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Sydney, 29 November 2021

Office of the High Commissioner for Human Rights (OHCHR)

Palais des Nations, UNOG

CH-1211 Geneva 10

SWITZERLAND

**[Sent via email: registry@ohchr.org]**

**RE: Australian Lawyers for Human Rights submission to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in accordance with Human Rights Council resolution 47/24**

Dear Madam, Sir

In accordance with HRC resolution 47/24, please see the attached submission by Australian Lawyers for Human Rights (**ALHR**) in support of the report on the adverse impacts of climate change on the enjoyment of human rights of people in vulnerable situations.

This research on issues with an Australian nexus has been prepared by a cross-section of professionals across our organisation, including our Environment and Human Rights Subcommittee members, with the support of our Women and Girls’ Rights Subcommittee and our Business and Human Rights Subcommittee.

We thank you for the opportunity to comment and trust you will find the submission useful. Please do not hesitate to reach out if you require further information or clarification on any of the points raised.

ALHR recognises the traditional owners and custodians of the land, seas and rivers of Australia. We pay our respects to First Nations elders past and present, and aspire to learn from traditional knowledge and customs so that, together, we can protect human rights, our environment and cultural heritage through law. We acknowledge that sovereignty has never been ceded and we express our support for the Uluru Statement from the Heart.

Yours faithfully

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**1. Please describe the impacts of the adverse effects of climate change on the full and effective enjoyment of the human rights of people in vulnerable situations. Where possible, please share specific examples and stories.**

***Introduction - Australia’s unique geographical vulnerability***

The devastating effects of climate change on low-lying and coastal States has been well documented.[[1]](#footnote-1) As an island State with significant connection to coastal and marine life that also experiences a comparatively high temperature climate, Australia is particularly exposed to the impacts of climate change. The Australian Academy of Science has noted that the clearest present-day impacts experienced in Australia are increased temperatures, as well as an increase in the number, duration and severity of heat waves.[[2]](#footnote-2) This has recently led to one of the worst bushfire seasons on record, resulting in devastating biodiversity loss as well as extended drought along the Murray-Darling Basin, and severe consequences for already marginalised groups in affected regions. In this submission, we seek to highlight some of the most pertinent human rights impacts on vulnerable communities throughout Australia.

At the outset, we wish to note that current legislation, policy, regulation and strategy in Australia is failing to adequately address and mitigate climate change. Australia has not adopted a human rights-based framework in its approach to addressing or mitigating the impacts of climate change, with current policy settings continuing to exacerbate threats posed to human rights.

1. ***Impact on First Nations people***
	1. Aboriginal and Torres Strait Islander people in Australia are especially vulnerable to the impacts of climate change due to their deep connection to Country, their many remote communities already living in the driest inhabited continent on the planet and most profoundly due to systemic racism, discrimination, marginalisation and disadvantage within Australian society. For those Aboriginal and Torres Strait Islanders in remote parts of Australia, increases in temperature will reduce the amount of bush tucker and other native foods available. For people in coastal areas, rises in sea levels may force people off their land[[3]](#footnote-3). As noted by the Australian Indigenous HealthInfoNet, this is especially concerning considering the connection that Aboriginal and Torres Strait Islander people have to their Country, and may result in poor mental health and other social issues[[4]](#footnote-4). Extreme weather events such as cyclones and floods will affect the infrastructure in remote Aboriginal and Torres Strait Islander communities, and these communities may be cut-off from services for long periods of time.[[5]](#footnote-5) The full and effective enjoyment of the full range of rights articulated in the UNDRIP is likely to be impacted by climate change.
	2. First Nations Australians from the Torres Strait Islands, a strip of roughly 150 islands between Cape York and the southern coast of Papua New Guinea, face profound and immediate human rights impacts from climate change.[[6]](#footnote-6) As a collection of low-lying islands, the Strait is particularly exposed to rising sea levels and has been frequently identified as one of the most vulnerable regions within Australia.[[7]](#footnote-7)
	3. The consequences of rising sea level and increased ocean acidification have had, and continue to have, significant implications for the enjoyment of a number of human rights. These include the right of enjoyment of culture (ICCPR, art. 27) owing to the inability of First Nations people to rely on the biodiversity of the Islands, as well as the impact on traditional gardening practices.[[8]](#footnote-8) There are also observable impacts on the right to life (UDHR art, 3 and ICCPR, art. 6), to freedom from arbitrary interference with privacy and home (ICCPR, art. 17), to food and to shelter (ICESCR, art. 6) and also to the highest standard of attainable health (ICESCR, art. 12).[[9]](#footnote-9)
	4. Further, climate change is also likely to impact First Nations’ enjoyment of the right to self-determination (UDHR art. 1, ICCPR art. 1A, UNDRIP art 3). While not as severe as the impact felt by those in coastal States to which climate change poses a literal existential threat, climate resilience measures and increased reliance on the Australian Government threatened the degree of political autonomy enjoyed by the inhabitants of the Strait.
	5. In May 2019, an individual communication was submitted to the UN Human Rights Committee by a group of eight Torres Strait Islanders. The complainants argued that the Australian federal Government is in violation of its human rights obligations by failing to protect Torres Strait Islanders from the harmful impacts of climate change, and therefore violating the right of the inhabitants to life, to culture and to be free from arbitrary interference with privacy, family and home.[[10]](#footnote-10)
	6. The impacts of climate change on our First Nations people are complex, as they adversely affect not only health, food security, and shelter, but also a loss of spiritual and cultural connections with the land and community caused by environmental degradation and loss of biodiversity (ICCPR, arts 1, 6, 27; ICESCR, arts. 1, 11, 12 as well as the rights expressed in the UNDRIP).
	7. For instance, in the Yakanarra community in Western Australia, extreme weather events and environmental degradation may be interpreted by the Indigenous community to signify a breakdown in the relationship between the people and the land. In addition to increased tensions and stress between Indigenous communities, there are reported levels of heightened spiritual anxiety. Further, in the Northern Territory, the Maningrada community’s connection to the land is also impacted. Environmental changes have threatened a number of freshwater plants and animal species intrinsic to Maningrida’s customary economy and traditional way of life. This has also had an observable economic impact, as the natural materials used in products are sold by the local Arts and Culture Centre, which the community heavily relies on for income. Due to its location, the Maningrida region is also highly vulnerable to extreme weather events such as tropical cyclones or increases in temperature. In 2006, a cyclone damaged over 75% of houses in the community. Food security and economic stability are also impacted, as the transport of goods increases due to infrastructure damage. The region is in the tropical north of Australia, and the hot and humid conditions may become intolerable with rises of even a few degrees.
	8. Further, impacts of rising temperatures have also had a significant effect on the Yakanarra community in Western Australia. Productivity throughout the community has reduced, while teaching staff often take children to billabongs to cool off in effort not to harm their academic progress.[[11]](#footnote-11) The Australian Housing and Urban Research Institute (AHURI) has also predicted that existing housing for Indigenous communities is unlikely to be able to withstand the effects of climate change.[[12]](#footnote-12) The AHURI notes that among other effects, the maintenance processes for hardware inside houses, such as air conditioner units is likely to fail with an increase in temperatures, with implications for the right to the highest attainable standard of health (ICESCR, art. 12), to adequate standard of living (ICESCR, art. 11), and potentially to life (ICCPR, art. 6).
	9. We commend to you the November 2021 Discussion Paper, “*Climate Change and Aboriginal and Torres Strait Islander Health*” prepared by the Lowitja Institute and the National Health Leadership Forum, which describes climate change in Australia and its impact on the health and wellbeing of Aboriginal and Torres Strait Islander people, noting:

*“There are many varied direct and indirect climate change impacts on the morbidity and mortality of Aboriginal and Torres Strait Islander people. Climate change is compounding historical injustices and disrupts cultural and spiritual connections to Country that are central to health and wellbeing. Health services are struggling to operate in extreme weather with increasing demands and a reduced workforce. All these forces combine to exacerbate already unacceptable levels of ill-health within Aboriginal and Torres Strait Islander populations.”[[13]](#footnote-13)*

* 1. We note that the human rights impacts of climate change on First Nations people in Australia are likely to be more profoundly experienced due to a lack of existing human rights frameworks in Australia and legal recognition of First Nations. Australia stands apart from the vast majority of developed countries in its failure to appropriately recognise First Nations people and address a long, significant history of denying them institutional power and representation in decision-making. The Australian Constitution has no bill of rights or equality guarantee. There is no formal recognition of First Nations languages. There was no founding treaty, and Australia’s First Nations have no dedicated voice in Australia’s political and institutional arrangements.[[14]](#footnote-14)
1. ***Impact on the human rights of Women and Girls***
	1. We also wish to highlight the cumulative effect of climate change on the physical, economical and emotional wellbeing of women in Australia. While the enjoyment of human rights by women and girls is connected to all manner of climate impacts, we note that these can be most readily observed by assessing community recovery efforts following extreme weather events. The activities in the aftermath of these events, such as the clean-up, care of children, employment impacts and food insecurity, disproportionately impact women.[[15]](#footnote-15)
	2. Firstly, women bear a larger burden of unpaid work following natural disasters, and are therefore more likely to be economically threatened as a result of their increased frequency.[[16]](#footnote-16) This, in turn, has the impact of marginalising women and further amplifying their existing need for government support.[[17]](#footnote-17) Employment vulnerabilities and climate induced food scarcity, which the UN Development Programme estimates will increase the cost of world food prices by 30-50%, will be an additional repercussion faced by women.[[18]](#footnote-18)
	3. Additionally, the increased costs of living for women could further contribute to energy poverty, particularly amongst low-income households in Australia.[[19]](#footnote-19) It is widely acknowledged that lack of access to energy has a strong gender dimension – particularly in developing countries across the Asia-Pacific – due to the impact on economic and educational opportunities.[[20]](#footnote-20) Poverty also impacts women’s reproductive rights and autonomy over their health; including access to contraception, the ability to carry and deliver, and to raise a family, and is a key contributing factor to child, early and forced marriage of women and girls.[[21]](#footnote-21) In Australia, forced marriage is the most commonly investigated form of human trafficking and slavery.[[22]](#footnote-22)
	4. Further, a growing body of evidence also indicates that violence against women increases in the aftermath of natural disasters.[[23]](#footnote-23) It has been noted that disasters can also intensify violence when women are separated from support networks such as family and friends that help mitigate violence.[[24]](#footnote-24) Analysis of the Australian Black Saturday bushfires in 2009 demonstrated that in the months after the fires, the urgency of disaster recovery meant that domestic and family violence was deprioritised at a systems level.[[25]](#footnote-25)
2. ***Impact on vulnerable children***
	1. The ability of all children to enjoy the full range of their human rights is impacted by climate change, however, vulnerable children in Australia are particularly at risk, particularly those experiencing socioeconomic disadvantage. CRC rights to life, survival and development are at risk of being impacted by higher rates of malnutrition due to the impacts of global warming, potential increases in vector-borne diseases and heat-amplified levels of smog which risk exacerbating respiratory disorders. The right to education (CRC art 28 and ICESCR art 13) may be impacted by these human rights challenges. For First Nations children the impact of temperatures in remote desert regions coupled with a lack of access to air-conditioned education infrastructure may pose a future significant barrier to education for a cohort who already have significant educational disadvantage in Australian society.

**2. Please describe any specific policy, legislation, practice or strategy that your Government has undertaken, in compliance with applicable international human rights law, to promote an approach to climate change mitigation and adaptation, as well as loss and damage that ensures the full and effective enjoyment of the human rights of people in vulnerable situations. Please also note and identify any relevant mechanisms for ensuring accountability for these commitments including their means of implementation.**

1. ***Legislative and policy***
	1. Australia is the only Western liberal democracy without a federal Human Rights Act or Bill of Rights. As a nation we have agreed to be legally bound by the core international human rights conventions however the vast majority of these human rights obligations have not been incorporated into national domestic legislation. Australian laws do not recognise the right to a clean, healthy and sustainable environment.
	2. There is a notably significant lack of government policy at both the state and territory and federal level in terms of legislation, practise or strategy in compliance with international human rights law to promote an approach to climate change mitigation and adaptation loss and damage that ensures the effective enjoyment of the human rights of people in vulnerable situations. Consequent to this lack of human rights framework in Australian governmental approaches to climate change, there is also a lack of meaningful mechanisms for implementation and accountability.
2. ***National Climate Resilience and Adaptation Strategy***
	1. The Australian Government has recently established the *National Climate Resilience and Adaptation Strategy for 2021-2025* (the ‘Strategy’).[[26]](#footnote-26) We wish to highlight this development in the interests of completeness, however note that the framework has not been established in compliance with applicable international human rights standards.
	2. This high-level policy is designed to support local governments and communities to better adapt to climate change by supporting three objectives to enable more effective adaptation: to drive investment and action through collaboration; to improve climate information and services; and to assess progress and improve over time. Notably, the Strategy also includes a commitment from the Australian Government to ensure climate impacts are factored into delivery of its services, its policies to promote resilience of vulnerable communities, and partnerships with Aboriginal and Torres Strait Islander peoples.

**3. Please share a summary of any relevant data that captures how the adverse effects of climate change have affected people in vulnerable situations, taking into account multiple and intersecting forms of discrimination (i.e. discrimination based on a combination of multiple grounds, including disability, gender, race, colour, sex, language, religion, nationality and migration status).**

It is well documented that disadvantaged and vulnerable people will be impacted sooner and more severely by the changing climate. Increased social vulnerability drastically impacts a community or individual’s ability to adapt to climate change and its risks.[[27]](#footnote-27)

1. ***Heatwaves***
	1. Heatwaves are a major threat to the right to life (ICCPR, art. 6) and to enjoyment of the right to the highest attainable standard of physical and mental health (UDHR art. 25 and ICESCR art. 12) in Australia, and cause more deaths than all other natural disasters combined.[[28]](#footnote-28) Infants, people living with disability or chronic illness and the elderly are most at risk, however other vulnerability factors include people who are outdoors either working or without shelter in general, people who are homeless, people in remote and rural areas including First Nations people, and people who have recently arrived to an area.. More broadly, we note that climate change will exacerbate the systemic socioeconomic disadvantage that already impacts peoples’ ability to protect themselves from heat. Research demonstrates that factors such as the quality of housing, capacity to seek shelter, access to and affordability of electricity are exacerbated by socioeconomic inequality.[[29]](#footnote-29)
	2. The human rights of workers within Australia are also particularly exposed to climate change (ICCPR, art. 6; ICESCR, art. 7). We recently observed media reports of a 47 year old worker who died in Western Australia while working in 37°C heat.[[30]](#footnote-30) Given the scale of Australia’s mining, mineral extraction, horticulture and agricultural sectors, we expect these reports to become more frequent as temperatures rise. Given farm and seasonal workers in Australia are often most at risk from modern slavery offences, climate change may expose already vulnerable workers in these sectors to further threats to their fundamental human rights.
2. ***Drought***
	1. Increasing drought events are of particular concern in rural areas, in particular with respect to the rights of people living in those communities’ to food, water and an adequate standard of living (ICESCR, arts. 11, 12). Drought and its economic impacts on people who make a living through agriculture have already seen increased suicide risks of up to 15% t in Australian rural males aged 30-49 years.[[31]](#footnote-31)

**4. Please describe any mechanisms and tools that are in place to measure and monitor the impacts of climate change on the full and effective enjoyment of the human rights of people in vulnerable situations.**

1. Australia is the only Western liberal democracy without a federal Human Rights Act or Bill of Rights. As a nation we have agreed to be legally bound by the core international human rights conventions however the vast majority of these human rights obligations have not been incorporated into national domestic legislation. Australian laws do not recognise the right to a clean, healthy and sustainable environment.
2. ***Government initiatives***
	1. There is a concerning lack of adequate Commonwealth, state and territory mechanisms and frameworks through which to monitor the human rights impacts of climate in Australia. Outside the work of the Australian Human Rights Commission, we are not aware of any Government-driven mechanism which measures and monitors the impact of climate change on human rights.[[32]](#footnote-32) Further, the Australian Human Rights Commission does not have a climate change and human rights commissioner.
3. ***NGO and advocacy bodies***
	1. A number of NGO and civil society organisations exist within Australia for the purpose of human rights and environmental advocacy. Notably, the ALHR Environment and Human Rights Subcommittee monitors the enjoyment of human rights connected to the environment, and regularly provides policy submissions to Government, media and supports environment and human rights litigation where relevant.[[33]](#footnote-33)
	2. The Environmental Defenders Office (EDO) undertakes environmental litigation in Australia as well as advocacy toward systemic reform that recognises the human rights impacts of climate change. We commend to you their 2020 Annual Report and their policy paper, “Legal Analysis: The Right to a Healthy Environment in Australia.”[[34]](#footnote-34)

**5. Please identify and share examples of good practices and challenges in the promotion, protection, and fulfilment of the human rights of people in vulnerable situations in the context of the adverse effects of climate change.**

1. ***Increased use of strategic litigation***
	1. In recent years, we have observed an increase in the strategic use of litigation to protect human rights impacted by climate change in Australia, particularly by young people vulnerable to climate impacts.
	2. For instance, In *Sharma v Minister for the Environment*, the Australian Federal Court found the Minister for the Environment to hold a duty of care to protect young people from the adverse impacts of climate change.[[35]](#footnote-35) Similarly, in *Youth Verdict Ltd v Waratah Coal Pty Ltd,*[[36]](#footnote-36) the Land Court of Queensland dismissed an application to strike-out objections under the *Mineral Resources Act 1989* (Qld) relying upon the *Human Rights Act 2019* (Qld). The case was brought by a group of younger Australians who claimed the Carmichael Coal Mine was unlawful, as its government approval was in violation of a number of human rights, including the right to life, protection of children and cultural rights of Aboriginal and Torres Strait Islander peoples, as it contributed to increased greenhouse gas emissions. Importantly, the litigation has had led to implications for the resource sector to address such human rights objections, in particular when applying for mining leases and making environmental authority applications.

**6. Please include examples and good practices that highlight international and multilateral cooperation and approaches that are implemented through close consultation with and active involvement of people in vulnerable situations.**

1. ***Climate Change Action Strategy***
	1. In alignment with the *National Climate Resilience and Adaptation Strategy,* the Australian Government has also introduced a *Climate Change Action Strategy,* establishing a range of initiatives intended to support developing countries within the Indo-Pacific with their own climate resilience.[[37]](#footnote-37) However, while this framework makes financial commitments to provide international assistance, it has not been designed in the context of international human rights nor in close consultation with or active involvement of people in vulnerable situations.

**Conclusion**

As Amnesty International have noted, “**climate change is already impacting human rights in Australia, including our rights to life, health, and culture. The bushfire crisis in late 2019 and early 2020 demonstrated just how real and catastrophic climate change is for Australia.”[[38]](#footnote-38)**

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