

## **Joint Stakeholder Submission to the Universal Periodic Review of Australia\***

37<sup>th</sup> Session of the Universal Periodic Review Working Group  
**8 July 2020**

### **About Environmental Justice Australia**

Established in 1991, Environmental Justice Australia is the environment's legal team. We use the law to protect our environment, and we work to change our laws to make sure they protect the right of all Australians to clean air, clean water and healthy ecosystems.

Contact: Ariane Wilkinson, Senior Lawyer  
60 Leicester Street, Carlton VIC 3053 Australia  
[ariane.wilkinson@envirojustice.org.au](mailto:ariane.wilkinson@envirojustice.org.au)  
[www.envirojustice.org.au](http://www.envirojustice.org.au)



### **About Environmental Defenders Office**

Environmental Defenders Office (EDO) was established in 1985 and is the largest environmental legal centre in the Australia-Pacific, dedicated to protecting our climate, communities and shared environment by providing access to justice, running groundbreaking litigation and leading law reform advocacy. We are an accredited community legal service and a non-government, not-for-profit organisation that uses the law to protect and defend Australia's wildlife, people and places.

Contact: David Morris, CEO  
L5, 263 Clarence Street, Sydney NSW 2000 Australia  
[david.morris@edo.org.au](mailto:david.morris@edo.org.au)  
[www.edo.org.au](http://www.edo.org.au)



### **About Earthjustice**

Founded in 1971, Earthjustice fights for the right of all to a healthy environment. As the largest nonprofit environmental law organization in the United States, Earthjustice uses the power of the law and the strength of partnership to protect people's health, preserve magnificent places and wildlife, advance clean energy, and combat climate change. We partner with thousands of groups and individuals to take on the critical environmental issues of our time and bring about positive change.

Contact: Noni Austin, Staff Attorney  
50 California St, Suite 500, San Francisco CA 94111  
United States of America  
[naustin@earthjustice.org](mailto:naustin@earthjustice.org)  
[www.earthjustice.org](http://www.earthjustice.org)



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\* Submitting organizations are Environmental Justice Australia, Environmental Defenders Office, and Earthjustice.

## **A. Introduction**

1. This submission is made on behalf of Environmental Justice Australia, Environmental Defenders Office, and Earthjustice in relation to Australia's failure to satisfy its international human rights obligations to take measures to prevent immediate and future human rights violations caused by climate change. Instead, Australia's actions are fueling the release of greenhouse gases which drive climate change and contribute to threats to human rights:
  - a. Australia's greenhouse gas emissions, excluding land use, land-use change and forestry emissions, rose every year from 2014-2018, with no significant decline projected to 2030, and Australia is not on track to meet its 2020 or 2030 emissions reductions targets under the United Nations Framework Convention on Climate Change ("UNFCCC");
  - b. Australia's proposed reliance on carryover credits to meet its 2020 and 2030 emissions reductions targets undermines global action on climate change because it artificially and substantially inflates Australia's total reported reductions and is contrary to the Paris Agreement's goal of increasingly ambitious reductions;
  - c. Australia's 2030 target is not ambitious and does not represent its fair share of global emissions reductions;
  - d. Australia is one of the world's largest exporters of coal and liquefied natural gas, and plans to continue expanding these exports;
  - e. Australia's economy remains carbon-intensive and the government actively promotes the production and use of fossil fuels, including through subsidies; and
  - f. Under current policies, Australia's per-capita emissions will remain among the highest globally until at least 2030.
2. In addition, Commonwealth and subnational governments have made concerted efforts to stifle public dissent and debate on climate policy, including by introducing legislation to inhibit the exercise of the fundamental freedoms of peaceful assembly, opinion, and expression, and by attacking the ability of non-government organisations to undertake advocacy on climate policies without fear of losing their charitable status as tax-deductible gift recipients.

## **B. Climate change threatens human rights in Australia and abroad**

3. United Nations human rights bodies have noted that "climate change directly and indirectly threatens the full and effective enjoyment of a range of human rights, including the rights to life, water and sanitation, food, health, housing, self-determination, culture and development."<sup>1</sup> In 2018, the Committee on Economic, Social and Cultural Rights observed that climate change is "already affect[ing]" human rights and "will do so at an increasing pace in the future."<sup>2</sup> In 2019, the Human Rights Committee noted that climate change constitutes one "of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life,"<sup>3</sup> and the Committee on the Rights of the Child stated that "the effects of climate change have an undeniable impact on children's rights, for example the rights to life, survival and development, non-

discrimination, health and an adequate standard of living.”<sup>4</sup>

4. Climate change is already affecting human rights in Australia, including the rights to life, health, and culture. In 2019 and 2020, massive bushfires in southeast Australia – which were exacerbated by climate change – burned at least 19.4 million hectares (48 million acres),<sup>5</sup> an area approximately the size of Senegal. These bushfires have directly resulted in at least 34 fatalities,<sup>6</sup> destroyed over 5,900 homes and public buildings, and killed an estimated 1.5 billion animals.<sup>7</sup> Since the fire season began in August 2019, many Australians have been breathing toxic air,<sup>8</sup> and a recent study published in the Medical Journal of Australia estimated that the smoke pollution contributed to over 400 deaths and over 3,000 hospitalisations for cardiorespiratory problems.<sup>9</sup> These widespread bushfires and resulting toxic air pollution contribute to violations of Australians’ rights to life, health, and housing.
5. Rising temperatures attributed to climate change are also increasing the “duration, frequency and intensity” of heatwaves in Australia.<sup>10</sup> Exposure to increased and more intense heatwaves also violates the right to life and health, as it can lead to heat-related illnesses such as heat stroke, aggravate pre-existing medical conditions, and increase mortality.<sup>11</sup> A heatwave in January 2014 killed 167 more people than expected during that time of year in the state of Victoria.<sup>12</sup> In December 2019, Australians experienced the hottest day on record, with an average maximum of 41.9°C (107.4°F).<sup>13</sup> Australia’s Department of Agriculture, Water and the Environment projects temperatures to “continue increasing with more extremely hot days and fewer extremely cool days.”<sup>14</sup>
6. Warmer temperatures are predicted to increase the risk of vector-borne diseases in Australia. Scientific studies have concluded that increases in temperature will likely increase the geographic and seasonal range of the transmission potential of the Ross River Virus in temperate southern Australia where most Australians live,<sup>15</sup> and enable the greater spread of dengue in inland Australia.<sup>16</sup>
7. Climate change is also contributing to rising sea temperatures and ocean acidification, which have driven an unprecedented three mass coral bleaching events on the Great Barrier Reef in just five years.<sup>17</sup> In 2016 and 2017, around half of the Reef’s shallow-water corals died as a result of bleaching.<sup>18</sup>
8. The impacts of climate change are threatening the spectrum of Indigenous Australians’ human rights, including their rights to life, health, housing, and culture. Indigenous peoples “are especially vulnerable to climate change because of their close connection to nature and dependence on wildlife, plants and healthy ecosystems for food, medicine and cultural needs.”<sup>19</sup> In Australia, many of the ecosystems on which Indigenous peoples depend are particularly prone to the effects of climate change, including floods, sea level rise, droughts, heatwaves, and bushfires.<sup>20</sup> For example, in the Torres Strait Islands off the northern coast of Australia – home to the Indigenous Torres Strait Islander people – sea levels are rising twice as fast as the global average.<sup>21</sup> In January 2018, seawater swept over the seawall around Yam Island in the Torres Strait, destroying residents’ homes and belongings.<sup>22</sup> In 2019, eight individuals from four different Torres Strait islands filed a complaint with the United Nations Human Rights Committee alleging violations of their rights to culture, family, and life, stemming from Australia’s failure to set adequate greenhouse gas targets, mitigate emissions, and fund coastal defense and resilience measures.<sup>23</sup> One of the complainants, Kabay Tamu, said that the Islanders are “seeing the effects of climate change ... daily, with rising seas, tidal surges, coastal erosion and inundation of our communities.”<sup>24</sup>

9. Furthermore, the impacts of climate change “exacerbate[] existing health inequities”<sup>25</sup> suffered by Indigenous peoples in Australia related to the ongoing consequences of colonisation.<sup>26</sup> The impacts are also intensified by the ongoing dispossession of land: massive fossil fuel projects are developed on Indigenous homelands, despite Australian law failing to protect the right to free, prior, and informed consent in relation to extractive industries on Indigenous lands.<sup>27</sup>
10. Beyond Australia’s borders, people face similar threats to their human rights. For example, people in small island nations face the loss of their land, homes, and culture to rising sea levels,<sup>28</sup> communities in the United States and elsewhere face increased risk of devastating bushfires,<sup>29</sup> and vector-borne diseases will become more prevalent throughout the world.<sup>30</sup>
11. The impacts of climate change on human rights in Australia and around the world will increase as temperatures continue to rise.<sup>31</sup>

### **C. The human rights obligations of states to address climate change**

12. There is growing recognition that states are responsible under international human rights law to reduce their contributions to climate change to protect human rights.
13. In 2019, five United Nations human rights treaty bodies recognised that states have “obligations, including extra-territorial obligations, to respect, protect and fulfil all human rights of all peoples.”<sup>32</sup> In light of those obligations, “failure to take measures to prevent foreseeable human rights harm caused by climate change, or to regulate activities contributing to such harm,” could constitute a human rights violation.<sup>33</sup> Accordingly, states must “adopt and implement policies aimed at reducing emissions, which reflect the highest possible ambition,” “ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development,” “effectively contribute to phasing out fossil fuels [and] promoting renewable energy,” and “discontinue financial incentives or investments in activities and infrastructure which are not consistent with low greenhouse gas emissions pathways.”<sup>34</sup>
14. Similarly, in 2018, the Committee on Economic, Social and Cultural Rights warned that “a failure to prevent foreseeable harm to human rights caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so,” could constitute a human rights violation.<sup>35</sup> States should revise their emissions reductions targets under the Paris Agreement to “better reflect the highest possible ambition,” refrain from adopting “measures that could worsen climate change,” and adopt “policies that can channel modes of production and consumption towards a more environmentally sustainable pathway.”<sup>36</sup>
15. In his 2019 annual report to the United Nations General Assembly, the United Nations Special Rapporteur on Human Rights and Environment, David Boyd, noted that:

The Paris Agreement refined the concept of a safe climate as “well below” a 2°C increase in the average global temperature, and ideally limited to a 1.5°C increase.

...

States must not violate the right to a safe climate through their own actions; must protect that right from being violated by third parties, especially businesses; and must establish, implement

and enforce laws, policies and programmes to fulfil that right.

...

States must ... dedicate the maximum available financial and material resources to shift to renewable energy...

...

To comply with their human rights obligations, developed States ... must reduce their emissions at a rate consistent with their international commitments.... States must submit ambitious nationally determined contributions by 2020.... All States should prepare rights-based deep decarbonization plans intended to achieve net zero carbon emissions by 2050.... Four main categories of actions must be taken: addressing society's addiction to fossil fuels; accelerating other mitigation actions; protecting vulnerable people from climate impacts; and providing unprecedented levels of financial support to least developed countries and small island developing States.

...

To address society's addiction to fossil fuels, all States should:

- (a) Immediately terminate all fossil fuel subsidies...;
- (b) Stop building new coal-fired power plants unless equipped with carbon capture and storage technology, and require existing coal-fired power plants to be retrofitted with carbon capture and storage technology or be closed by 2030 in high-income nations....

...

Developed States should demonstrate leadership [in addressing society's addiction to fossil fuels] by:

- (a) Prohibiting further exploration for additional fossil fuels, since not all existing reserves can be burned while still meeting the commitments of the Paris Agreement;
- ...
- (c) Rejecting any other expansion of fossil fuel infrastructure;
- (d) Prohibiting the expansion of the most polluting and environmentally destructive types of fossil fuel extraction, including oil and gas produced from hydraulic fracturing (fracking)....<sup>37</sup>

**D. Australia is failing to prevent foreseeable human rights harm caused by climate change because it is not reducing its contributions to climate change at the highest possible ambition**

16. Despite the devastating and intensifying impacts of climate change on the enjoyment of human rights, Australia's contributions to climate change continue to increase.
17. Concerns about Australia's inaction on climate change were raised in its last Universal Periodic Review in 2015. Maldives "inquired about efforts made to address climate change and reduce greenhouse gas emissions to safe levels" and Fiji "noted with concern that the commitment of Australia to reducing greenhouse gas emissions would not be sufficient."<sup>38</sup> Fiji recommended that Australia "[r]eview its Intended Nationally Determined Contribution to be in line with a fair approach taken by other industrialized countries, so as to be consistent with the full enjoyment of human rights by its people and those in neighboring countries."<sup>39</sup> However, Australia dismissed Fiji's recommendation.<sup>40</sup>
18. United Nations human rights treaty bodies have also raised concerns about Australia's failure to reduce its contributions to climate change:

- a. In July 2017, the Committee on Economic, Social and Cultural Rights expressed concern about Australia’s “continued increase of carbon dioxide emissions ... which run the risk of worsening in the coming years, despite [Australia’s] commitments as a developed country under the United Nations Framework Convention on Climate Change and the Kyoto Protocol, as well as its nationally determined contribution under the Paris Agreement.”<sup>41</sup> The Committee recommended that Australia “take immediate measures aimed at reversing the current trend of increasing absolute emissions of greenhouse gases, ... pursue alternative and renewable energy production ... [and] review its position in support of coal mines and coal exports.”<sup>42</sup>
  - b. In July 2018, the Committee on the Elimination of Discrimination Against Women expressed concern about Australia’s “greenhouse gas emissions of 1.4 per cent of global emissions,” “the high level of those emissions in relation to the State party’s population of 0.3 per cent of the world population,” and Australia’s “continued dependency on coal for domestic use and exports.”<sup>43</sup> The Committee recommended that Australia “further reduce greenhouse gas emissions, notably those resulting from coal consumption and exports.”<sup>44</sup>
  - c. In November 2019, the Committee on the Rights of the Child expressed concern that Australia had “made insufficient progress on the goals and targets set out in the Paris Agreement and about its continuing investment in extractive industries” and urged Australia to “promptly take measures to reduce its emissions of greenhouse gases by establishing targets and deadlines to phase out the domestic use and export of coal and to accelerate the transition to renewable energy.”<sup>45</sup> The Committee also expressed “concern and disappointment that a protest led by children calling on government to protect the environment received a strongly worded negative response from those in authority, which demonstrates disrespect for the right of children to express their views on this important issue.”<sup>46</sup>
19. Australia has not acted on these recommendations. Instead, it is continuing to fuel climate change, intensifying the current and future impacts on human rights in Australia and around the world.
- a. **Australia’s greenhouse gas emissions, excluding land use, land-use change and forestry emissions, rose every year from 2014 to 2018, with no significant decline projected to 2030, and Australia is not on track to meet its 2020 or 2030 emissions reductions targets under the United Nations Framework Convention on Climate Change.**
    - i. Instead of reducing its greenhouse gas emissions, Australia’s emissions, excluding land use, land-use change and forestry (“LULUCF”), rose every year between 2014 to 2018, with 2019 emissions (excluding LULUCF) only 1.17% lower than 2018 emissions (excluding LULUCF).<sup>47</sup> The government projects emissions in 2030 to be only 4% lower than in 2019.<sup>48</sup> As at 2019, emissions from oil and gas had risen by 621% since 2005, and road transport, industry, and mining emissions had risen by 122%, 60%, and 41% respectively since 2005.<sup>49</sup>
    - ii. In addition, the Australian government’s own data projects emissions in 2020 to be only 0.3% less than in 2000, well below its target of 5% below 2000 levels.<sup>50</sup> The UN Environment Programme (“UNEP”) has singled out Australia’s lack of progress in reducing emissions, noting that Australia “will not achieve its 2020 pledge” unless it

“[carries] forward its overachievement from the Kyoto period”<sup>51</sup> – an accounting process that creates an artificially inflated picture of actual emissions reductions.

- iii. Similarly, the government’s data indicates that it will not meet its 2030 target under the Paris Agreement: emissions in 2030 are projected to be only 16% below 2005 levels, far short of Australia’s target of 26-28% below 2005 levels.<sup>52</sup> Again, Australia proposes to rely on carryover credits to meet its lower 2030 target, and even using this controversial accounting method it will not be able to meet its higher 2030 target.<sup>53</sup>
- iv. Many independent expert institutions have confirmed Australia’s insufficient progress in meeting its emissions reductions targets and its lack of adequate policies to enable it to meet its targets. In 2019, both UNEP and the Organisation for Economic Co-Operation and Development (“OECD”) said Australia needs to intensify its efforts if it is to meet its 2030 target.<sup>54</sup> UNEP noted that Australia has “no major policy tool to encourage emissions reductions from the electricity sector” and that Australian government estimates indicate that the additional money Australia provided to its “Climate Solutions Fund” in 2019 will only result in 100 MtCO<sub>2</sub>e of emissions reductions by 2030<sup>55</sup> – which is well below the 395-462 MtCO<sub>2</sub>e of reductions that the government says is required to meet its Paris target.<sup>56</sup>
- v. Non-governmental expert organisations have reached similar conclusions. For example, the 2020 Climate Change Performance Index (“CCPI”) – an independent monitoring tool for tracking the climate performance of 57 countries and the EU published annually since 2005 by Germanwatch, the NewClimate Institute and Climate Action Network – rated Australia’s climate policies last out of the 57 countries and the EU that are together responsible for more than 90% of global GHG emissions, giving Australia a score of zero, which no other country received.<sup>57</sup> The CCPI noted that the Australian government has “continued to worsen performance at both national and international levels.”<sup>58</sup> Both Climate Analytics and Climate Action Tracker (“CAT”) conclude that Australia is not on track to meet its 2030 target.<sup>59</sup> According to CAT, “While the federal government continues to repeatedly state that Australia is on track to meet its 2030 target ‘in a canter’, [CAT] is not aware of any scientific basis, published by any analyst or government agency, that would support this.”<sup>60</sup> CAT – together with scientists and other experts – has also criticised Australia’s “Climate Solutions Package” as failing to identify how Australia will meet its 2030 target and inadequate to reduce emissions across the energy sector.<sup>61</sup>

**b. Australia’s proposed reliance on carryover credits to meet its 2020 and 2030 emissions reductions targets undermines global action on climate change because it artificially and substantially inflates Australia’s total reductions and is contrary to the Paris Agreement’s goal of increasingly ambitious reductions.**

- i. Australia is avoiding overall emissions reductions by proposing to carry over credits from the Kyoto Protocol to meet its 2020 and 2030 targets – the only country that is intending to do so.<sup>62</sup> Australia’s “claim of overachievement ... does not represent any real emission reductions but is technical only, resulting from anomalies under

Kyoto accounting rules and deliberate accounting choices Australia made.”<sup>63</sup> For example, Australia set unambitious targets under the Kyoto Protocol (8% *above* 1990 emissions for the first Kyoto commitment period of 2008-2012, and 0.5% below 1990 levels for the second Kyoto commitment period of 2013-2020), and used its historically high emissions in 1990 (resulting from land clearing) as the base against which emissions reductions were assessed.<sup>64</sup> It would be “perverse, to say the least, to reward Australia in 2030 for large scale deforestation that took place forty years earlier in 1990.”<sup>65</sup> As Professor Will Steffen from the Australian National University has said, “fake emissions reductions aren’t emissions reductions at all.”<sup>66</sup>

- ii. Australia’s stance undermines global action on climate change and is contrary to the Paris Agreement’s goal of increasingly ambitious emissions reductions.<sup>67</sup> In March 2020, nine pre-eminent Australian law professors wrote to the Australian Prime Minister expressing their view that the use of carryover credits from the Kyoto Protocol to meet targets under the Paris Agreement is “legally baseless” at international law.<sup>68</sup> Christina Figueres, former executive secretary of the UNFCCC, has also criticised Australia’s stance, saying, “Kyoto ‘carryover’ can’t be used to make up the gap [between Australia’s projected emissions and its 2030 target]. The Paris Agreement doesn’t allow it. To suggest otherwise is at best an attempt to paper over Australia’s lagging efforts; and at worst, a legally baseless ploy that ... holds back development of the next phase of carbon markets.”<sup>69</sup> In July 2019, Pacific Island leaders requested that Australia not carry over any credits,<sup>70</sup> and at the December 2019 UNFCCC Conference of the Parties, about 100 countries pushed for a ban on the use of carryover credits, with 32 countries signing principles to this effect.<sup>71</sup> Australia worked to block the ban.<sup>72</sup> The Alliance of Small Island States was “appalled and dismayed” by the failure to agree on the ban.<sup>73</sup>

**c. Australia’s 2030 target is not ambitious and does not represent the country’s fair share of global emissions reductions.**

- i. Even if Australia were to meet its 2030 target, scientists and other experts – including members of an independent advisory body to the Australian government – have criticised that target as unambitious and failing to represent Australia’s fair share of responsibility for limiting temperature rise to 2°C.<sup>74</sup> In 2015, Australia’s Climate Change Authority (an independent advisory body to the government) recommended that Australia’s emissions reduction target for 2030 be 45-65% below 2005 levels, with the 65% reduction representing Australia’s fair share to limiting warming to no more than 1.5°C.<sup>75</sup> Similarly, both Climate Action Tracker and Paris Equity Check, which rate countries’ targets against multiple effort-sharing approaches,<sup>76</sup> conclude that Australia’s 2030 target does not represent its fair share of global emissions reductions to limit warming to 2°C, let alone 1.5°C.<sup>77</sup> Climate Action Tracker concludes that if all governments were to propose targets at a similar level of effort to Australia relative to their national circumstances, this would lead to warming of up to 3°C.<sup>78</sup>

**d. Australia is one of the world’s largest exporters of coal and liquefied natural gas, and plans to continue expanding these exports.**



- i. The burning of fossil fuels is the primary driver of climate change, and Australia is a major contributor to the problem: it is one of the world's two largest exporters of coal<sup>79</sup> and the world's largest exporter of liquefied natural gas (LNG).<sup>80</sup> In fact, Australia exports 1.1 billion metric tons of CO<sub>2</sub>e each year; only Russia and Saudi Arabia export more CO<sub>2</sub>e.<sup>81</sup> When Australia's domestic and exported fossil fuel emissions are combined, Australia is responsible for 5% of the world's fossil fuel emissions – with 0.3% of the world's population.<sup>82</sup>
  - ii. Furthermore, Australia is determined to expand its fossil fuel production and export by opening massive new coal and gas basins across the country: for example, in February 2020, the federal Minister for Resources, Water, and Northern Australia, Keith Pitt, called for Australia to increase its coal and gas exports.<sup>83</sup> The Australian federal and Queensland state governments are committed to opening the as-yet-undeveloped Galilee Basin – one of the world's largest untapped coal reserves – to at least six coal mines, and possibly more.<sup>84</sup> At full operational capacity, the average annual emissions attributable to just one of these mines, the Carmichael Coal Mine and Rail Project, would be greater than the average annual emissions of a number of countries, including Sri Lanka, Malaysia, and Austria.<sup>85</sup>
  - iii. The Australian government also supports the expansion of gas production, including fracking, and exports.<sup>86</sup>
  - iv. Australia's proposed new fossil fuel sources would contribute emissions for decades to come and are contrary to clear evidence that fossil fuels must remain unburned to avert the most serious consequences of climate change.<sup>87</sup> Climate Analytics concluded in 2019 that "if current government and industry projections for fossil fuel exports are realised, Australia could be responsible (including both domestic and exported emissions) for about 13% (between 11.9% - 17.4%) of Paris Agreement compatible global CO<sub>2</sub> emissions in 2030."<sup>88</sup>
- e. Australia's economy remains carbon-intensive and the government actively promotes the production and use of fossil fuels, including through subsidies.**
- i. Despite being a well-resourced country with capacity to transition to a decarbonised economy, the Australian economy is carbon intensive and the government is actively promoting the use of fossil fuels. As the OECD said in 2019, Australia has "one of the most resource- and carbon-intensive OECD economies."<sup>89</sup> Australia generates about 80% of its domestic energy from fossil fuels,<sup>90</sup> with no coherent policy to decarbonise the economy.<sup>91</sup> The government is instead committed to extending the life of aging coal plants and, in early February 2020, announced it was spending AUD\$4 million of taxpayer money to undertake a feasibility study into a new coal plant.<sup>92</sup> This is contrary to the IPCC's findings that coal use in electricity generation must fall by 80% below 2010 levels by 2030 with coal plants phased out by mid-century;<sup>93</sup> Climate Analytics' findings that coal plants must be phased out in OECD countries (of which Australia is one) by 2031 to ensure compatibility with a 1.5°C pathway;<sup>94</sup> the actions of many other countries, including France, Spain, Britain, and Germany, all of whom have pledged to phase out coal power;<sup>95</sup> and the call by UN Secretary-General António Guterres that no new coal plants be built after

2020.<sup>96</sup>

- ii. Australia continues to heavily subsidise the fossil fuel industry. According to Climate Transparency's 2019 Brown to Green report, Australia's fossil fuel subsidies were US\$7.5 billion in 2017,<sup>97</sup> among the highest per unit of gross domestic product in the G20.<sup>98</sup> The Institute for Energy Economics and Financial Analysis estimates that the company in control of the Carmichael Mine and Rail Project described in paragraph 19.d.ii above is set to receive over AU\$4.4 billion (US\$2.6 billion) from the Australian government in tax exemptions, deferrals, and capital subsidies.<sup>99</sup>

**f. Under current policies, Australia's per-capita emissions will remain among the highest globally until at least 2030.**

- i. Australia's per-capita emissions are among the world's highest and more than double the average for G20 member countries<sup>100</sup> (which are the 19 countries and the European Union that together represent 80% of the world's economic output<sup>101</sup>). Unfortunately, Australia is not acting to change this: UNEP considers that, under current policies, Australia will be the second-highest per-capita emitter in the G20 by 2030, behind Saudi Arabia.<sup>102</sup>
- ii. In addition, Australia's claim that its 2030 target represents a halving of per-capita emissions<sup>103</sup> misrepresents the adequacy of reductions because this claim relies on the historically high emissions in 1990 resulting from large-scale deforestation (see discussion in paragraph 19.b.i above), as well as rapid population growth that has depressed per-capita emissions without reducing overall emissions.<sup>104</sup> In any event, as Dr. Hugh Saddler, Honorary Associate Professor at Australian National University specialising in energy and environmental policy, has said, "The atmosphere doesn't care how many people are contributing to emissions; it's the total quantity of emissions that matter."<sup>105</sup>

20. In addition, federal and subnational governments are stifling public dissent through the introduction of anti-protest laws and attacks on the ability of non-government organisations to advocate on climate policies.

- a. There have been consistent attacks in Australia on the charitable and tax-deductible gift recipient ("DGR") tax law statuses of non-government organisations seeking to undertake political advocacy relevant to their area of public interest concern, including environmental advocacy. The most recent of these attacks was in 2017 with the release of the Federal Treasury's Tax DGR Reform Discussion Paper (June 2017) and the subsequent *Electoral Legislation Amendment Bill 2017* and the *Foreign Influence Transparency Scheme Bill 2017*.<sup>106</sup> The United Nations Special Rapporteur on the Situation of Human Rights Defenders, Michel Forst, has expressed concern about attacks on political advocacy in Australia:

Organizations that continue receiving decreased governmental funds have often to abide by the so-called "gagging" clauses in their funding agreements, instructing them against "lobbying" the Governments or to "engage in public campaigns." The Government has increasingly stressed a distinction between "frontline services" and

“advocacy” work of peak bodies, with the latter function not meriting official funds. To me, such a distinction is rather paradoxical because it is impossible for those organizations to provide direct services to vulnerable populations, without advocating for their rights in that process. And such advocacy should be seen as important feedback for the Government to consider in its formulation of policy approaches to addressing systemic issues.<sup>107</sup>

- b. Special Rapporteur Forst also recognised that governmental efforts to limit the advocacy undertaken by environmental organisations can “be closely linked to government lobbying by the fossil fuel industry,” and, in addition to threats to remove DGR status, has led to the government cutting funding for environmental organisations and making “efforts to vilify advocacy by environmental organisations.”<sup>108</sup> The Special Rapporteur called on politicians and government officials to “refrain from attempts to vilify environmentalists,” noting that such attacks “de-legitimize valid environmental concerns in policy debate and protect business interests linked to environmental harm” and are “not in line with the responsibility of the State to respect the rights of human rights defenders and support their work.”<sup>109</sup>
- c. Over the past decade, various state governments have also restricted and attacked the right of freedom of peaceful assembly by seeking to introduce new criminal law provisions with associated high penalties to prevent public demonstration activities.<sup>110</sup> These attacks have often related to peaceful assemblies seeking to raise awareness around inadequate environmental protections. In December 2019, four United Nations Special Rapporteurs raised concerns about legislation passed in the state of Queensland that unduly restricts the rights to freedom of peaceful assembly, opinion, and expression by criminalising legitimate and lawful protest.<sup>111</sup> Special rapporteurs had also raised concerns in 2014 and 2016 in relation to similar legislation in the states of Tasmania and Western Australia.<sup>112</sup> Following his mission to Australia in 2016, Special Rapporteur Forst noted that

Freedom of peaceful assembly is an essential part of democratic societies. Demonstrations and protests help raise awareness about human rights and encourage dialogue on social concerns and environmental, labour or economic issues. ... Despite this, it is alarming to observe the increasing trend by State governments to constrain the exercise of this fundamental freedom through what essentially is anti-protest legislation. Jointly with other fellow UN experts, I have conveyed repeated concerns to the Australian Government that such laws would contravene Australia’s international obligations under international human rights law, including the rights to freedom of expression as well as peaceful assembly.<sup>113</sup>

- d. These attacks are further heightened by deeply-concerning rhetoric being perpetuated by federal and state-level politicians, as well as influential Australian figures, who have made public statements that stigmatise and vilify people engaging in peaceful protest, threaten removal of social security payments, and joke about doing serious harm to protesters.<sup>114</sup>
21. Finally, Australia is an important actor in the Pacific region, where small island states are suffering the impacts of sea-level rise and repeated extreme weather events caused by climate change. The governments of small island states alone cannot safeguard the human rights of their people from the impacts of climate change. Consistent with its international obligation not to cause transboundary harm, Australia must take strong climate action that is consistent with protecting

human rights in other countries, including small island states.

## **E. Conclusion and recommendations**

22. For the reasons in paragraphs 19-21 above, Australia is failing to fulfil its human rights obligations to prevent foreseeable harm to human rights caused by climate change. It is failing to adopt and implement ambitious policies to reduce emissions, contribute to the phase out of fossil fuels, ensure that investments are consistent with a low carbon future, and discontinue financial incentives for climate-polluting activities. Instead, its actions are worsening climate change and, accordingly, intensifying current and future harm to human rights in Australia and around the world.
23. We urge members of the Human Rights Council to recommend that Australia fulfil its human rights obligations by implementing measures to reduce its greenhouse gas emissions to reflect the highest possible ambition and use the maximum available resources to do so, to ensure consistency with the full enjoyment of human rights by its people and those around the world. Specifically, members of the Council should recommend that Australia:
  - a. Take immediate measures to reverse its current trend of increasing greenhouse gas emissions, setting enforceable deadlines to do so;
  - b. Intensify its efforts to meet its 2030 emissions reductions target under the Paris Agreement, including by refraining from the use of carryover credits from the Kyoto Protocol;
  - c. Strengthen its 2030 emission reduction target under the Paris Agreement so that the target reflects Australia's highest possible ambition, and mobilise the maximum available resources to achieve this target;
  - d. Promptly take steps and set enforceable deadlines to phase out its domestic reliance on fossil fuels and dedicate the maximum available financial and material resources to shift to renewable energy by, for example, making long-term commitments to procure energy from low-carbon renewable sources or reforming national regulation to facilitate the deployment of renewable energy;
  - e. Reconsider the development of new and expanded fossil fuel development projects, and promptly take steps and set enforceable deadlines to phase out its production and export of fossil fuels, including by refusing to approve new or expanded fossil fuel development projects;
  - f. Withhold financial or other support for fossil fuel development projects;
  - g. Discontinue subsidies, financial incentives, or investments that promote or enable activities and infrastructure that are inconsistent with low greenhouse gas emissions pathways;
  - h. Ensure that:
    - i. All those who are affected by climate change in Australia, especially those most vulnerable to its impacts – such as young people and Indigenous peoples – have

access to information on the causes and impacts of climate change, and are adequately consulted on the development of climate policies;

- ii. The right of children to express their views on climate change is duly recognised and respected; and
  - iii. The rights and interests of people outside Australia who are impacted by Australia's contributions to climate change, especially those of Australia's Pacific neighbours, are considered when Australia formulates and implements climate policies; and
- i. Protect the essential rights of non-government organisations to undertake policy advocacy on environmental issues and the freedom of the public to undertake peaceful protest.

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<sup>2</sup> Committee on Economic, Social and Cultural Rights (“CESCR”), *Climate change and the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2018/1 (Oct. 31, 2018), para. 4, <https://undocs.org/en/E/C.12/2018/1>.

<sup>3</sup> Human Rights Committee, *General Comment No. 36 – Article 6: right to life*, CCPR/C/GC/36 (Sep. 3, 2019), para. 62, <https://undocs.org/CCPR/C/GC/36>.

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<sup>8</sup> The Guardian, *Inside Australia's climate emergency: the air we breathe* (Feb. 20, 2020), <https://www.theguardian.com/environment/ng-interactive/2020/feb/20/the-toxic-air-we-breathe-the-health-crisis-from-australias-bushfires>.

<sup>9</sup> N. Arriagada *et al*, “Unprecedented smoke-related health burden associated with the 2019–20 bushfires in eastern Australia” *Medical Journal of Australia* (Mar. 12, 2020), <https://onlinelibrary.wiley.com/doi/full/10.5694/mja2.50545>.

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<sup>11</sup> Climate Council of Australia, *The silent killer: climate change and the health impacts of extreme heat* (2016), p. 5, <https://www.climatecouncil.org.au/uploads/b6cd8665c633434e8d02910eee3ca87c.pdf>.

<sup>12</sup> Australia Government, *Climate change impacts in Australia*, above n. 10.

<sup>13</sup> BBC News, *Australia heatwave: All-time temperature record broken again* (Dec. 19, 2019), <https://www.bbc.com/news/world-australia-50837025>.

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<sup>84</sup> Australian Government, Geoscience Australia, *Australian Energy Resource Assessment* (2nd ed., 2014), p. 149, [https://d28rz98at9flks.cloudfront.net/79675/79675\\_AERA.pdf](https://d28rz98at9flks.cloudfront.net/79675/79675_AERA.pdf). Those mines are the Alpha Coal Project, Carmichael Coal Mine and Rail Project, Galilee Coal Project (Northern Export Facility), Kevin's Corner Project, South Galilee Coal Project, and China Stone Coal Project.

<sup>85</sup> C. Amos and T. Swann, The Australia Institute, *Carmichael in context: quantifying Australia's threat to climate action* (Nov. 2015), pages i, 4, 5, <http://www.tai.org.au/sites/default/files/Amos%202015%20Carmichael%20in%20context%20-.pdf>.

<sup>86</sup> See, for example, A. Morton, The Guardian, *Revealed: northern Australia's fossil fuel plans push climate goals beyond reach* (Oct. 9, 2019), <https://www.theguardian.com/environment/2019/oct/09/northern-australia-fossil-fuel-climate-goals-paris-agreement>.

<sup>87</sup> C. McGlade and P. Ekins, "The geographical distribution of fossil fuels unused when limiting global warming to 2°C" *Nature* 517, 187-190 (2015).

<sup>88</sup> Climate Analytics, *Evaluating the significance of Australia's global fossil fuel carbon footprint*, above n. 82, p. 22 (citations omitted).

<sup>89</sup> OECD, *OECD Environmental Performance Reviews – Australia 2019*, above n. 54, p. 3. See also *id.*, pp. 26-27, 30.

<sup>90</sup> Australian Government Department of Industry, Science, Energy and Resources, *Electricity generation*, <https://www.energy.gov.au/data/electricity-generation> (“Fossil fuels contributed 81% of total electricity generation in 2018, including coal (60%), gas (19%) and oil (2%).”).

<sup>91</sup> See, for example, 2019 UNEP Emissions Gap Report, above n. 51, p. 14; OECD, *OECD Environmental Performance Reviews – Australia 2019*, above n. 54, pp. 19, 26, 27, 30. See also discussion in para. 14.a of this document.

<sup>92</sup> E. Young, SBS News, *Australia is one of the last developed countries actively considering new coal-fired power stations* (Feb. 13, 2020), <https://www.sbs.com.au/news/australia-is-one-of-the-last-developed-countries-actively-considering-new-coal-fired-power-stations>; J. Thornhill, Bloomberg Green, *Australia to fund study into new coal-fired power station* (Feb. 8, 2020), <https://www.bloomberg.com/news/articles/2020-02-08/australia-to-fund-study-into-new-coal-fired-power-station>.

<sup>93</sup> Intergovernmental Panel on Climate Change (“IPCC”), *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* (2018), p. 14, para. C.2.2 (p. 15), [https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15\\_Full\\_Report\\_High\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/06/SR15_Full_Report_High_Res.pdf) (“In modelled 1.5°C pathways with limited or no overshoot ... the use of coal shows a steep reduction in all pathways and would be reduced to close to 0% (0–2% interquartile range) of electricity [in 2050]....”). See also CarbonBrief, *In-depth Q&A: The IPCC’s special report on climate change at 1.5C* (Oct. 8, 2018), <https://www.carbonbrief.org/in-depth-qa-ipccs-special-report-on-climate-change-at-one-point-five-c>.

<sup>94</sup> Climate Analytics, *Global and regional coal phase-out requirements of the Paris Agreement: Insights from the IPCC Special Report on 1.5°C* (Sep. 2019), [https://climateanalytics.org/media/report\\_coal\\_phase\\_out\\_2019.pdf](https://climateanalytics.org/media/report_coal_phase_out_2019.pdf).

<sup>95</sup> E. Young, *Australia is one of the last developed countries actively considering new coal-fired power stations*, above n. 92.

<sup>96</sup> United Nations Secretary-General, *Secretary-General’s remarks at closing of Climate Action Summit [as delivered]* (Sep. 23, 2019), <https://www.un.org/sg/en/content/sg/statement/2019-09-23/secretary-generals-remarks-closing-of-climate-action-summit-delivered>.

<sup>97</sup> Climate Transparency, *Brown to Green*, above n. 74, p. 16.

<sup>98</sup> Climate Transparency, *Brown to Green – the G20 transition towards a net-zero emissions economy* (2019), p. 52, <https://www.climate-transparency.org/wp-content/uploads/2019/11/Brown-to-Green-Report-2019.pdf>.

<sup>99</sup> Tim Buckley, Institute for Energy Economics and Financial Analysis, *Australian taxpayers funding subsidies worth billions for Adani’s Carmichael thermal coal mine* (Aug. 29, 2019), <https://ieefa.org/ieefa-australia-australian-taxpayers-funding-subsidies-worth-billions-for-adanis-carmichael-thermal-coal-mine/>.

<sup>100</sup> Climate Transparency, *Brown to green*, above n. 74, p. 1; Climate Analytics, *Evaluating the significance of Australia’s global fossil fuel carbon footprint*, above n. 82, p. 2; Climate Analytics, *Climate change: Australia vs the world – Australia’s pollution profile & how to turn it around* (2018), p. 1, <https://climateanalytics.org/media/australiacimatefactsheets2018-australianeconomy-climateanalytics.pdf>.

<sup>101</sup> G20, *What is the G20?* <https://g20.org/en/about/Pages/whatis.aspx>.

<sup>102</sup> 2019 UNEP Emissions Gap Report, above n. 51, p. 11, Table 2.2.

<sup>103</sup> See, for example, Australian Government Department of Industry, Science, Energy and Resources, *Meeting our international commitments*, <https://www.energy.gov.au/A-fair-deal-on-energy/a-fair-deal-3>; Australian Government Department of Agriculture, Water and the Environment, *Australia’s 2030 climate change target*, <https://www.environment.gov.au/climate-change/publications/factsheet-australias-2030-climate-change-target>.

<sup>104</sup> ABC News Fact Check, *Are carbon emissions coming down in Australia?* (Dec. 20, 2018), <https://www.abc.net.au/news/2018-12-17/fact-check-are-emissions-coming-down-in-australia/10620194>. See also Climate Analytics, *Climate change: Australia vs the world*, above n. 100, p. 1 (“[A]chieving its Paris Agreement NDC target would still put Australia behind other major economies like the USA, China, Japan, and the EU [on a per-capita basis] - in contrast to claims by the Australian government that on a per person basis, the Australian target is one of the strongest.”).

<sup>105</sup> Honorary Associate Professor Dr. H. Saddler, quoted in ABC News Fact Check, *Are carbon emissions coming down in Australia?* above n. 104.

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<sup>106</sup> See Australian Government, *Tax deductible gift recipient reform opportunities* – discussion paper (Jun. 15, 2017), available to download at <https://treasury.gov.au/consultation/tax-deductible-gift-recipient-reform-opportunities>.

<sup>107</sup> Special Rapporteur M. Forst, *End of mission statement by Michel Forst, United Nations Special Rapporteur on the situation of human rights defenders* (Oct. 18, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=20689>.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> See, for example, OHCHR, *UN experts urge Tasmania to drop its anti-protest bill* (Sep. 9, 2014), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15002&LangID=E>; *UN human rights experts urge Western Australia's Parliament not to pass proposed anti-protest law* (Feb. 15, 2016), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17047&LangID=E>.

<sup>111</sup> Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders, OL AUS 8/2019 (Dec. 3, 2019), <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/5df088d34ba53f728440e587/1576044757116/Communication+to+Australia+03.12.2019.pdf>. The legislation of focus passed in the Queensland Parliament was the *Summary Offences and Other Legislation Amendment Act 2019* (Qld), which was introduced as a result of peaceful assemblies being undertaken with respect to climate change and the treatment of animals, as stated in the explanatory notes to the relevant Bill here: <https://www.legislation.qld.gov.au/view/pdf/bill.first.exp/bill-2019-056>.

<sup>112</sup> See above n. 110.

<sup>113</sup> Special Rapporteur Forst, *End of mission statement*, above n. 107.

<sup>114</sup> See, for example, A. Remeikis, *The Guardian*, *Peter Dutton accused of sounding 'like a dictator' after urging welfare cuts for protesters* (Oct. 3, 2019), <https://www.theguardian.com/australia-news/2019/oct/03/peter-dutton-accused-dictator-urging-welfare-cuts-protesters>; ABC, *Animal activists protest across the country, storm abattoirs, block Melbourne's Flinders St* (Apr. 7, 2019), <https://www.abc.net.au/news/2019-04-08/tougher-laws-for-animal-rights-activists-amid-plans-for-protest/10979204>; K. Kennerley, quoted in ABC Media Watch, *Speed bump jokers – Kerri-Anne Kennerley not the first to suggest climate protesters be run over* (Oct. 14, 2019), <https://www.abc.net.au/mediawatch/episodes/protesters/11601080>; N. McElroy and C. Flatley, *Oberon Review*, *QLD rail protest 'absolutely ridiculous'* (Oct. 9, 2019), <https://www.oberonreview.com.au/story/6428655/qld-rail-protest-absolutely-ridiculous/>.