



PO Box A147
Sydney South
NSW 1235
info@alhr.org.au
www.alhr.org.au

27 October 2023

By email: portfoliocommittee7@parliament.nsw.gov.au

Dear Portfolio Committee No. 7 - Planning and Environment,

Submission to the Inquiry into the Climate Change (Net Zero Future) Bill 2023

Australian Lawyers for Human Rights (“ALHR”) thanks the Portfolio Committee No. 7 - Planning and Environment for the opportunity to provide feedback on the Climate Change (Net Zero Future) Bill 2023 (NSW) (“the Bill”). Our submission is solely directed towards the Bill’s inclusion of the human right to a healthy environment as a guiding principle, and does not otherwise comment on the Bill.

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory and thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Support for the Inclusion of the Human Right to a Healthy Environment

The right to a clean, healthy and sustainable environment received universal recognition by the [United Nations General Assembly on 28 July 2022](#) ⁴. More than 150 countries recognise and protect the right to a healthy environment through their constitutions, national laws, judiciaries or ratification of regional and international instruments. Similarly, the preamble of the [Paris Agreement \(2015\)](#) acknowledges:

*“...that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective **obligations on human rights**, the right to health, the rights of indigenous peoples...”*

Sadly, despite this international progress, the people of NSW do not yet enjoy legal recognition of their right to a clean, healthy and sustainable environment. We face a dangerously changing climate, which has already had profound human rights impacts on the people of NSW.

Indeed, the [NSW State of the Environment 2021 Report](#) found that “the effects of climate change on the people and the environment of NSW are expected to become greater as warming continues”. Already, the EPA estimates that NSW has experienced an average increase in temperatures of 1.1°C since 1961.

Given this international and local crisis, ALHR commends the leadership of NSW and the inclusion of the following guiding principles, targets and objectives in the Bill (at cl 8(5)):

(5) Action to address climate change should be consistent with the right to a clean, healthy and sustainable environment.

ALHR believes that explicitly protecting the human right to a clean, healthy and sustainable environment through the Bill contributes to the fulfilment of the Australian Government’s international legal obligations under binding instruments and in accordance with contemporary norms of human rights and fundamental freedoms as expressed by various UN Treaty Bodies, Special Rapporteurs and foreign jurisprudence. Furthermore, the enshrinement of the human right to a healthy environment in NSW law is an opportunity for NSW to promote best practice human rights protections within its domestic jurisdiction.

Finally, ALHR commends NSW for enshrining the human right to a healthy environment in alignment with Victoria and the ACT. Victoria recognises the human right to a healthy environment pursuant to the principle of equity set out in s 21 of the [Environment Protection Act 2017 \(Vic\)](#). The ACT has gone a step further and introduced on [26 October 2023](#) a bill to recognise the human right to a healthy environment as a standalone human right under the *Human Rights Act 2004* (ACT).

However, we encourage the Committee to consider opportunities to strengthen the Bill to ensure that the human right to a healthy environment is not just recognised within the Bill, but protected within broader environmental and planning, and climate laws in NSW. We support and endorse the following recommendations set out by the Environmental Defenders Office and Law Society of NSW:

- the call for the Bill to impose “specific obligations” upon government agencies and decision-makers to have regard to, and act consistently with, the guiding principles in the Bill when exercising their powers and functions to administer environmental and planning, and climate law in NSW (see the submissions of the [Law Society of NSW \(page 3\)](#) and the [Environmental Defenders Office \(page 8\)](#)); and
- to amend the Bill so that independent bodies, including the Independent Planning Commission, are required to have regard to, and act consistently with, the guiding principles in the Bill when making decisions in respect of fossil fuel extraction projects (see the submission of the [Environmental Defenders Office \(page 4\)](#)).

Ensuring substantive protection and enforcement of the human right to a healthy environment is entirely consistent with domestic, regional and international instruments that have contributed to the progressive development of the right as a norm of international law. In particular, the [UN Special Rapporteur on Human Rights and the Environment](#) has set out the procedural and substantive aspects of the human right to a healthy environment including access to remedies for breach of the right and the obligations upon governments to ensure there is equal access and non-discrimination in the protection and promotion of the human right to a healthy environment.

ALHR also calls upon NSW to build upon this Bill and legislate a [human rights act in NSW](#), to set out a charter for the recognition and enforcement of the fundamental human rights of the people of NSW, including the recognition of a standalone and enforceable human right to a healthy environment. We [emphasise](#) that such legislation will achieve stronger protection of human rights for everyone in NSW, having our human rights set out in law will lead to a fairer society and ensure the dignity, equality and respect for all within the community.

If you would like to discuss any aspect of this submission, please contact Kerry Weste, President Australian Lawyers for Human Rights, by email at president@alhr.org.au.

Yours faithfully,

Kerry Weste

President, Australian Lawyers for Human Rights