**The Right to a Safe, Clean, Healthy and Sustainable Environment**

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**Please provide, in detail, examples of laws, regulations, policies and programmes that specifically incorporate the human right to a safe, clean, healthy and sustainable environment (acknowledging that different terms may be used to describe this human right)**

1.0 While there is no universally accepted definition of the right to a safe, clean, healthy and sustainable environment, Boyd observes that the first formal recognition can be found in the Stockholm Declaration: ‘Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations’.[[1]](#footnote-1) Alternative expressions of this right have been enumerated such as the ‘right to an ecologically balanced environment’, a right of peoples to ‘a general satisfactory environment favourable to their development’, and ‘the right to live in a benevolent environment’. Indeed, since the United Nations Conference on the Human Environment in 1972, more than one hundred countries have incorporated the right to a healthy environment into their national constitutions.[[2]](#footnote-2)

The Human Right to a Healthy Environment & Australian Environmental Law

1.1 The national law that comes closest to providing for the right to a safe, clean, healthy and sustainable environment is the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) *(‘EPBC’)*. This statute aims to ensure the protection of the Australian environment across all state jurisdictions,[[3]](#footnote-3) with an ecologically sustainable development approach. This includes incorporating the principles of sustainable use, the precautionary principle, the principle of intergenerational equity, ensuring that environmental considerations are fundamental in all decision making, and using market strategies to encourage environmental protection.[[4]](#footnote-4) Importantly, it also empowers entities to bring proceedings for judicial review and civil enforcement proceedings of governmental decisions that affect the environment.[[5]](#footnote-5) The legislation largely concerns ‘environmental impact assessment and approval’ (‘EIAA’) provisions, which outlines the steps of how the Minister for the Environment is to determine whether an action can proceed if it will or is predicted to have impacts on the environment.[[6]](#footnote-6) 1.2 Therefore, actions under the EIAA provisions are regarding the judicial review process of the decisions of the Minister for the Environment. The non-EIAA section of the legislation concerns mainly wildlife trade permits. Between the period of 2000-2015, 129 legal proceedings were brought either under the EPBC Act or in relation to it, however only 19 of these were environmental citizen suits, of which only 21% were successful.[[7]](#footnote-7)

1.3 Nonetheless, the effectiveness of Australian environmental law in incorporating the human right to a safe, clean, healthy and sustainable environment is questionable, as it has improved environmental outcomes in Australia, however this has not been consistent across all sectors.[[8]](#footnote-8)  Moreover, a review by the Australian Panel of Experts on Environmental Law found the Australian framework lacking, recommending among a suite of reforms the integration of environmental democracy as a core component of the next generation of environmental law, including: ‘a substantive right to a safe, clean and healthy environment; and procedural environmental rights (including the right to information, to public participation and access to justice in environmental matters).’[[9]](#footnote-9)

1.4 Australia is one of only fifteen nations that does not currently recognise the human right to a healthy environment at the federal level in the absence of a federal bill of rights or express recognition under the Australian Constitution.[[10]](#footnote-10) While Australia has a Parliamentary Joint Committee on Human Rights charged with the responsibility to examine the compatibility of proposed laws with articulated international human rights, it is not required to consider impacts on or compatibility with a right to a healthy environment. As was demonstrated in 2016 during deliberations on amendments to the EPBC Act, where the Minister found that there was no ‘standalone right to a healthy environment.’[[11]](#footnote-11) Instead, the Committee narrowed its scope to consider the amendment’s ‘impact on environmental protection indirectly through consideration of its impact on the right to health’ (which includes the ‘underlying determinants of health such as a healthy environment).[[12]](#footnote-12) We note that the recent move by the state of Queensland in enacting its *Human Rights Act 2019* (Qld) did not include an express right to a healthy environment despite grave public concerns regarding the impacts of mining developments, such as the Adani coal mine.

**How do you ensure that the rights of environmental human rights defenders are protected? What efforts has your Government, business or organization made to create a safe and enabling environment for them to freely exercise their rights without fear of intimidation, violence or reprisal?**

2.0 The right to protest is an implied human right under the Australian Constitution.[[13]](#footnote-13) Therefore, in general, Australia has a largely accepting environment in relation to peaceful actions of environmental human rights defenders. Nonetheless, there are still active efforts by the government to quash voices in opposition. An example includes the recent attempted amendment by the federal government to make it more difficult for citizen suits to be brought under the *EPBC* by setting a higher threshold of legal standing.[[14]](#footnote-14) What is significantly concerning about this is also the fact that this amendment directly followed a successful environmental action under the *EPBC*.[[15]](#footnote-15) There are also more subtle ways that the Australian Government has sought to adversely affect the capacity for environmental human rights defenders to challenge the status quo, including funding cuts to the Environmental Defenders Offices (the only public interest environmental lawyers in Australia), and attempts to undermine the operation of environmental charities and not-for-profits (including increasing administration costs and attempts to limit the amount of advocacy or activism in order to maintain direct-gift-recipient status). Public interest litigants and NGOs have always played an active role in healthy public discourse, demanding accountability from decisionmakers and transparency of their reasoning and interests, and these back-door attempts to diminish their impact are not conducive to environmental democracy. As observed by Orellana, ‘civil society organizations have consistently voiced the need to preserve the earth’s capability to sustain life, restore degraded ecosystems, and foster a balanced interaction between humans and nature’.[[16]](#footnote-16) Therefore, efforts to enumerate a right to a safe, clean, healthy and sustainable environment must encompass substantiveand procedural rights, that is, provide for the content of the right and make provision for access to justice and enforcement.

2.1 At the present time, we observe that the extent of protection of the rights of environment human rights defenders relies largely on the separation of powers between the legislature, executive and judicature. In the last week a Queensland court upheld the rights of civil liberties protesters to march despite claims that local residents would ‘fall victim to green extremists’.[[17]](#footnote-17) In 2017, the High Court of Australia handed down a landmark decision in *Brown v Tasmania* (2017) 261 CLR 328 concerning the validity of Tasmania’s anti-protest laws, under which former Australian Greens leader Bob Brown had been charged while protesting the logging of 49 hectares of the Lapoinya forest. The laws had been designed to prevent the disruption of mining and forestry projects. The Court ruled in favour of Mr Brown in a 6:1 majority decision, finding that while Parliament may legislate with respect to protesters who interfere with business operations, a number of provisions within the Tasmanian law ‘were not reasonably appropriate and adapted, or proportionate’[[18]](#footnote-18) towards that aim while being compatible with ‘the system of representative and responsible government for which the Constitution provides.’[[19]](#footnote-19) The decision prompted State and Territory governments across Australia to review their anti-protest laws. In the absence of express rights to ‘protest’ and ‘free speech’ in Australia, *Brown v Tasmania*[[20]](#footnote-20) underscores the importance of the judiciary in determining the legality of laws that seek to burden the ‘implied freedom of political communication’.[[21]](#footnote-21) However, we see its true significance as the latest in a long line of Australian cases where environmental protection has rested in the hands of communities who understand the connection between people, animals and our shared environment.

2.2 The fact that the human right to a safe, clean, healthy and sustainable environment is not established in the Australian Constitution means that the legislation can be easily and swiftly amended by parliament, as was nearly seen. The right is also not even made expressly in any federal legislation. Therefore, there are very few safeguards that ensure this right will be upheld and not arbitrarily modified when it becomes politically, or commercially, inconvenient.

**What are ways in which high-income States should assist low-income States in respecting, protecting, and fulfilling the human right to a safe, clean, healthy and sustainable environment?**

The Principle of Common but Differentiated Responsibility[[22]](#footnote-22)

3.0 This concept is two-fold: it involves accepting the collective responsibility all states have towards protecting the environment and the different contributions states have towards environmental degradation, as well as the different capacities states have to prevent and resolve environmental harm.[[23]](#footnote-23) This is a significant imperative for high-income states to assist low-income states in fulfilling their human rights obligations. Particularly in relation to the issue of climate change, this principle also recognises the necessity for states to accept their historical emissions; though high income states contribute the highest amount of greenhouse gas emissions at present,[[24]](#footnote-24) the earlier industrial revolution of the developed world significantly contributed to putting the world in the difficult position it is today.[[25]](#footnote-25)

Capacity building

3.1 Capacity building ensures the long-term improvement of a state, as it creates an approach to resolving health and environmental issues that are directly adapted to the country. It is especially important to facilitate this process in low-income countries as they are among the highest polluters in the world.[[26]](#footnote-26) This can be compared to the often-used alternative of mere ‘financial resources’, as specified in article 9 of the Paris Climate Accord, which states that high-income countries are to contribute financially to low-income states.[[27]](#footnote-27)

3.2 This method of assistance has proven effective in many sectors of facilitating development in low-income countries, such as in combating the HIV epidemic.[[28]](#footnote-28) This includes working specifically with local people who work in environmental and health care institutions to ensure that development and human rights goals are met. Notably, capacity building also encourages low-income states to respect the right to a healthy environment as they take ownership of their efforts to improve the health of their environment and their people.[[29]](#footnote-29)

3.3 It is also essential that capacity building initiatives are implemented uniformly across all three arms of government: the legislature, the executive and the judiciary. This represents the ‘dialogue model’ advocated by the Australian National Human Rights Consultation Committee.[[30]](#footnote-30)

Education

3.4 This is arguably the most fundamental means of assistance, as it empowers and inspires communities to be engaged in upholding this human right. This is inevitably facilitated by capacity building as well, however implementing education programs prior to establishing capacity building programs may facilitate a more welcoming approach at the onset of these programs.

3.5 As part of a network of young people who recognise the interconnection between human health, peace and security; environmental quality and the return of ecosystem services; and the role that all forms of life of Earth play in ensuring our survival as a species, Jane Goodall’s Roots & Shoots, Macquarie University underscores the pivotal role that education plays towards fulfilling the vision of a future worth safeguarding. We view access to education as a means to interpret scientific data and inform evidence-based policies as essential towards inter and intra generational equity and are hopeful that the Report by the Special Rapporteur will advance humankind towards access to environmental justice and the fulfilment of our human rights.

1. David R Boyd, *The Environmental Rights Revolution* (UBC Press, 2011); Stockholm Declaration 1972. [↑](#footnote-ref-1)
2. Marcos Orellana, ‘The Case for a Right to a Healthy Environment’ *Human Rights Watch* (Commentary, 1 March 2018) <<https://www.hrw.org/news/2018/03/01/case-right-healthy-environment>>. [↑](#footnote-ref-2)
3. *Environment Protection and Biodiversity Conservation Act 1999* (Cth) pt 1(3) *(‘EPBC’)*. [↑](#footnote-ref-3)
4. Ibid pt 1(3)(a). [↑](#footnote-ref-4)
5. Andrew Macintosh, Heather Roberts and Amy Constable, ‘An Empirical Evaluation of Environmental Suits under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)’ (2017) *Sydney Law Review* 39, 85; *EPBC* s 475(6)(b), 487(2)(b). [↑](#footnote-ref-5)
6. *EPBC* pt 2(11). [↑](#footnote-ref-6)
7. Macintosh (above n 5) 102. [↑](#footnote-ref-7)
8. Susan Tridgell, ‘Evaluating the effectiveness of the Environment Protection and Biodiversity Conservation Act 1999 (Cth): 2008-12’ (2013) 30(3) *Environmental and Planning Law Journal* 245, 258. [↑](#footnote-ref-8)
9. The Australian Panel of Experts on Environmental Law, *Blueprint for the Next Generation of Australian Environmental Law* (Summary of Key Ideas, August 2017) 3 <[https://static1.squarespace.com/static/56401dfde4b090fd5510d622/t/59bb6fe3f43b55b154728d29/1505456149104/APEEL+Blueprint+for+environmental+laws.pdf](https://static1.squarespace.com/static/56401dfde4b090fd5510d622/t/59bb6fe3f43b55b154728d29/1505456149104/APEEL%2BBlueprint%2Bfor%2Benvironmental%2Blaws.pdf)>. [↑](#footnote-ref-9)
10. Meg Good, ‘Should Australia recognise the human right to a healthy environment’, *The Conversation* (Online, 22 February 2018) <<https://theconversation.com/should-australia-recognise-the-human-right-to-a-healthy-environment-92104>>. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. *Nationwide News Pty Ltd v Wills* (1992) 177 CLR 1. [↑](#footnote-ref-13)
14. *Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015* (Cth). [↑](#footnote-ref-14)
15. Macintosh (n 5) 87–88; GHD, ‘Carmichael Coal Mine and Rail Project: Supplementary Environment Impact Statement’ (Report, Adani Mining, 19 November 2013) 1–2; Federal Court of Australia, ‘Statement re NSD33/2015 *Mackay Conservation Group v Minister for Environment’* (Media Release, 20 August 2015). [↑](#footnote-ref-15)
16. Orellana (n 2). [↑](#footnote-ref-16)
17. Ben Smee, ‘Brisbane city council loses court bid to prevent protest march’, *The Guardian* (online, 27 August 2019) <<https://www.theguardian.com/australia-news/2019/aug/27/brisbane-city-council-loses-court-bid-to-prevent-protest-march>>. [↑](#footnote-ref-17)
18. *Brown v Tasmania* (2017) 261 CLR 328, [104]. [↑](#footnote-ref-18)
19. Ibid [88]. [↑](#footnote-ref-19)
20. (2017) 261 CLR 328. [↑](#footnote-ref-20)
21. Ibid [61]. [↑](#footnote-ref-21)
22. Rio Declaration 1992; Climate Change Convention 1992. [↑](#footnote-ref-22)
23. Philippe Sands et al, *Principles of International Environmental Law* (Cambridge University Press, 3rd ed, 2012) 233. [↑](#footnote-ref-23)
24. ‘Developing Countries Are Responsible for 63 Percent of Current Carbon Emissions’, *Centre for Global Development* (Web Page, 18 August 2015) <<https://www.cgdev.org/media/developing-countries-are-responsible-63-percent-current-carbon-emissions>>. [↑](#footnote-ref-24)
25. Hannah Ritchie and Max Roser, ‘CO2 and Greenhouse Gas Emissions’, *Our World in Data* (Web Page, May 2017) <<https://ourworldindata.org/co2-and-other-greenhouse-gas-emissions>>. [↑](#footnote-ref-25)
26. Ibid. [↑](#footnote-ref-26)
27. Paris Climate Accord 2016, article 9. [↑](#footnote-ref-27)
28. Joshua Bardfield et al, ‘A Quality Improvement Approach to Capacity Building in Low- and Middle-Income Countries’ (2015) *AIDS* 179. [↑](#footnote-ref-28)
29. Organisation for Economic Co-operation and Development, ‘Enhancing Capacity: A basis for greening development’ (Report Summary) <<https://www.oecd.org/dac/environment-development/49389301.pdf>>. [↑](#footnote-ref-29)
30. The Hon Catherine Branson QC, ‘The National Human Rights Consultation: Outcomes’ (Speech, Centre for Comparative and Constitutional Law University of Melbourne, 21 October 2009) [<https://www.humanrights.gov.au/about/news/speeches/president-speech-national-human-rights-consultation-outcomes](https://www.humanrights.gov.au/about/news/speeches/president-speech-national-human-rights-consultation-outcomes)>. [↑](#footnote-ref-30)