the Paris Agreement and IPCC reports to support its finding that strong emissions reductions were necessary and scientifically justified.⁵⁵²

Urgenda Foundation was the first court decision to hold a government accountable for its inadequate climate policy. The court ordered the Dutch Government to commit to a greater emission reduction target to mitigate against climate change’s impact. It ruled that the Dutch Government owed a duty to its citizens to prevent dangerous climate change, spurring ‘duty of care’ climate cases around the world.⁵⁵³

Climate litigation has been effective in incentivising corporations and governments to adopt more sustainable practices, to disclose climate risks to business investors and to influence policy decisions for the benefit of the environment, individuals, communities and businesses. It has spurred legislative reform, facilitated increased public awareness of the real impacts of climate change and has paved a way for communities in vulnerable situations to seek climate justice.⁵⁵⁴

9. Table of abbreviations and definitions

AHRC Act	<i>Australian Human Rights Commission Act 1986</i> (Cth)
CCA	<i>Climate Change Act 2022</i> (Cth)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	UN Committee on the Elimination of Discrimination Against Women
CHR	Philippines Commission on Human Rights
Climate system	The totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions
COAG	Council of Australian Governments
Commission	Australian Human Rights Commission as established by the AHRC Act
COP	Conference of the Parties
Country	Land, Waterways and Seas in Australia to which its First Peoples are connected and belong to
CRC	Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSIRO	Commonwealth Scientific and Industrial Research Organisation
Cth	Commonwealth of Australia
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPBC Act	<i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth)
GANHRI	Global Alliance of National Human Rights Institutions
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR Committee	UN Committee on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR Committee	UN Committee of Economic, Social and Cultural Rights
ICJ	International Court of Justice
IPCC	Intergovernmental Panel on Climate Change

ITLOS	International Tribunal for the Law of the Sea
NCP	OECD National Contact Point
NDCs	Nationally Determined Contributions
NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	OECD Guidelines for Multinational Enterprises
OHCHR	UN Office of the High Commissioner for Human Rights
Paris Agreement	An international agreement under the UNFCCC that requires Nation States parties to limit global average temperature increases to a primary goal of 1.5 degrees Celsius above pre-industrial levels.
PJCHR	Parliamentary Joint Committee on Human Rights
RDA	<i>Race Discrimination Act 1975 (Cth)</i>
Rio Declaration	A series of internationally agreed principles intended to guide future sustainable development
SDGs	Sustainable Development Goals
SLAPP	Strategic Litigation Against Public Participation
Nation States	Countries that have a defined territory, a permanent population, a government and the capacity to enter into relations with other Nation States
Stockholm Declaration	A series of internationally agreed principles recognising the importance of environmental protection and sustainability for the development of humankind
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNEP	UN Environment Programme
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UNGPs	UN Guiding Principles on Business and Human Rights
UNHRC	UN Human Rights Council
UNICEF	UN Children's Fund
UPR	Universal Periodic Review
1997 COAG Environment Agreement	A November 1997 agreement of the COAG which set out the Australian federal, state and territory government roles and responsibilities for the Environment, signed by the heads of all governments in Australia and the Australian Local Government Association

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