

**EDO** Qld.

Environmental Defenders Office

*Using the law to protect
our environment.*

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18 April 2016

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000
Sent via email only: lacsc@parliament.qld.gov.au

Dear Mr Chair and Committee Members

Submission to the Human Rights Inquiry

We welcome the opportunity to provide submissions to the inquiry into whether Queensland should legislate for a Human Rights Act.

We congratulate the Queensland Government for prioritising the inquiry into the need for a Human Rights Act in Queensland. This is a step towards the fulfilment of a policy platform commitment made by the Labor Government in 2015 to introduce a charter of human rights and responsibilities to Queensland.¹

Environmental Defenders Office Qld

The Environmental Defenders Office Qld (EDO Qld) is an independent community legal centre specialising in empowering the community to protect their environment and health through the use of the law. We achieve this through working with all sectors of the community to provide advocacy, education, representation and advice on environmental laws and access to justice. Through this role EDO Qld is an appropriate entity to provide commentary and deliberation in relation to the recognition and protection of human rights dimensions of the environment.

Our submissions are provided in this letter in summary, in detail in **Appendix 1**, and are also supported by a submission of advice provided to EDO Qld by Earthjustice, provided in **Appendix 2** to the submission.

In summary our submissions are:

1. We strongly support the introduction of a Human Rights Act to Queensland.
2. The Human Rights Act should require the recognition, promotion and protection of all of those rights reflected in the United Nations International Covenant on Civil and Political

¹ Queensland Labor, 'State Policy Platform 2015', (Presented at State Conference of the Queensland Branch of Australia Labor Party, Queensland, 29 & 30 August 2015), policy 8.43 <http://www.queenslandlabor.org/wp-content/uploads/2015PolicyPlatform_ALP_QLD_a.pdf>.

Rights and United Nations Covenant on Economic, Social and Cultural Rights, as well as the following clearly specified rights:

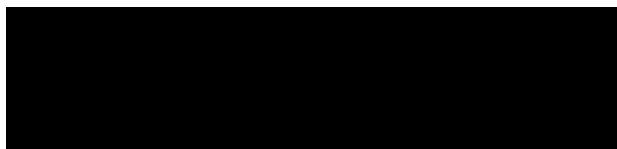
- (a) right to a healthy environment;
 - (b) right to public participation in decision making;
 - (c) right to public access to information;
 - (d) right to transparency and accountability in governance and decision making; and
 - (e) clear recognition of the rights of Aboriginal and Torres Strait Islander people of Queensland needed.
3. A Human Rights Act must enshrine the following elements to ensure it fulfils the purpose of the recognition, protection and promotion of human rights through:
- (a) appointment or grant of power to an independent body to oversee the Act, such as a Commission or Ombudsman;
 - (b) sufficiently strong investigation and enforcement mechanisms, including the provision of an independent cause of action against public authorities for a breach of their obligations under the Human Rights Act;
 - (c) provision of education for the community, public authorities, parliament and the judiciary on the purpose, intent and operation of the Human Rights Act;
 - (d) supporting and encouraging public authorities to play a key role in upholding human rights;
 - (e) appointment of a Parliamentary Committee to scrutinize legislation to assess its compatibility with the Human Rights Act, with a power to declare incompatible legislation to be invalid; and
 - (f) empowering the courts to interpret legislation against the Human Rights Act.

EDO Qld would welcome the opportunity to present to the Committee in the public hearing of this inquiry.

Yours faithfully
Environmental Defenders Office (Qld) Inc



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APPENDIX 1 – EDO QLD submissions in detail

1. Whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model

In absence of constitutional protection, legislation is desirable

The Universal Declaration of Human Rights (1948) declares that:

*“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”.*²

Most modern democracies have considered these rights too important to be left as moral norms and have thus entrenched human rights in their constitutions, such that Australia is now the only democratic western country that does not have explicit human rights in our constitution.

Australia has instead relied on a collection of implied rights in our constitution and commitments through international treaties that are given limited effect through legislation.

This piecemeal implementation has not given full and comprehensive recognition and protection to these fundamental rights. While constitutional recognition of human right would be preferable, and commensurate with the importance of these rights, in the absence of such protection it is appropriate and desirable for our human rights to be protected through legislation.

Legislative protection has been the path followed by ACT and Victoria, as well as the United Kingdom, New Zealand, Canada and Hong Kong. Canada and Hong Kong have now moved on to enshrine their human rights commitments into their constitutions.

Queensland Parliament unicameral system needs extra check and balance to protect human rights

Human rights are above the politics of the day and provide a fundamental reference against which legislation can be tested.

This role is particularly important in Queensland’s unicameral parliamentary system as there is not a house of review to guard against legislative overreach.

Queenslander’s expect human rights to be upheld

Queensland has a jagged history of human rights. We were the first State to abolish the death penalty in 1922; and yet in 2013 we also passed the notorious *Vicious Lawless Association Disestablishment Act 2013* (Qld) (**VLAD Act**) which infringed the internationally agreed right to freedom of association, created mandatory punishment, the potential waiving of bail and parole and a reversal of the onus of proof. Recently there were also attempts to erode many community

² Universal Declaration of Human Rights, GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 December 1948).

rights to participate in decision making process, particularly with respect to developments which pose environmental impacts.³

Of note, in response to the removal of community rights and the passing of the VLAD Act, Queensland saw significant dissent from all sectors of the community, including from academics,⁴ the legal profession,⁵ community groups,⁶ and particularly with respect to the latter laws, from the Australian Human Rights Commission⁷ and even the former NSW director of public prosecutions.⁸ The then Queensland Government, which passed these Acts, was voted out in 2015 after only one term of government, being replaced by the current government which ran on a platform of transparency and accountability.⁹ This goes towards demonstrating the value that Queenslanders hold for human rights, and the expectation that exists that these rights will be upheld. A Human Rights Act would support the clear articulation of those rights which Queenslanders already expect our society to reflect.

A Human Rights Act will not necessarily create a bar on legislation which infringes fundamental rights, but would ensure that the justification for such infringement is brought forward to the time of passing.

Putting the recognition, protection and promotion of human rights into daily life in Queensland

Human rights are not currently clearly on the agenda of public authorities or parliamentarians, or broadly through the community and media in Queensland. The establishment of a Human Rights Act will assist in the concept of human rights entering into the daily parlance of our society, with a widespread recognition and understanding of what those rights are and how we should expect them to be upheld. This is particularly likely to occur where there are specific requirements for the drafters, parliament and the judiciary to consider the Human Rights Act when analysing laws, as

³ *Mineral and Energy Resource (Common Provisions) Act 2014* (Qld)

⁴ Gabrielle Appleby 'Bikies crackdown: did the Constitution fail Queensland?', *The Conversation* (online), 21 October 2013 <<https://theconversation.com/bikies-crackdown-did-the-constitution-fail-queensland-19359>>; Graeme Orr 'A shocking case of government overreach', *Brisbane Times* (online), 24 October 2013 <<http://www.brisbanetimes.com.au/comment/a-shocking-case-of-government-overreach-20131023-2w1vs.html>>; Chris McGrath 'Mining coup in Queensland removes public objections rights', *The Conversation* (online), 22 September 2014 <<https://theconversation.com/mining-coup-in-queensland-removes-public-objection-rights-31737>>.

⁵ Melinda Howells and Andree Withey 'Lawyer Peter Callaghan continues to debate Qld's anti-bikie, sex offender laws', *ABC News* (online) 25 October 2013 <<https://ljiq.files.wordpress.com/2013/11/article-131025.pdf>>; Stephen Keim 'Stephen Keim SC: Campbell Newman's anti-bikie laws make Queensland look ridiculous' *Independent Australia* (online), 23 February 2014 <<https://independentaustralia.net/politics/politics-display/stephen-keim-sc-campbell-newmans-anti-bikies-laws-make-queensland-look-ridiculous,6205>>; Amy Park 'A voice against threats to mining objections right is Qld' *Lawyers Alliance* (online), 31 July 2014 <<https://www.lawyersalliance.com.au/opinion/a-voice-against-threats-to-mining-objection-rights-in-qld>>.

⁶ Eddie Clarke 'Submission to VLAD Taskforce on Freedom of Association' *Queensland Council for Civil Liberties* (online), 1 December 2009 <<http://qccl.org.au/downloads/submission-to-vlad-taskforce-on-freedom-of-association-pdf/>>; 'Queensland Taskforce on Organised Crime Legislation Submission- VLAD Act' *Rule of Law* (online), 18 August 2015 <<http://www.ruleoflaw.org.au/queensland-organised-crime-vlad-act/>>; Kathy McLeish and Matt Wordsworth 'Mining law amendments restrict rights to object to lease applications, sparking anger from opponents' *ABC News* (online), 12 September 2014 <<http://www.abc.net.au/news/2014-09-12/late-night-amendment-changes-right-of-qld-landholders-mining-lea/5741032>>; Melody Labinsky 'Small victory for landholder rights' *Queensland Country Life* (online), July 16 2015 <<http://www.queenslandcountrylife.com.au/story/3295457/small-victory-for-landholder-rights/>>.

⁷ 'Freedoms and Rights concerns in QLD bikie Laws' *Australian Human Rights Commission* (online), 18 October 2013 <<https://www.humanrights.gov.au/news/stories/freedoms-and-rights-concerns-qld-bikie-laws>>.

⁸ Simon Santow 'Tough QLD anti-bikie laws pass through Parliament' *ABC News* (online), 16 October 2013 <<http://www.abc.net.au/am/content/2013/s3869934.htm?site=southqld>>.

⁹ Peter Wellington, 'Letter Exchange to Anastacia Palaszczuk', 5 February 2015 <<http://www.peterwellingtonmp.com/Letter%20Exchange%202015.pdf>>.

well as through placing a duty on public authorities to uphold the Human Rights Act when undertaking their work.

The ACT Government has itself acknowledged that the passing of the Human Rights Act in the ACT has:

- increased awareness of human rights issues throughout Government;¹⁰
- had a ‘positive impact on political debate and consideration of policy issues by Government’;¹¹ and
- provides ‘an impetus for agencies to properly consider human rights obligations and consult within and across different areas of government on the implications of their bills’.¹²

Queensland deserves benefits of Human Rights Act

Sir Anthony Mason, then the Chief Justice of the High Court, in 1988 summarised the various benefits that can flow from a Bill of Rights, and of course equally from a Human Rights Act, as follows:

- It deters Parliament from abrogating the rule of law, thereby presenting a constitutional obstacle to the use of parliamentary power as a means of a totalitarian system;
- It ensures that the power of the majority in Parliament cannot be used to override the rights of minorities and individuals;
- It offers more secure protection of individual and minority rights from the exercise of power by institutions and pressure groups operating through government machinery;
- It offers principled and reasoned decision-making on fundamental issues;
- It reinforces the legal foundations of society, thereby enhancing the role of the law in society;
- It has a major educative role in promoting greater awareness of, and respect for, human rights.¹³

The benefits proposed by Sir Mason are invaluable in the operation of a democratic society. EDO Qld considers that these outcomes are not adequately provided for in Queensland law, and therefore that Queensland is, indeed, in need of a Human Rights Act.

¹⁰ ACT Justice and Community Safety Directorate, Government Response: Australian National University Human Rights Research Project Report The Human Rights Act 2004 (ACT): The First Five Years of Operation (March 2012), p.24, <http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government_Response_first_5_yrs_PDF.pdf>.

¹¹ Ibid, 2.

¹² ACT Justice and Community Safety Directorate, ‘Economic, social and cultural rights in the Human Rights Act 2004 – Section 43 review’ (November 2014) ACT Government, 26, <http://cdn.justice.act.gov.au/resources/uploads/JACS/ACT_Government_s_43_Review_Report.pdf>.

¹³ Sir Anthony Mason, ‘A Bill of Rights for Australia’ (1989) 5(1) Australian Bar Review 79, 88.

2. What should the Human Rights Act include?

EDO Qld considers that a Queensland Human Rights Act should recognise, promote and protect all of those rights reflected in the United Nations International Covenant on Civil and Political Rights and United Nations Covenant on Economic, Social and Cultural Rights. Australia is a party to these treaties and therefore we have an obligation to fulfill our commitment to reflect these rights in our laws.

In addition to these rights, Queensland would benefit greatly from recognising specifically the:

- (a) right to a healthy environment;
- (b) procedural rights to:
 - public participation in decision making;
 - public access to information; and
 - transparency and accountability in governance and decision making.
- (c) rights of Aboriginal and Torres Strait Islander people of Queensland.

(a) The right to a healthy environment

As humans, our health and wellbeing is inextricably linked to the health of the environment we live in and depend on. River water contaminated by toxic products can contaminate the water we drink and make us sick. Air emissions from polluting industries can cause us to suffer severe illnesses and lead to death. Vegetables or grains grown on land contaminated with toxic material from a previous user can poison us. As human beings, we therefore deserve recognition of this link, and our consequent right to a healthy environment.

Right to a healthy environment should be explicit

The right to a healthy environment was initially formally recognised in the *Stockholm Declaration* and *Rio Declaration*.¹⁴ There is broad recognition now that the protection of the environment ‘is a vital part of contemporary human rights doctrine and a sine qua non for numerous rights, such as the right to health and the right to life.’¹⁵

In the international community, complaints concerning abuses of human rights due to impacts to the environment have often been grounded in other rights, such as the right to life, health or

¹⁴ *Declaration on the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1972); *United Nations Declaration on Environment and Development*, UN Doc A/CONF.151/5/Rev.1 (1992).

¹⁵ *Gabcikovo Nagymaros Project (Hungary v Slovakia)* (Separate Opinion of Vice President Weeramantry) [1997] ICJ 97, 110 [Separate Opinion]; Asia Pacific Forum Secretariat, *Human Rights and The Environment Background Paper* (September 2007) Asia Pacific Forum <http://www.mcmillan.ca/Files/SOCarroll_HumanRightsandtheEnvironment.pdf>; Human Rights and Equal Opportunity Commission, *Human Rights and Climate Change Background Paper* (April 2008) *Human Rights and Equal Opportunity*, 3, <https://www.humanrights.gov.au/sites/default/files/content/pdf/about/media/papers/hrandclimate_change.pdf>.

property.¹⁶ It is recognised, however, that a right to a healthy environment needs to be explicit, rather than being only exercisable through reference to other existing rights.¹⁷

The Advisory Council of Jurists of the Asia Pacific Forum have noted that existing trends and environmental law instruments have not been adequate in supporting the recognition of a clear and specific right to, as they refer to it, ‘an environment of a particular quality’.¹⁸ By specifically recognising a right to a healthy environment, the right can more efficiently and effectively be realised, in a way that will assist mutually the more effective achievement of most other rights, such as the right to life.

The right to a healthy environment, recognised in various different formulations, has been recognised in the constitutions of numerous countries around the world. EDO Qld has asked our colleagues in the international program of Earthjustice for assistance with the experience of human rights internationally, particularly with regard to the environment. A copy of their advice to us is **Appendix 2**. As demonstrated through their advice, the introduction of a Human Rights Act in Queensland would bring Queensland into line with the rest of the world and assist in meeting Australia’s international obligations under treaties and conventions we have signed. As we have not entrenched this right in our Australian constitution, it is appropriate that Queensland, in taking up the opportunity to legislate for human rights, includes this right to a healthy environment in our Human Rights Act.

The benefits of a right to a healthy environment

The passing of a Human Rights Act would be a step forward in the effectiveness of Queensland laws in protecting our human right to a healthy environment, and would also help to protect the rights of those whose lives are impacted by environmental abuses. The Special Rapporteur on human rights and the environment states:

‘Without a healthy environment, we are unable to fulfil our aspirations or even live at a level commensurate with minimum standards of human dignity.’¹⁹

Recognising the right to a healthy environment in a Queensland Human Rights Act would assist in ensuring:

- *More robust decision making around new laws and proposals involving environmental impacts*

The protection of the right to a healthy environment will likely require government to consider more fully how proposed legislation, policy or projects might impact on the environment on which we depend for our livelihoods and health. While environmental impacts are a required

¹⁶ Joint report of the Office of the High Commissioner for Human Rights and United Nations Environment Programme, *‘Human Rights and the Environment: Jurisprudence of Human Rights Bodies’* Background Paper No.2, January 2002

<http://www.unep.org/environmental-governance/Portals/8/publications/UNEP_Compndium_HRE.pdf>.

¹⁷ Advisory Council of Jurists, ‘Human Rights and the Environment Final Report and Recommendations’ (September 2007) Asia Pacific Forum, 33,

<http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Asia_Pacific_Forum_of_NHRIs_1_HR_and_Environment_ACJ_Report_Recommendations.pdf>.

¹⁸ Ibid.

¹⁹ John Knox, Special Rapporteur on human rights and the environment (former Independent Expert on human rights and the environment), United Nations Human Rights, Office of the High Commissioner, accessed online 21 April 2016, <<http://www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SREnvironmentIndex.aspx>>

consideration in project assessment generally, considering these impacts from the point of view of a human right to have a healthy environment provides a requirement to consider the links between the possible environmental harm that a project may cause, and the impact this will have to those humans who will be affected by this harm. This is in comparison to the current separate considerations of environmental impacts, and human impacts, such as noise and amenity.

- *Less likelihood of litigation where right to a healthy environment considered upfront*

By providing a requirement for the consideration up front of the impact a proposed project, law or policy might have on the human right to a healthy environment, there is less chance that litigation might be undertaken to challenge that project, law or policy on the basis of the impacts to the right to a healthy environment.

- *Address the injustices in environmental protection measures for marginalized Queenslanders*

The rights of marginalised Queenslanders, including those whose livelihood is dependent on a healthy environment, such as farmers, are not given as strong a weight as the rights of others. They frequently suffer impacts to their air and water quality which would not be allowed to occur in urban Queensland. For example, we are aware that air monitoring and standards for particle emissions from activities in rural Queensland are typically less rigorous than for urban Queenslanders. A Human Rights Act would help to address the imbalance between needs of rural Queenslanders and those living in cities. The right would act as a reminder to public authorities in their decision making, as well as proponents when considering their activities, that rural people deserve the same protections to the health of their environment as those in urban areas.

Case Study

A case study provided by the Human Rights Law Centre demonstrates the necessity for a right to a healthy environment, and the interdependence of other human rights on the right to a healthy environment being protected: *‘Mulga Bore is a small community in Central Australia, which has a school with approximately 45 children enrolled. Water from Mulga Bore is high in nitrates, containing nitrate at 150 per cent of the rate in the World Health Organisation’s standards for developing countries. This problem was [allegedly] known to the Australian Government for some time and yet it did not act. In February 2008, the water stopped running and Mulga Bore School had no water. The result of this failure to provide a healthy environment is that the school has been closed down and students are no longer able to enjoy their right to education.’*²⁰

Right to a healthy environment should be for current and future generations

In recognising the right to a healthy environment, we also recognise that it is not just our current generations who should enjoy this right, future generations of Queenslanders, our children and grandchildren, also have a right to their environment remaining healthy. This recognition is also demonstrated in the Commonwealth Government’s National Strategy for Ecologically Sustainable

²⁰ Human Rights Law Centre, Right to a Healthy Environment, Factsheet, accessed online 21 April 2016, <<http://www.hrlrc.org.au/files/fact-sheet-right-to-a-healthy-environment.doc>>. See also: Russell Skelton, No water, blackouts, Mulga Bore’s students get a lesson in neglect, 28 February 2008, online <http://www.theage.com.au/news/national/a-lesson-in-neglect/2008/02/27/1203788442683.html>

Development.²¹ Through this recognition, we will ensure that the decisions we make today will not compromise the health of the environment over the long or short term.

Providing for human rights has been found to improve law, not open floodgates to litigation

The consideration of the introduction of rights or forms of redress is always met with concern that the granting of these rights will lead to an increase in litigation. It is important to note that to our knowledge there is no evidence of an enduring increase in litigation occurring in response to the human rights instruments that have been introduced through Victoria and the ACT, nor through the United Kingdom or New Zealand which have greater recourse to courts for breaches of their Acts compared to the Australian Acts.

In reviewing the success of the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Victorian Charter) and other human rights instruments, Professor George Williams notes that human rights legislation has not increased the volume of court business.²² He considers the Victorian Charter ‘has been a success without giving rise to the litigation and other problems sometimes associated with the United States Bill of Rights’.²³

Similarly, he notes that, in response to the United Kingdom Human Rights Act, the Scottish courts have had a rise in ‘little over a quarter of 1 per cent of the total criminal courts caseloads’.²⁴

Rather, a Human Rights Act can help to ensure that laws, policies and decision making are all more robust and of a higher standard, and thus that human rights abuses do not arise; leading in turn to fewer appeals to courts for assistance.²⁵ Professor Williams considers that the Victorian Charter is indeed designed in a way that ensures it does not lead to a significant increase in litigation, however the intention of the Act is that it does have a significant impact on the performance of the courts when undertaking their work.²⁶

(b) Procedural rights – the right to:

- **public participation in decision making;**
- **public access to information; and**
- **transparency and accountability in governance and decision making.**

Public participation in decision making, including through submission, review and appeal rights, has been demonstrated to improve decision making outcomes, through increasing the social licence of the policy, law or project, and through broadening the critique of the proposal under consideration and testing it against the values and concerns of the society it will impact.

The NSW Independent Commission Against Corruption (ICAC) has identified community participation in decision making through appeal rights as of vital importance to a transparent and accountable

²¹ ESD Steering Committee, *National Strategy for Ecologically Sustainable Development* (December 2012) Council of Australian Governments <<http://www.environment.gov.au/about-us/esd/publications/national-esd-strategy-part1>>.

²² ²² George Williams, ‘The Victorian Charter of Human Rights and Responsibilities: Lessons for National Debate’, (2006) 46 *Papers on Parliament* 81, 81-95.

²³ Ibid.

²⁴ Ibid.

²⁵ George Williams, ‘The Victorian Charter of Human Rights and Responsibilities: Origins and Scope’, (2006) 30(3) *Melbourne University Law Review* 880, 893.

²⁶ Ibid, p.894.

governance, and particularly in the planning system. ICAC found that the “absence of third party appeals creates an opportunity for corrupt conduct to occur, as an important disincentive for corrupt decision-making is absent from the planning system.”²⁷

Other reasons why recognition and protection of the right to public participation in decision making is important include that it:

- encourages greater public debate around decision making of concern to the community;
- improves and aids the form by which public participation is provided for, through better and more consistent policies and procedures being developed to facilitate meaningful public participation;
- allows multiple views and concerns to be expressed and ‘provide a forum where collective rights and concerns can be weighed against the rights and concerns of the individual’;²⁸
- facilitates consideration of local knowledge which may not be held by or be accessible to the decision maker;²⁹ and
- improves decision-making and ensures greater transparency and accountability within the decision-making process, through the requirement to ensure the public has access to adequate and relevant material to assist in providing input into the decision making process.

The Rio Declaration recognizes that environmental issues ‘are best handled with participation of all concerned citizens’ and that ‘each individual shall have appropriate access to information concerning that environment that is held by public authorities’... ‘and the opportunity to participate in decision-making processes’. Further it states that states ‘shall facilitate and encourage public awareness and participation by making information widely available’.³⁰ The rights were also recognized specifically from the perspective of ‘environmental democracy’ in the Aarhus Convention adopted in Europe in 1998.³¹

These rights have been considered to be derivatives of other rights, such as the right to participate in public life.³² EDO Qld considers there is a benefit in clearly defining these three procedural rights as particular rights to be recognized, protected and promoted. This will ensure these rights are understood and not lost within the broader concept of participation in ‘public life’. These rights should not be limited to only environmental matters, as they are beneficial to the fulfilment of all human rights and the operation of a well-functioning democratic society.

As discussed above, the value that Queenslanders place on these rights is demonstrated in the community reaction to the reductions in legal rights to participate in decision making, and the current government’s winning platform mounted on transparency and accountability.

²⁷ Independent Commission Against Anti-Corruption (ICAC), *Anti-Corruption Safeguards and the NSW Planning System* (2012) Independent Commission Against Corruption. <<http://www.icac.nsw.gov.au/documents/preventing-corruption/cp-publications-guidelines/3867-anti-corruption-safeguards-and-the-nsw-planning-system-2012/file>>.

²⁸ Judge Christine Trenorden, ‘Third-Party Appeal Rights: Past and Future’ (Paper presented at the Town Planning Law Conference, Western Australia, 16 November 2009).

²⁹ Ibid.

³⁰ United Nations Declaration on Environment and Development, UN Doc A/CONF.151/5/Rev.1 (1992) art 10.

³¹ United Nations Economic Commission for Europe, *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, June 1998 <<http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>>.

³² International Covenant on Civil and Political Rights, opened for signature 16 December 1966, UNTS 171 (entered into force 23 March 1976) art 25.

Existing procedural rights need stronger protection

There are rights under our current Commonwealth and Queensland laws to access information, and for the public to participate in decision making. However, through our work assisting clients in accessing these laws it has become clear that effectiveness of these rights is proportionate to the willingness of the government of the day to promote transparency and accountability in governance.

By their nature, laws providing for access to information must have caveats to ensure that confidential information is not released. Under a government that is unsympathetic to the rights of the community to access information, these caveats can be easily used to deny access in a way that far exceeds the required level of discretion.

Further, while our laws do frequently provide for public participation in decision making, there is no overriding law or policy which declares that this is a right that we as a society recognise and protect. These rights can therefore be eroded or removed at the whim of the politics of the time, with little recourse other than consistently re-opening the discussion as to the need for these rights to exist. This is a drain on the resources of community groups, like the EDO Qld, as well as of government. Queensland would benefit greatly for the discussion to be put to rest, and these rights to be enshrined in a Human Rights Act for our state.

(c) Clear recognition of the rights of Aboriginal and Torres Strait Islander people of Queensland needed

EDO Qld also recognizes that the rights of indigenous Australians should be clearly recognised in a Human Rights Act, as peoples who have suffered immense discrimination under the western legal system imposed upon them. We recommend that the special rights of Aboriginal peoples of Queensland could be reflected in the preamble, as provided in the Victorian and ACT Human Rights Acts, as well as through the recognition, protection and promotion of clear rights provided for in the body of the Act.

4. Measures to support the effective operation of the Human Rights Act

For a Human Rights Act to be effective in achieving its purpose of recognising, promoting and protecting human rights, we consider the following mechanisms must be provided for in the Act or to support the Act:

(a) Appointment or grant of power to an independent body to oversee the Act, such as a Commission or Ombudsman

EDO Qld recommends that a Commission or Ombudsman could be empowered to receive complaints of breaches of the Human Rights Act. This will assist in increasing access to justice for those not willing or able to bring actions before the court. A broader range of complaints will therefore be considered than that which would potentially be brought before a court. It will also help to filter complaints so that fewer matters are likely to be taken to the Court.

This role is undertaken under the ACT Human Rights Act by the ACT Human Rights Commission. In Victoria complaints can be heard through various mechanisms, including the Victorian Civil and Administrative Tribunal, public authorities directly, particular topic specific commissioners, or the Victorian Ombudsman. The various avenues available for having complaints heard in Victoria has

been found to be beneficial, particularly for complaints to be heard by those specializing in an area, such as the Mental Health Complaints Commissioner.³³ We suggest further thought be given to the most appropriate mechanisms available in Queensland to hear human rights complaints, and whether a single Human Rights Commission focused on human rights complaints, or a varied system such as in Victoria, would be more appropriate.

Ideally the independent body would also be empowered and resourced to monitor and report on systemic human rights issues and advise on recommended responses to human rights decisions from Queensland and other jurisdictions. The body could also provide alternative dispute resolution assistance to complainants as another means of addressing human rights abuse complaints that is low cost and effective, as long as appropriate ADR methods are used to address power imbalances between those concerned. This was a recommendation also for improvement on the utility of the Victorian Charter.³⁴

(b) Free-standing cause of action for breach of the Act

The Human Rights Act must support its objectives by providing a clearly framed cause of action for breach of the Act, and affordable and accessible means to remedy the breach. The ACT has a free-standing remedy, however damages are not recoverable under their Act.³⁵ Similarly, the Victorian Charter provides, in section 39, for the right to seek relief or remedy for a breach of the Charter by a public authority, but only where relief or remedy is sought with respect to an act or decision under another instrument. The learnings from the Victorian Charter demonstrate the need for this remedy to be free-standing and not dependent on bringing another cause of action.

In a review of the Victorian Charter undertaken by the Victorian Equal Opportunity and Human Rights Commission section 39 was found to be ‘inaccessible and inadequate’ in ensuring the Charter achieves its purpose.³⁶ The review recommended that, so that the protection of human rights can be achieved effectively through the Charter, the Charter be amended to provide a direct right of action under the Charter. The review further recommended that the Victorian Civil and Administrative Tribunal be utilised for hearing claims under section 39, as a low cost forum through which complaints can be heard.³⁷ Queensland can learn from this by ensuring we provide a free-standing action for breach of the Act.

(c) Education throughout the community is necessary to develop a ‘human rights culture’

A law alone is not enough to create cultural change; government needs to invest in the development of a human rights culture. This was established also in the 2015 review of the Victorian Charter, whereby it was determined that the Victorian Government needed to focus more

³³ Michael Brett Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, Summary Report (September 2015), 107-108.

³⁴ Michael Brett Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, Summary Report (September 2015), 99.

³⁵ *Human Rights Act 2004* (ACT), section 40C.

³⁶ Victorian Equal Opportunity & Human Rights Commission, Eight-Year Charter Review, Position Paper: Legal Proceedings and Remedies, http://www.humanrightscscommission.vic.gov.au/media/k2/attachments/Position_Paper_Legal_Proceedings_and_Remedies_edited_JB.pdf

³⁷ *Ibid*, p. 128.

resources into the development of a culture of recognition, promotion and protection of human rights in the state, to ensure the Charter's intent was being effectuated throughout decision makers and the broader community.³⁸

Adequate resources must therefore be provided to support the Human Rights Act, to educate the community, government, courts and parliamentarians. Further, special effort should be made to empower marginalised and vulnerable groups such as Aboriginal and Torres Strait Islander communities as to how the Act could assist them to protect their human rights.

(d) Public authorities must be supported in playing key role in upholding human rights

The daily decisions of public authorities are a good place to concentrate attention on ensuring that human rights are adequately upheld in Queensland. Firstly, public authorities must be educated on human rights so that they understand how they are required to recognize, protect and promote these rights. To support the introduction of the Human Rights Acts in New Zealand and the United Kingdom, we understand that the two governments published handbooks and other supporting literature for public authorities. This information was designed to increase the awareness of human rights issues and to provide guidance on how to conduct functions consistently with the human rights standards of their respective Acts.

EDO Qld recommends that Queensland should emulate the obligations placed on public authorities under the Victorian and ACT Human Rights Acts, whereby public authorities are obliged to act compatibly with human rights, and to give proper consideration to relevant human rights when making a decision.³⁹ We further recommend that in Queensland public authorities should be required to report against human right performance indicators. This will ensure that human rights remain a consistent consideration in the decision making of public authorities, as well as making sure that their implementation is transparent and government is made accountable to this implementation. These recommendations also apply to private entities as far as they are undertaking a public role.

(e) Appointment of a Parliamentary Committee to scrutinize legislation

A parliamentary committee should be empowered to scrutinize new legislation for their compliance with human rights. For example, a Queensland Human Rights Act could establish a Joint Parliamentary Human Rights Committee to undertake reviews of laws, as established in the UK and at a Commonwealth level in Australia.

The Committee should have a power to declare incompatible legislation to be invalid and unable to be passed unless adequate explanation is provided as to why the breaches of human rights proposed are necessary in that instance. We recommend that the Human Rights Act or explanatory material could suggest potential scenarios which may give rise to providing sufficient reason to allow a breach of the Act, and those scenarios which would not be considered to be sufficient.

³⁸ Michael Brett Young, From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006, Summary Report (September 2015), p. 5.

³⁹ *Human Rights Act 2004* (ACT), ss 30, 40B; *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 32, 38.

New Bills must similarly be accompanied by a Statement of Compatibility to demonstrate compliance with the Human Rights Act.

(f) Courts should be empowered to interpret legislation against the Human Rights Act

Through the Victorian and ACT Human Rights Act, courts are required to undertake the interpretation of legislation in a way that is compatible with human rights, and may do so using jurisprudence from international jurisdictions to assist their interpretation.⁴⁰ Similarly, in Queensland, courts should be obliged to consider international jurisprudence to interpret the Human Rights Act and any other Act. This is essential to ensure that the courts can access the wealth of insight provided by previous consideration given to human rights through other jurisdictions, to prevent Queensland from having to start from scratch.⁴¹

The courts should be empowered to criticize legislation as far as it proves to be incompatible with a Human Rights Act. This power is provided in the ACT Human Rights Act, which gives courts the right to issue a declaration that legislation is incompatible with the Act. However, there is no requirement for the ACT government to review their legislation in light of the declaration of incompatibility.

There must be a requirement in a Queensland Human Rights Act to implement remedial mechanisms that ensure incompatible legislation is reviewed by the Queensland government and changed to be consistent with the Human Rights Act. Further, the Human Rights Act should specifically be made to prevail over other legislation to the extent of any inconsistencies.

⁴⁰ *Human Rights Act 2004* (ACT), ss 30, 31; *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 32.

⁴¹ *Kracke v Mental Health Review Board & Ors* [2009] VCAT 646, paras 201-2 (Bell J)

APPENDIX 2 – Submission of Earthjustice



ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

15 April 2016

Environmental Defenders Office - Queensland
30 Hardgrave Road,
West End Qld 4101
Phone: (07) 3211 4466
Email: edoqld@edoqld.org.au

Earthjustice* submits this advice to the Environmental Defenders Office - Queensland (EDO) in support of EDO's comments to the Queensland Legislative Assembly Legal Affairs and Community Safety Committee's inquiry into whether it is appropriate and desirable to legislate for a Human Rights Act, and, if so, the objectives of and rights to be protected under the Act. Earthjustice commends the Queensland Government for taking seriously its commitment to human rights by considering the adoption of a Human Rights Act. We strongly recommend that such a law explicitly include the right to a healthy environment.†

It is indisputable that environmental degradation can have a profound impact on the enjoyment of a wide range of human rights, including the rights to life and health. For this reason, more than 90 countries, and every regional human rights instrument adopted since the early 1980s, have explicitly recognized a right to a healthy environment. Indeed, any constitution, bill of rights or national or regional human rights instrument that does not recognize such a right is at odds with this widespread global practice.

Recognizing a human right to a healthy environment is not just a symbolic gesture; such recognition would confer many tangible benefits to Queensland and its residents. It would promote the adoption and interpretation of laws in a manner that enhances protection of Queensland's unique environment, and would ensure that economic development is sustainable and consistent with human rights. It would also create a foundation for procedural rights – rights of access to information, participation, and remedy – that are essential for the protection of the environment and human rights, improve decision-making, and enhance public support for proposed projects or policies.

* Founded in 1971, Earthjustice fights for the right of all people 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. (www.earthjustice.org.)

† Reference to the "right to a healthy environment" includes various alternative formulations, such as the right to a clean, safe, sustainable and/or favourable environment.

Adopting a right to a healthy environment would bring Queensland into line with modern global practice. More importantly, it would send an important message to the Australian people and the world that Queensland recognises the fundamental importance of the environment to human dignity, equality, and freedom, the grounds of all human rights set out in the Universal Declaration of Human Rights.

I. Environmental degradation interferes with the enjoyment of a broad range of human rights

Environmental degradation can interfere with a broad range of human rights, from the most fundamental right to life to other widely recognized human rights such as the rights to health, culture, housing, food, and water.

Indeed, history is full of examples of environmental disasters that caused significant mortalities and harm to human health – Bopal, Chernobyl, the Minamata disease epidemic in Japan caused by industrial mercury contamination, to name a few. More recently, in November 2015, toxic sludge that burst out of an iron-ore tailings dam in Brazil, caused widespread environmental damage, killing at least a dozen people, contaminating the drinking water supply for a quarter-million people, leaving hundreds of people homeless, and killing thousands of fish that many communities relied on to sustain their livelihoods.¹

Unfortunately, groups in some of the most vulnerable positions – including children, women, and indigenous peoples – often suffer the most from environmental harm. In Nigeria, lead poisoning from small-scale artisanal gold mining has killed hundreds of children and left thousands with permanent life-long disabilities.² In Mombasa, Kenya, a new lead smelter illegally emitted fumes laden with lead and dumped acid wastewater into streams where people bathed, causing severe health impacts that particularly affected woman and children living in the communities nearby.³ Just this year, in Flint, Michigan, one of America’s poorest cities with 41percent of residents living in poverty, it was discovered that city residents had been drinking water contaminated with extremely high levels of lead (in some cases up to 26 times the legal limit) for over 17 months.⁴ As in Nigeria, children have been most impacted and will suffer irreversible, lifelong health effects.

International bodies and instruments have long recognized that environmental harm can interfere with the full enjoyment of human rights. For example, the first paragraph of the 1972 Stockholm Declaration states that “both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights – even the right to life itself.” The United Nations Human Rights Council recently noted that “climate change, the unsustainable management and use of natural resources and the unsound management of chemicals and waste may interfere with the enjoyment of a safe, clean, healthy and sustainable environment,” and “that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of all human rights.”⁵ The United Nations Special

Rapporteur on human rights and environment has stated that it is “firmly established” that “environmental degradation can and does adversely affect the enjoyment of a broad range of human rights.”⁶

II. Recognizing a human right to a healthy environment would provide many benefits to Queensland

More than 90 countries and every modern regional human rights instrument have recognized some formulation of a right to a healthy environment.⁷ Many sub-national constitutions also recognize a right to a healthy environment, particularly in Canada, the United States, and Latin America.⁸ However, recognizing a right to a healthy environment is more than a paper exercise – it would deliver important benefits to Queensland. For example, a right to a healthy environment would:

- 1) promote the adoption and interpretation of laws in a manner that enhances protection of Queensland’s unique environment;
- 2) ensure that economic development is sustainable and consistent with human rights;
- 3) create a foundation for procedural environmental rights – rights of access to information, participation, and remedy – that are essential for the protection of the environment and human rights and enhance public support for proposed projects and policies;
- 4) protect groups most vulnerable to environmental degradation;
- 5) lead to a healthier environment, including cleaner air and water, and healthier ecosystems; and
- 6) bring Queensland into line with modern international and national practice.

A. Adopting the right to a healthy environment would promote the adoption and interpretation of laws in a manner that enhances protection of Queensland’s unique environment.

Having a right to a healthy environment in the proposed Queensland Human Rights Act would lead to laws that are more consistent with the goals of environmental protection. Human rights laws and constitutional provisions can require advanced review of proposed laws to ensure consistency with the human rights enshrined in the Act, including the right to a healthy environment.⁹

Similarly, a human rights statute could require or encourage a review of existing laws, policies and decision-making processes to determine consistency with the right to a healthy environment. For example, section 38 of the Victoria Charter provides that it is “unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.”

In this regard, a leading constitutional environmental rights expert has found that,

[i]n 78 out of 92 nations, environmental laws were strengthened after the right to a healthy environment gained constitutional status. Laws were amended to specifically focus on environmental rights, as well as access to environmental information, participation in decision making, and access to justice. This includes all surveyed nations in Eastern Europe (19 out of 19); almost all nations in Western Europe (8/9), Latin America and the Caribbean (16/18), and Asia (12/14); and a clear majority in Africa (23/32).¹⁰

B. Adopting the right to a healthy environment would ensure that economic development is sustainable and appropriately considers the human rights implications of environmental harm.

A right to a healthy environment would not require the cessation of all activities that may cause any environmental degradation. However, recognition of a right to a healthy environment sends a clear signal to the public, government agencies and other stakeholders that protection of the environment is as important as other fundamental human rights, and that society values protection of the environment as much as economic and social development.¹¹ In doing so, a right to a healthy environment would promote a more balanced, sustainable and holistic decision-making process.¹²

The South African Constitutional Court recently clarified the type of balancing that a right to a healthy environment promotes:

[A right to healthy environment] requires that the interests of the environment be balanced with socio-economic interests. Thus, whenever a development which may have a significant impact on the environment is planned, it envisages that there will always be a need to weigh considerations of development, as underpinned by the right to socio-economic development, against environmental considerations, as underpinned by the right to environmental protection. In this sense, it contemplates that environmental decisions will achieve a balance between environmental and socio-economic developmental considerations¹³

C. Adopting the right to a healthy environment would create a foundation for procedural environmental rights that are essential for the protection of the environment and human rights.

A right to a healthy environment encompasses certain procedural rights – access to information, participation in decision-making, and access to remedies – that have their roots in both international environmental law and human rights law. These rights help make “policies more transparent, better informed and more responsive.”¹⁴ They also lead to better decisions and promote public support for proposed projects or policies, which could ultimately reduce potential challenges, including litigation.

Many human rights instruments protect these procedural rights, which include the rights to freedom of expression and association, rights to receive information and participate in decision-making processes, and rights to legal remedies. For example, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which Australia has ratified, recognize these rights.¹⁵ Although these instruments “do not explicitly address environmental issues, they undoubtedly encompass the exercise of the rights for environmental ends.”¹⁶ In other words, it is clear that these rights apply to environmental decision-making.

In international environmental law, an important source of these procedural rights is the widely influential principle 10 of the 1992 Rio Declaration, which states:

Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

Even though principle 10 does not characterize environmental procedural rights as human rights, there is a strong overlap between principle 10 and these norms under human rights law.¹⁷ The international instrument that most explicitly recognizes the link between principle 10 and human rights norms is the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, a regional instrument on procedural environmental rights ratified by 47 countries.¹⁸ Article 1, which states the objective of the Convention, provides:

In order to contribute to the protection of *the right of every person of present and future generations to live in an environment adequate to his or her health and well-being*, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters.¹⁹

The increased emphasis on these procedural rights under a right to a healthy environment would promote greater public support and buy-in for proposed projects or policies and result in better decisions, which could ultimately reduce potential challenges, including litigation. In particular, meaningful public participation “contributes to better decisions because decision-makers have more complete information – in the form of additional facts, values, and perspectives obtained through public input – to bring to bear on the decision process.”²⁰ The result is that decisions “are more implementable and sustainable because the decision considers the needs and interests of all stakeholders, and stakeholders better understand and are more invested in the outcomes.”²¹ As the preamble of the Aarhus Convention states, “in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the

public the opportunity to express its concerns and enable public authorities to take due account of such concerns.”

Environmental decision-making that meaningfully reflects diverse and informed perspectives can also result in actions or policies that better protect human rights. For example, the UN Special Rapporteur on human rights and the environment has explained that, “[w]hen directed at environmental issues, the exercise of [procedural] rights results in policies that better reflect the concerns of those most concerned and, as a result, that better safeguard their rights to life and health, among others, from infringement through environmental harm.”²²

D. Adopting the right to a healthy environment would protect groups most vulnerable to environmental degradation.

Although environmental degradation can harm anyone, the reality is that some groups are more vulnerable to being harmed by environmental degradation than others. The UN Human Rights Council has recognized that, “while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by those segments of the population already in vulnerable situations.”²³ Groups that are particularly vulnerable to harm from environmental damage include women, children, indigenous peoples, those living in extreme poverty, displaced persons and migrants.²⁴

The protection of vulnerable groups lies at the heart of human rights and a right to a healthy environment can help protect and draw attention to the rights of groups most vulnerable to environmental harm. One important way that this can take place is through the involvement of national and sub-national human rights institutions or commissions (like the Australian Human Rights Commission or the Anti-Discrimination Commission Queensland) that may be empowered to investigate alleged violations of rights adopted in a Human Rights Act or their respective country or state constitutions, and that often act on behalf of the groups most vulnerable to human rights violations.²⁵

There are many examples of these human rights institutions addressing environmental threats to human rights, most often based on a right to a healthy environment. For example, the Kenyan National Commission on Human Rights has increasingly focused on environmental issues over the last decade.²⁶ In 2005, the Commission conducted a public inquiry into human rights violations and environmental degradation occurring at salt manufacturing companies in Malindi, and issued a comprehensive report outlining its findings and recommendations.²⁷ The public inquiry process allowed communities and individuals who were affected by the salt mines to meet with the Commission and express their grievances, thus providing them with a platform to voice their concerns.²⁸ As a result of the Commission’s recommendations, the national environmental authority also convened a public hearing investigating environmental degradation from the mines.²⁹ The Commission also noted that it had received feedback that “the community under discussion, is now more empowered and that the Inquiry had lent them legitimacy and

voice.”³⁰ Furthermore, the inquiry created a coalition among communities that until then had advocated separately against the mines.³¹ In addition to its public inquiry in Malindi, in April 2007, the Commission issued a briefing paper on forced evictions in the Mau Forest of Kenya. On the community level, the Commission has provided human rights training to county assemblies to strengthen their ability to protect citizens and the environment.³²

The Mexican National Human Rights Commission has also played an important part in addressing environmental harms. In fact, the Mexican Commission issued a number of recommendations related to environmental protection even before the right to a healthy environment was included in the Mexican Constitution in 2012. For example, in 2010 it found that the National Water Commission failed to comply with environmental standards that required it to treat and clean up polluted water in the Santiago River, and that this failure caused the death of a child and affected the health of people living in the vicinity of the river.³³ In another case, the Commission found that untreated wastewater being released into the Usumacinta River violated, among other things, the human rights to an adequate environment and drinking water of the inhabitants nearby. The Commission has also organized seminars and workshops on human rights and the environment.³⁴ In September 2012 it organized a seminar on human rights and access to environmental justice with a specific focus on non-judicial mechanisms and means for citizen participation.³⁵

Other examples of human rights institutions that have addressed environmental harms include the Malaysian National Human Rights Commission, the National Human Rights Commission of Thailand, the Scottish Human Rights Commission, Portugal’s Human Rights Ombudsperson, Costa Rica’s Ombudsperson, Croatia’s Ombudsperson, and Hungary’s Ombudsperson for Future Generations.³⁶

By taking up environmental issues, human rights institutions like these can play an important role in protecting the rights of those most vulnerable to environmental harm. For example, a commission’s inquiry into a particular issue may bring much needed attention to an otherwise ignored issue and shine an important public spotlight on the situation. As demonstrated in Kenya, the investigation process can also empower and unite groups, and provide marginalized communities and individuals with a platform to voice their concerns. Knowing that a commission may investigate and draw public and official attention to alleged human rights violations may also cause potential human rights violators to reconsider their actions. Commissions can also play an important role in promoting human rights, including a right to a healthy environment, among the public and other government institutions. As demonstrated above, many commissions have organized public awareness initiatives, training, seminars and other activities that help a wide variety of actors learn about the importance of human rights.

Thus, a right to a healthy environment, like other human rights, can help protect groups in vulnerable positions whose human rights are disproportionality impacted (in this case by environmental harm). Should the Human Rights Act empower human rights institutions, like the

Anti-Discrimination Commission Queensland, to investigate alleged violations of and promote compliance with the Act, it would go a long way toward protecting the rights of these groups.

E. Adopting the right to a healthy environment would lead to a healthier environment.

A national or sub-national right to a healthy environment could lead to improved environmental performance, including cleaner air and water, and healthier ecosystems. Indeed, most of the benefits of adopting a right to a healthy environment identified above would also likely promote improved environmental protection. For example, as mentioned, a right to a healthy environment could result in laws that better protect the environment, which, if adequately enforced, would lead to a healthier environment. A right to a healthy environment would also promote procedural environmental rights, which as explained, would result in decision-making that is more protective of the environment.

There is empirical evidence that national recognition of a right to a healthy environment does improve the environment. An analysis of the ecological footprint, performances on recognized environmental indices and other factors in countries that have adopted a right to a healthy environment showed that “[n]ations with environmental provisions in their constitutions have smaller ecological footprints, rank higher on comprehensive indices of environmental indicators ..., are more likely to ratify international environmental agreements, and made faster progress in reducing emissions of sulfur dioxide, nitrogen oxides, and greenhouse gases than nations without such provisions.”³⁷ Although the author of the study recognized that there are other potential explanations for good environmental performance, he concluded that “[t]he consistency of the correlation between constitutional protection for the environment and superior environmental performance across three indices and four indicators provides persuasive, albeit not conclusive, evidence” that a right to a healthy environment “substantial[ly]” influences environmental health.

F. Adopting the right to a healthy environment would bring Queensland into line with modern international and national practice.

As described, every regional human rights instrument adopted since the early 1980s has included a right to a healthy environment and the vast majority of countries that have adopted or amended their constitutions since the mid-1970s have adopted a right to a healthy environment. Should Queensland not adopt such a right in a Human Rights Act, it would be out of step with modern international and national practice.

III. Examples of different formulations of a right to a healthy environment

Although an explicit right to a healthy environment has been adopted in many regional human rights instruments and over 90 national constitutions, the formulation of this right varies.

A. Formulations at the regional level

At the regional level, a right to a healthy environment has been recognized in treaties or declarations in Africa, Europe, Latin America, the Middle East and, most recently, Southeast Asia. Different examples of how these instruments have formulated such a right include:

African Charter on Human and Peoples' Rights (1981)

“All peoples shall have the right to a general satisfactory environment favorable to their development.”³⁸

Additional Protocol to the American Convention on Human Rights (1988)

“[E]veryone shall have the right to live in a healthy environment.”³⁹

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

“Women shall have the right to live in a healthy and sustainable environment ... [and] the right to fully enjoy their right to sustainable development.”⁴⁰

Arab Charter on Human Rights (2004)

“Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights.”⁴¹

Human Rights Declaration adopted by the Association of Southeast Asian Nations (2012)

“Every person has a right to an adequate standard of living for himself or herself and his or her family, including: The right to a safe, clean and sustainable environment.”⁴²

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) (1998)

“Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations.”⁴³

B. Formulations at the national level

At the national level, formulations of the right to a healthy environment vary from state to state. At a minimum, most states have adopted a substantive right to some quality environment, while

other countries have adopted more comprehensive language, which sometimes also includes procedural rights or specific duties of the State.

1. Examples of a substantive right to a healthy environment

Most national and sub-national constitutions refer to a healthy environment, while alternative formulations include rights to a clean, ecologically-balanced, safe, favourable, good or wholesome environment.⁴⁴ Some examples of these constitutional formulations include:

Angola

“All citizens shall have the right to live in a healthy and unpolluted environment.”⁴⁵

Bolivia

“Everyone has the right to a healthy, protected and balanced environment.”⁴⁶

Indonesia

“Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care.”⁴⁷

Jamaica

“the right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage.”⁴⁸

Mongolia

“The citizens of Mongolia shall enjoy ... the right to a healthy and safe environment and to be protected against environmental pollution and ecological imbalance.”⁴⁹

Slovakia

“Every person has the right to a favourable environment.”⁵⁰

South Korea

“All citizens have the right to a healthy and pleasant environment.”⁵¹

2. Examples of more detailed substantive formulations

Many countries have adopted more detailed substantive formulations in their constitutions. In addition to recognizing a right to a healthy environment, these formulations may, among other things, recognize the rights of present and future generations, or establish clear obligations of the government to take specific or general actions, like preventing pollution and ecological degradation, defending the right, securing sustainable development, or promoting environmental

conservation. Having a more detailed right is beneficial because it provides greater clarity concerning the content and obligations of right to a healthy environment. Examples of more detailed constitutional formulations include:

Costa Rica

“Every person has the right to a healthy and ecologically balanced environment. ... The State will guarantee, will defend and will preserve this right. The Law will determine the responsibilities and corresponding sanctions.”⁵²

Greece

“The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainable development.”⁵³

Guyana

“(1) Everyone has the right to an environment that is not harmful to his or her health or well-being. (2) The State shall protect the environment, for the benefit of present and future generations, through reasonable legislative and other measures designed to – (a) prevent pollution and ecological degradation; (b) promote conservation; and (c) secure sustainable development and the use of natural resources while promoting justifiable economic and social development.”⁵⁴

Norway

“(1) Every person has a right to an environment that is conducive to health and to natural surroundings whose productivity and diversity are preserved. Natural resources should be made use of on the basis of comprehensive long-term considerations whereby this right will be safeguarded for future generations as well. ... (3) The State authorities issue further provisions for the implementation of these principles.”⁵⁵

Panama

“The State has the fundamental obligation to guarantee that its population lives in a healthy environment, free of contamination (pollution), and where air, water, and foodstuffs satisfy the requirements for proper development of human life.”⁵⁶

“The State, and all the inhabitants of the national territory, have the obligation of promoting economic and social development that prevents environmental contamination, maintains ecological balance, and avoids the destruction of ecosystems.”⁵⁷

“The State shall regulate, supervise, and apply, at the proper time, the measures necessary to guarantee rational use of, and benefit from, land, river and sea life, as well as forests, lands and waters, to avoid their misuse, and to ensure their preservation, renewal, and permanence.”⁵⁸

“Benefits gained from non-renewable natural resources shall be regulated by law, to avoid social, economic and environmental abuses that could result.”⁵⁹

Serbia

“Everyone shall have the right to healthy environment and the right to timely and full information about the state of environment. Everyone, especially the Republic of Serbia and autonomous provinces, shall be accountable for the protection of environment. Everyone shall be obliged to preserve and improve the environment.”⁶⁰

Seychelles

Article 38: “The State recognises the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment with a view to ensuring the effective realisation of this right the (a) to take measures to promote the protection, preservation and improvement of the environment; (b) to ensure a sustainable socio-economic development of Seychelles by a judicious use and management of the resources of Seychelles; (c) to promote public awareness of the need to protect, preserve and improve the environment...”⁶¹

South Africa

“Everyone has the right – (a) to an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that – (i) prevent pollution and ecological degradation; (ii) promote conservation; and (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”⁶²

Turkey

“Everyone has the right to live in a healthy, balanced environment. It is the duty of the State and citizens to improve the natural environment, to protect the environmental health and to prevent environmental pollution.”⁶³

3. Examples of procedural rights related to the environment

About 36 countries explicitly include detailed procedural rights related to environmental decision-making as part of or as a companion provision to their constitutional substantive right to a healthy environment.⁶⁴ These standards typically set out obligations related to access to information, public participation and/or access to remedy concerning environmental decision-making, as described in section II above. Examples include:

Argentina

“All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and shall have the duty to preserve it. As a first

priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and of the biology diversity, and shall also provide for environmental information and education.”⁶⁵

Azerbaijan

“I. Everyone has the right to live in healthy environment. II. Everyone has the right to gain information about true ecological situation and to get compensation for damage done to his/her health and property because of violation of ecological requirements.”⁶⁶

Belarus

“Citizens of the Republic of Belarus shall be guaranteed the right to receive, store and disseminate complete, reliable and timely information of the activities of state bodies and public associations, on ... the state of the environment.”⁶⁷

“Everyone shall be entitled to a conducive environment and to compensation for loss or damage caused by the violation of this right. The State shall supervise the rational utilization of natural resources to protect and improve living conditions, and to preserve and restore the environment.”⁶⁸

Colombia

“Every individual has the right to enjoy a healthy environment. The law will guarantee the community’s participation in the decisions that may affect it. It is the duty of the State to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance, and to foster education for the achievement of these ends.”⁶⁹

Czech Republic

“1. Everyone has the right to a favorable environment. 2. Everyone has the right to timely and complete information about the state of the environment and natural resources. 3. No one may, in exercising her rights, endanger or cause damage to the environment, natural resources, the wealth of natural species, or cultural monuments beyond the extent designated by law.”⁷⁰

Ethiopia

“All persons have a right to a clean and healthy environment.”

“People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly.”⁷¹

Kenya

“Every person has the right to a clean and healthy environment, which includes the right – (a) to have the environment protected for the benefit of present and future generations through legislative and other measures, particularly those contemplated in Article 69; and (b) to have obligations relating to the environment fulfilled under Article 70.”⁷²

“(1) The State shall – (a) ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; ... (d) encourage public participation in the management, protection and conservation of the environment.”⁷³

“(1) If a person alleges that a right to a clean and healthy environment recognised and protected under Article 42 has been, is being or is likely to be, denied, violated, infringed or threatened, the person may apply to a court for redress in addition to any other legal remedies that are available in respect to the same matter. (2) On application under clause (1), the court may make any order, or give any directions, it considers appropriate – (a) to prevent, stop or discontinue any act or omission that is harmful to the environment; (b) to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; or (c) to provide compensation for any victim of a violation of the right to a clean and healthy environment. (3) For the purposes of this Article, an applicant does not have to demonstrate that any person has incurred loss or suffered injury.”⁷⁴

France

“Everyone has the right to live in a balanced environment which shows due respect for health.”⁷⁵

“When the occurrence of any damage, albeit unpredictable in the current state of scientific knowledge, may seriously and irreversibly harm the environment, public authorities shall, with due respect for the principle of precaution and the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of temporary measures commensurate with the risk involved in order to preclude the occurrence of such damage.”⁷⁶

“Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress.”⁷⁷

“Everyone has the right, in the conditions and to the extent provided for by law, to have access to information pertaining to the environment in the possession of public bodies and to participate in the public decision-taking process likely to affect the environment.”⁷⁸

“Education and training with regard to the environment shall contribute to the exercising of the rights and duties set out in this Charter.”⁷⁹

Mexico

“Any person has the right to a healthy environment for his/her own development and well-being. The State will guarantee the respect to such right. Environmental damage and deterioration will generate a liability for whoever provokes them in terms of the provisions by the law.”⁸⁰

Norway

“In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to be informed of the state of the natural environment and of the effects of any encroachments on nature that are planned or commenced.”⁸¹

Poland

“1. Public authorities shall pursue policies ensuring the ecological security of current and future generations. 2. Protection of the environment shall be the duty of public authorities. 3. Everyone shall have the right to be informed of the quality of the environment and its protection. 4. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.”⁸²

Russian Federation

“Everyone shall have the right to favourable environment, reliable information about its state and for a restitution of damage inflicted on his health and property by ecological transgressions.”⁸³

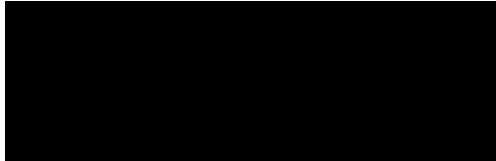
IV. Conclusion

For the reasons described above, we recommend that Queensland adopt a right to a healthy environment as part of its proposed Human Rights Act. Although even a basic formulation of this right (similar to those presented in section III.B.1 above) would be beneficial to Queensland and its residents, we recommend that the government adopt a more detailed formulation similar to those presented in section III.B.2 and III.B.3 above, and that at a minimum sets out detailed procedural rights to access to information, participation, and access to remedy.


We also recommend that the proposed Human Rights Act create strong implementation and enforcement mechanisms, to ensure that individuals and communities are able to enjoy their human rights. Without such mechanisms, the human rights guaranteed under the Act would serve little value. Ideally, the Human Rights Act should enable citizens to directly challenge alleged violations of their human rights in the court system or before an administrative tribunal subject to judicial review. In some systems, such claims must first be reviewed by an administrative body like a human rights commission, but it is best if unfavourable resolution in that forum can be appealed to a court. It would also be valuable for the Human Rights Act to give the Queensland Anti-Discrimination Commission and the Australia Human Rights Commission a broad mandate to implement the rights in the Act, including the power to


investigate alleged violations of human rights or other issues of concern identified by the commission, to issue recommendations for avoiding or resolving violations, and to promote human rights through trainings, workshops and awareness-raising campaigns.

Sincerely,



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¹ The Guardian, *Brazil's mining tragedy: was it a preventable disaster?* (25 November 2015), available at <http://www.theguardian.com/sustainable-business/2015/nov/25/brazils-mining-tragedy-dam-preventable-disaster-samarco-vale-bhp-billiton>.

² Human Rights Watch, *Dispatches: Avoiding Lead Poisoning in Nigeria* (21 May 2015), available at <https://www.hrw.org/news/2015/05/21/dispatches-avoiding-lead-poisoning-nigeria>.

³ The Guardian, *'East African Erin Brockovich' wins prize for closing polluting lead smelter* (19 April 2015), available at <http://www.theguardian.com/environment/2015/apr/20/east-african-erin-brockovich-wins-prize-for-closing-polluting-lead-smelter>; Human Rights Watch, *Kenya: Toxic Lead Threatening Lives Treat, Compensate Victims of Mombasa Smelter* (24 June 2014), available at <https://www.hrw.org/news/2014/06/24/kenya-toxic-lead-threatening-lives>.

⁴ See, e.g., CNN, *How tap water became toxic in Flint, Michigan* (13 January 2016), available at <http://www.cnn.com/2016/01/11/health/toxic-tap-water-flint-michigan/>; Washington Post, *This is how toxic Flint's water really is* (15 January 2016), available at <https://www.washingtonpost.com/news/wonk/wp/2016/01/15/this-is-how-toxic-flints-water-really-is/>.

⁵ Human Rights Council Resolution 28/11 (7 April 2015), U.N. Doc. A/HRC/RES/28/11; see also Human Rights Council Resolution 16/11 (24 March 2011), U.N. Doc. A/HRC/RES/16/11; Human Rights Council Resolution 18/22 (17 October 2011), U.N. Doc. A/HRC/RES/18/22.

⁶ *Preliminary Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox* (24 December 2012), U.N. Document A/HRC/22/43, para. 34, available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-43_en.pdf.

⁷ See, e.g., *Preliminary Report of the Independent Expert on the issue of human rights and environment*, note 6, para. 12; David Richard Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment* (Vancouver, Toronto, UBC Press, 2012); James R. May and Erin Daly, *Global Environmental Constitutionalism* (Cambridge University Press, 2015).

⁸ Id.

⁹ For example, in France, the Constitutional Council reviews proposed legislation for consistency with human rights obligations. See David Boyd, *The Constitutional Right to a Healthy Environment*, Environment: Science and Policy for Sustainable Development (July-August 2012), available at <http://www.environmentmagazine.org/Archives/Back%20Issues/2012/July-August%202012/constitutional-rights-full.html>. The Victoria Human Rights Charter requires that a Member of Parliament who proposes a Bill to “cause a statement of compatibility” with human rights, and further provides that the Scrutiny of Acts and Regulations Committee “must consider any Bill introduced into Parliament and must report to the Parliament as to whether the Bill is incompatible with human rights.” Charter, sections 28, 30.

¹⁰ See Boyd, *The Constitutional Right to a Healthy Environment*, note 9.

¹¹ See, e.g., *Mapping Report of the Independent Expert on human rights and the environment* (30 December 2013), U.N. Doc. A/HRC/25/53, para. 53.

¹² Many country-level formulations of a right to a healthy environment incorporate the principle of sustainable development. For example, South Africa’s formulation of right to a healthy environment (which is set out fully in Section III) requires, among other things, that the State undertake “reasonable legislative and other measures that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” Section 24 of the South African Constitution (1996).

¹³ *Fuel Retailers Association of SA (Pty) Ltd v Director General, Environmental Management Mpumalanga and Others*, Case CCT 67/06 (2007) ZACC 13, para. 61.

¹⁴ *Preliminary Report of the Independent Expert on human rights and the environment*, note 6, para. 25.

¹⁵ See Universal Declaration of Human Rights, adopted by General Assembly Resolution 217 A(III) of 10 December 1948, arts. 7, 8, 19, 20 and 21; International Covenant on Civil and Political Rights, 999 UNTS 171; 6 ILM 368 (1967), arts. 2, 19, 21, 22, and 25.

¹⁶ *Preliminary Report of the Independent Expert on human rights and the environment*, note 6, para. 26.

¹⁷ Id., para. 31.

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- ¹⁸ UNECE, Status of ratifications of Aarhus Convention, <http://www.unece.org/env/pp/ratification.html>.
- ¹⁹ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 2161 UNTS 447; 38 ILM 517 (1999) (emphasis added), available at <http://www.unece.org/env/pp/treatytext.html>.
- ²⁰ United States Environmental Protection Agency, *Public Participation Guide: Introduction to Public Participation* <https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation>.
- ²¹ Id.
- ²² *Preliminary Report of the Independent Expert on human rights and the environment*, note 6, para. 25.
- ²³ Human Rights Council Resolution 28/11 (7 April 2015), U.N. Doc. A/HRC/RES/28/11.
- ²⁴ *Preliminary Report of the Independent Expert on human rights and the environment*, note 6, para. 44.
- ²⁵ See Victoria Charter, Part 4.
- ²⁶ See generally <http://www.knchr.org/>. Kenya has adopted a right to “a clean and healthy environment” in its Constitution (article 42).
- ²⁷ Kenya Human Rights Commission, *The Malindi Inquiry Report* (2006), available at http://www.knchr.org/Portals/0/EcosocReports/Malindi_Inquiry.pdf.
- ²⁸ Id.
- ²⁹ Id., p. 188.
- ³⁰ Id., p. 186.
- ³¹ See e.g. Protection International, *Kenya: Protection International and [Malindi] Human Rights Forum - Partnering since 2010 to Build a Safer Working Environment for Defenders* (1 May 2014), available at <https://protectioninternational.org/2014/05/01/kenya-malindi-human-rights-forum-community-hrds-in-marereni/>. Many of these community groups even came together to form a larger advocacy groups called the Malindi Rights Forum.
- ³² Id.; see also Environmental Right Database: good practices in the use of human rights to protect the environment, <http://environmentalrightsdatabase.org/kenya-national-commission-on-human-rights-actions-on-environment/>.
- ³³ See generally the Commissions website, <http://www.cndh.org.mx/>, Recommendation 012/2010. See also Environmental Right Database, <http://environmentalrightsdatabase.org/mexican-national-human-rights-commissions-environmental-actions/>.
- ³⁴ Commission’s website; Environmental Right Database, <http://environmentalrightsdatabase.org/mexican-national-human-rights-commissions-environmental-actions/>.
- ³⁵ See North American Commission for Environmental Cooperation (CEC), http://www.cec.org/Storage/140/16646_004_CNDH_Final_Agenda_en_FINAL.pdf.
- ³⁶ See generally, Environmental Right Database, note 32.
- ³⁷ Id.; see also David Richard Boyd, *The Environmental Rights Revolution*, note 7, pp. 257-77.
- ³⁸ Organization of African Unity (OAU), African Charter on Human and Peoples’ Rights (“Banjul Charter”), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 24, available at <http://www.achpr.org/instruments/achpr/>.
- ³⁹ Organization of American States (OAS), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”), 16 November 1999, Article 11.1, available at <http://www.oas.org/juridico/english/treaties/a-52.html>.
- ⁴⁰ African Union, Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa, 11 July 2003, Articles 18 and 19, available at <http://www.achpr.org/instruments/women-protocol/#18>.
- ⁴¹ League of Arab States, Arab Charter on Human Rights, 15 September 1994, Article 38, available at <https://www1.umn.edu/humanrts/instree/loas2005.html>.
- ⁴² Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012, Paragraph 28.f., available at <http://aichr.org/documents/>.
- ⁴³ Aarhus Convention, note 19, Preamble, available at <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>.
- ⁴⁴ See, e.g. *Preliminary Report of the Independent Expert on the issue of human rights and environment*, note 6, para. 12 May and Daly, *Global Environmental Constitutionalism*, note 7, Appendix A.
- ⁴⁵ Constitution of Angola, Article 24(1), available at https://www.constituteproject.org/constitution/Angola_2010.pdf?lang=en.
- ⁴⁶ Constitution of Bolivia, Article 33, available at https://www.constituteproject.org/constitution/Bolivia_2009.pdf.
- ⁴⁷ Constitution of Indonesia, Article 28H (1), available at https://www.constituteproject.org/constitution/Indonesia_2002.pdf?lang=en.

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- ⁴⁸ Constitution of Jamaica, Article 13(3)(1), available at <http://www.jamaicalawonline.com/revised-laws/alphabetical-list-of-statutes/103-CONSTITUTION%20OF%20JAMAICA.html>.
- ⁴⁹ Constitution of Mongolia, Article 16(2), available at https://www.constituteproject.org/constitution/Mongolia_2001.pdf?lang=en.
- ⁵⁰ Constitution of Slovakia, Article 44(1), available at <https://www.prezident.sk/upload-files/46422.pdf>.
- ⁵¹ Constitution of South Korea, Article 35(1), available at https://www.constituteproject.org/constitution/Republic_of_Korea_1987.pdf?lang=en.
- ⁵² Constitution of Costa Rica, Article 50, available at https://www.constituteproject.org/constitution/Costa_Rica_2011.pdf?lang=en.
- ⁵³ Constitution of Greece, Article 24(1), available at https://www.constituteproject.org/constitution/Greece_2008.pdf?lang=en.
- ⁵⁴ Constitution of Guyana, Article 149J, available at <http://parliament.gov.gy/constitution.pdf>.
- ⁵⁵ Constitution of Norway, Article 110b, available at http://www.servat.unibe.ch/icl/no00000_.html.
- ⁵⁶ Constitution of Panama, Article 118, available at https://www.constituteproject.org/constitution/Panama_2004.pdf?lang=en.
- ⁵⁷ Id., Article 119.
- ⁵⁸ Id., Article 120.
- ⁵⁹ Id., Articles 121.
- ⁶⁰ Constitution of Serbia, Article 74, available at http://www.srbija.gov.rs/cinjenice_o_srbiji/ustav_odredbe.php?id=218.
- ⁶¹ Constitution of the Seychelles, available at https://www.constituteproject.org/constitution/Seychelles_2011.pdf?lang=en.
- ⁶² Constitution of South Africa, Article 24, available at https://www.constituteproject.org/constitution/South_Africa_2012.pdf?lang=en.
- ⁶³ Constitution of Turkey, Article 56, available at https://www.constituteproject.org/constitution/Turkey_2011.pdf?lang=en.
- ⁶⁴ See Boyd, *The Environmental Rights Revolution*, note 7, pp. 65-7.
- ⁶⁵ Constitution of Argentina, Section 41, available at https://www.constituteproject.org/constitution/Argentina_1994.pdf?lang=en.
- ⁶⁶ Constitution of Azerbaijan, Article 39, available at https://www.constituteproject.org/constitution/Azerbaijan_2009.pdf?lang=en.
- ⁶⁷ Constitution of Belarus, Article 34, available at https://www.constituteproject.org/constitution/Belarus_2004.pdf?lang=en.
- ⁶⁸ Id., Article 46.
- ⁶⁹ Constitution of Colombia, Article 79, available at https://www.constituteproject.org/constitution/Colombia_2005.pdf.
- ⁷⁰ Constitution of the Czech Republic, Article 35, available at https://www.constituteproject.org/constitution/Czech_Republic_2002.pdf.
- ⁷¹ Constitution of Ethiopia, Articles 44(1), 92(3), available at https://www.constituteproject.org/constitution/Ethiopia_1994.pdf?lang=en.
- ⁷² Constitution of Kenya, Article 42, available at https://www.constituteproject.org/constitution/Kenya_2010.pdf?lang=en.
- ⁷³ Id., Article 69.
- ⁷⁴ Id., Article 70.
- ⁷⁵ French Environmental Charter, Article 1, available at <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/charter-for-the-environment.103658.html>. The French Environmental Charter was adopted by the National Assembly in 2004 and given constitutional status.
- ⁷⁶ Id., Article 5.
- ⁷⁷ Id., Article 6.
- ⁷⁸ Id., Article 7.
- ⁷⁹ Id., Article 8.
- ⁸⁰ Constitution of Mexico, Article 4, available at https://www.constituteproject.org/constitution/Mexico_2007.pdf.
- ⁸¹ Constitution of Norway, Article 110(b)(2), available at http://www.servat.unibe.ch/icl/no00000_.html.
- ⁸² Constitution of Poland, Article 74, available at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁸³ Constitution of the Russian Federation, Article 42, available at https://www.constituteproject.org/constitution/Russia_2008.pdf.