

Submission in response to

## **Call for inputs issued by the Special Rapporteur on climate change – Fossil fuel-based economy and human rights**

prepared by

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Environmental Justice Australia

28 February 2025

Submitted to: Special Rapporteur on climate change ([hrc-sr-climatechange@un.org](mailto:hrc-sr-climatechange@un.org))

## About Environmental Justice Australia

Environmental Justice Australia (**EJA**) is a national public interest legal centre. We use the law to empower communities, to protect and regenerate nature, to safeguard our climate and to achieve social and environmental justice.

We are proudly non-profit, non-government, and funded by donations from the community. Our legal team combines technical expertise and a practical understanding of the legal system to protect communities and our environment. EJA has a long history in advocating for a just energy transition, and has worked closely with people, communities, and environmental organisations to encourage and compel governments to act, to transform industries, and to ensure justice for the people most affected is at the foundation of all climate solutions, today and tomorrow.

### **Acknowledgement of Country**

We acknowledge the Wurundjeri peoples, the Traditional Owners of the lands on which our team lives and where the EJA office is located. We pay our respects to Elders past and present and recognise that this land always was and always will be Aboriginal and Torres Strait Islander land because sovereignty has never been ceded. We acknowledge the role of the legal system in establishing, entrenching and continuing the oppression and injustice experienced by First Nations people. We also acknowledge that the law has been an avenue for resistance and a critical framework of action for First Nations justice. It is an inherently complex space; we seek to contribute to using and developing laws in ways that lay foundations for just outcomes for First Nations people across the continent.

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# Fuelling Injustice: The Human Rights Cost of Fossil Fuels and the Path to a Just Transition in Australia

## Background: Human Rights Threats from Fossil Fuels in Australia

Australia is a global fossil fuels player. It ranks as the world's second largest exporter of fossil fuel CO<sub>2</sub> emissions arising from its vast coal and gas reserves.<sup>1</sup> In 2023, coal and liquefied natural gas (LNG) were Australia's second and third-largest export commodities, generating AU\$103.2 billion and AU\$74.3 billion respectively.<sup>2</sup> Despite committing to net zero emissions by 2050, the Australian government continues to expand fossil fuel production, locking in high-carbon infrastructure that undermines international climate commitments.<sup>3</sup> Policies such as the [Future Gas Strategy](#) reinforce fossil fuel dependency by commencing and subsidising new gas projects for domestic consumption rather than accelerating the transition to clean energy.<sup>4</sup>

The Australian climate has already warmed by an average of 1.51°C since national records began in 1910,<sup>5</sup> with the devastating impacts of climate change already observable and threatening the human rights of all Australians.<sup>6</sup> This includes:

- **The right to life** (ICCPR, Article 6) is at risk as extreme heat, bushfires, drought, floods, and disease increase mortality rates.<sup>7</sup> The 2019/2020 bushfires (one of the most intense and catastrophic fire seasons on record in Australia, known as the Black Summer Bushfires) exemplified these dangers, prompting recognition

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<sup>1</sup> Bill Hare, [‘Dug up in Australia, burned around the world – exporting fossil fuels undermines climate targets’](#) *Climate Analytics* (13 August 2024).

<sup>2</sup> Trade Data Section, Trade and Investment Economics Branch, International Economics and Energy Transition Division, Australian Government, Department of Foreign Affairs and Trade, [Australia's Top 25 Exports, Goods & Services](#) (Report, October 2024).

<sup>3</sup> By 2035, Australia's exported fossil fuel CO<sub>2</sub> emissions are projected to be 50% higher than the total emissions generated over the entire 63-year period from 1961 to 2023: See Bill Hare (n 1).

<sup>4</sup> See Australian Government, Department of Industry, Science and Resources *Future Gas Strategy 2024* (Report, May 2024) 24: in encouraging investment in carbon capture and storage (CCS) and supporting gas industry expansion, including through the \$15 million Carbon Capture Technologies Program; at 25: in emphasising natural gas as a critical fuel beyond 2050; at 31: in prioritising continued gas exploration and development; at 54: in utilising Australian Domestic Gas Security Mechanism (ADGSM) to ensure continued gas supply for domestic use and exports, reinforcing dependence on fossil fuel infrastructure.

<sup>5</sup> Commonwealth Scientific and Industrial Research Organisation (‘CSIRO’), [State of the Climate 2024](#) (Report, 2024) 2.

<sup>6</sup> The Intergovernmental Panel on Climate Change (‘IPCC’) has noted that are numerous physical effects of climate change that are already observable in Australia, with record breaking heatwaves and major floods and fires causing major impacts on many natural systems: See IPCC Working Group II, *Climate Change 2022: Impacts, Adaptation and Vulnerability* (IPCC Assessment Report 6, 2022) [Chapter 11: Australasia](#), 1583.

<sup>7</sup> See David R. Boyd, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/74/1/61 (15 July 2019)[29] (‘**Safe Climate Report**’); Michael Tong, Enembe Okokon and Sotiris Vardoulakis, ‘Health Risks of Climate Change in Australia: An umbrella review’ (2024) 20 *The Journal of Climate Change and Health* 100347:1–9, 1, 3–6; IPCC Working Group I, *Climate Change 2021: The Physical Science Basis* (IPCC Assessment Report 6, 2021) [Chapter 12: Climate change information for regional impact and for risk assessment](#), 1805-1807

from the Human Rights Council.<sup>8</sup> People with disabilities face heightened risks during such extreme weather events due to inadequate evacuation plans, inaccessible emergency communications, and gaps in response strategies.<sup>9</sup> Heatwaves also disproportionately impact those with chronic illnesses, such as cardiovascular and respiratory conditions, leading to preventable deaths.<sup>10</sup>

- **The right to health** (ICESCR, Article 12). Climate change-related extreme weather events such as heatwaves, bushfires, floods, storms, and droughts are occurring with greater frequency in Australia compared to 50 years ago,<sup>11</sup> and have yielded severe adverse health outcomes, including deaths, climate-induced illnesses including respiratory and cardiovascular diseases, heat stroke, and mental health disorders.<sup>12</sup> People living with chronic illness and disability and those in rural and remote communities are particularly impacted.<sup>13</sup> The absence of a clear federal just transition strategy exacerbates these vulnerabilities.
- **The right to a healthy environment**, affirmed by the UN in 2022, is jeopardised by rising temperatures, biodiversity loss, and ecosystem degradation. Coral bleaching in the Great Barrier Reef threatens species' survival, highlighting the destructive impact of climate change on critical ecosystems.<sup>14</sup> Fossil fuel expansion and industrial pollution further degrade air and water quality, disproportionately harming communities located near extraction sites.
- **The right to culture** (ICESCR, Article 15(1), ICCPR, Article 27) is particularly at risk for Indigenous communities,<sup>15</sup> whose deep ties to land and natural resources are disrupted by sea level rise, coastal erosion, and extreme heat.<sup>16</sup> The UN Human Rights Committee's ruling in *Daniel Billy & Others v Australia* recognised the existential threat climate change poses to Indigenous ways of

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<sup>8</sup> A/HRC/50/57: [The impacts of climate change on the human rights of people in vulnerable situations](#), (6 May 22), [5].

<sup>9</sup> CARE Australia and Humanitarian Advisory Group, '[The Black Summer: Inclusion and Vulnerability in the Bushfire Response](#)', *Humanitarian Advisory Group* (Blog Post, 10 March 2022).

<sup>10</sup> Sharma S, Sun W, Jian L, Landrigan T, Kirkland L, Joyce S and Scalley B, [Projecting heat-related health impacts under climate change in Perth](#) (Report, Department of Health WA, January 2024) 4.

<sup>11</sup> Tong, Okokon and Vardoulakis (n 7) 2.

<sup>12</sup> Safe Climate Report (n 7) [31].

<sup>13</sup> Climate Council of Australia, [On the Frontline: Climate Change and Rural Communities](#) (2016) I–III.

<sup>14</sup> Great Barrier Reef Marine Park Authority, [Great Barrier Reef Outlook Report 2024](#) (2024). Noting that the outlook for the Reef ecosystem is “very poor”: at 502.

<sup>15</sup> See, for example, Committee on Economic, Social and Cultural Rights, [General Comment No. 21: Right of everyone to take part in cultural life \(art. 15, para. 1 \(a\), of the International Covenant on Economic, Social and Cultural Rights\)](#), 43<sup>rd</sup> sess, UN Doc E/C.12/GC/21 (21 Dec. 2009) [36]; See Annex A, *Environmental Justice Australia (EJA) v. Australia* (2021) on complaints to the United Nations Special Rapporteur on Human Rights and the Environment, Special Rapporteur on the rights of Indigenous peoples, and Special Rapporteur on the rights of persons with disabilities over the Australian government's inaction on climate change.

<sup>16</sup> See, for example, Human Rights Committee, [Views adopted by the Committee under article 5\(4\) of the Optional Protocol, concerning communication No 3624/2019](#), UN Doc CCPR/C/135/D/3624/2019 (22 Sep. 2023); *Waratah Coal Pty Ltd v Youth Verdict Ltd & Ors (No 6)* [2022] QLC 21 ('Youth Verdict').

life. Weak native title and the absence of a Treaty further hinder Indigenous-led climate adaptation and land protection efforts,<sup>17</sup> exacerbating cultural displacement, as seen during the Black Summer Bushfires.<sup>18</sup>

- **The best interests of the child** (CRC, Article 3(1)) are not considered by administrative authorities in respect to climate change impacts and environmental decision-making in Australia. In May 2021, the Federal Court of Australia recognised that Australian children will experience excess mortality due to heatwaves and a lower quality of life due to continued climate inaction.<sup>19</sup> The Court also noted the climate inaction by “this generation of adults, in what might fairly be described as the greatest inter-generational injustice ever inflicted by one generation of humans upon the next.”<sup>20</sup> Despite these findings, the Federal Court of Appeal held that decisions-makers do not have a duty of care to children when approving fossil fuel projects during the climate crisis.<sup>21</sup> As part of a separate action, in October 2021, EJA supported five young people to make a complaint jointly to several UN Special Rapporteurs.<sup>22</sup> This group included young people from First Nations and disability communities and the complaint concerned the Australian government’s failure to act to meaningfully cut greenhouse gas emissions by 2030 and beyond.<sup>23</sup> The complaint included statements from the five young people about their experiences of climate change and how it was impacting their lives. No response was received from any of the three Special Rapporteurs.

## Systemic Causes of these Climate Change-Related Human Rights Impacts

### 1. *Fossil Fuel Dependence, Corporate Power, and Political Influence*

Australia’s deeply entrenched fossil fuel industry acts as a barrier to effective climate action, further exacerbating climate harms felt by people and communities and contributing to human rights impacts. The fossil fuel industry is sustained by deep-seated corporate and political entanglements that make it inseparable to the Australian economy. The fossil fuel industry more generally has been identified as having

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<sup>17</sup>George Williams, ‘[Does True Reconciliation Require a Treaty?](#)’ (2014)8(10) *Indigenous Law Bulletin*, 3; William Jonas ‘[Native Title and the Treaty Dialogue](#)’ (Speech, Seminar hosted by the Aboriginal and Torres Strait Islander Social Justice Commissioner and the International Law Association, 10 September 2002).

<sup>18</sup>‘[Bushfires disproportionately impact Indigenous Australians](#)’, *Australian National University* (13 April 2022).

<sup>19</sup> *Sharma & Others v Minister for the Environment* [2021] FCA 560 [219].

<sup>20</sup> *Ibid* [292].

<sup>21</sup> *Sharma & Others v Minister for the Environment* case is overturned on appeal. Initially, the Federal Court recognised a duty of care owed by the Minister for the Environment to avoid causing personal injury or death to Australian children due to carbon emissions when approving fossil fuel projects: see (n 19) [58].

<sup>22</sup> The complaint was addressed to the United Nations Special Rapporteurs for Human Rights and Environment, the rights of Indigenous people, and the rights of persons with disabilities.

<sup>23</sup> Environmental Justice Australia (EJA) v. Australia (2021) Complaint to UN Special Rapporteurs <<https://climatecasechart.com/non-us-case/environmental-justice-australia-eja-v-australia/>>.

overwhelming corporate power in Australia.<sup>24</sup> Some of the systemic constraints that business imposes on government capacity to strongly regulate the fossil fuel industry include:

- **Post-service compensation for political leaders.** There is a ‘revolving door’ between government officials and fossil fuel executives. It has been reported that every single federal resources minister from both major political parties since 2001 has gone to work in the fossil fuel sector after politics.<sup>25</sup> For example, former National Party leader and Deputy Prime Minister Mark Vaile is the Chairman and Non-Executive Director of Whitehaven Coal, a major coal mining company in Australia.<sup>26</sup>
- **Extensive inter-penetration of regulators and industry bodies.**<sup>27</sup> In 2018, it was found that more than 180 individuals had moved between fossil fuel and/or mining industries and senior positions in government over the past decade.<sup>28</sup> For example, Nev Power, deputy chair of a gas exploration company, was appointed as Chair of Australia’s Covid-19 recovery commission<sup>29</sup> which recommended a ‘gas-fired’ recovery which was then implemented by the government.<sup>30</sup>
- **Superprofits heyday and purchasing of influence.** Fossil fuel companies have made billions from Australian resources in the last few decades. For example, Woodside Energy doubled its profits to \$US3.6 billion in 2024.<sup>31</sup> For perspective, the GDP of Vanuatu in 2024 was \$US1.21 billion.<sup>32</sup> After COP26, leaked documents showed that Australia had asked IPCC scientists to delete a reference to analysis of the role played by fossil fuel lobbyists in watering down climate action climate in Australia.<sup>33</sup> The resources sector is one of the biggest donors in Australia politics and reportedly gave the most out of any sector in the

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<sup>24</sup> Patrick Dunleavy, (2024) ‘[Interest groups and corporate power](#)’, in Mark Evans, Patrick Dunleavy and John Phillimore (eds) *Australia’s Evolving Democracy: A New Democratic Audit*, (LSE Press, 2024) 143, 143–165.

<sup>25</sup> Senator Larissa Waters, ‘[Removing the Fossil Fuel Industry’s Influence on Politics and Parliament](#)’, *The Australia Institute* (22 March 2024).

<sup>26</sup> In the financial year ending 30 June 2024, Whitehaven Coal reported earnings of \$1.4 billion: ‘Full Year Results FY24’, *Whitehaven* (Web Page, 22 August 2024) <<https://whitehavencoal.com.au/full-year-results-fy24/>>.

<sup>27</sup> Dunleavy (n 24).

<sup>28</sup> Adam Lucas, ‘[Revealed: the extent of job-swapping between public servants and fossil fuel lobbyists](#)’, *The Conversation* (5 March 2018).

<sup>29</sup> Anne Davies and Lisa Cox, ‘[Revealed: documents detail key players behind vast Australian fossil fuel expansion](#)’, *The Guardian* (19 June 2023).

<sup>30</sup> Angus Taylor MP, ‘[Advancing Australia’s gas-fired recovery](#)’ (Media Release, 7 May 2021).

<sup>31</sup> Daniel Ziffer and Gareth Hutchins, ‘[Woodside Energy more than doubles profit to \\$3.6b, Viva Energy dumps 26pc in value, ASX loses ground — as it happened](#)’ *ABC News* (25 February 2025).

<sup>32</sup> ‘[Vanuatu Data Sets](#)’, *International Monetary Fund Data Mapper* (Web Page, October 2024).

<sup>33</sup> Justin Rowlett & Tom Gerken, ‘[COP26: Document leak reveals nations lobbying to change key climate report](#)’, *BBC* (21 October 2012).

most recent Australian Electoral Commission data disclosures.<sup>34</sup> Lobbying and political donations are poorly regulated in Australia.<sup>35</sup>

- **Ideological influence via think tanks and media operations.** Australia has a highly concentrated media landscape where fossil fuel interests dominate public discourse. News Corp Australia, which controls 60% of Australia's print media,<sup>36</sup> has long supported fossil fuel expansion while spreading misinformation about renewable energy alternatives.<sup>37</sup>
- **Fears of withdrawal of projects and harm to domestic economy.** Economic globalisation has been a potent disincentive to governments trying to regulate key industries, due to fears that fossil fuel projects will move elsewhere. For example, when the Australian government sought to introduce price caps to superprofits during the 2022 energy crisis, gas industry spokespeople threatened to move their business overseas.<sup>38</sup>

## 2. Colonial Legacies, and Absence of Strong Indigenous Land Rights

The legacy of colonisation continues to shape Australia's energy policies, with Indigenous land disproportionately targeted for fossil fuel projects.<sup>39</sup> Systemic factors which enable the fossil fuel industry include:

- **The enduring process of colonisation and dispossession of First Nations people.** Where rights for Indigenous people do exist, they are limited. For example, the *Native Title Act 1993* (Cth) provides only limited rights to native title holders, offering a right to negotiate rather than a right to veto fossil fuel projects on traditional lands.<sup>40</sup> This has allowed major projects like Adani's Carmichael coal mine and Tamboran's Beetaloo Basin fracking project to proceed without the free, prior, and informed consent of Traditional Owners.<sup>41</sup> The lifetime emissions of each project is the equivalent of a carbon bomb.<sup>42</sup> Adani's Carmichael mine is expected to produce 4.7 billion tonnes of CO<sub>2</sub> –

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<sup>34</sup> Tom Crowley, '[Gambling, fossil fuel and big pharma open wallets as political players gear up for election](#)' *ABC News* (online, 3 February 2025).

<sup>35</sup> Joo-Cheong Tham and Yee-Fui Ng, '[How to deal with fossil fuel lobbying and its growing influence in Australian politics](#)' *The Conversation* (19 August 2022); '[Billionaires, betting companies and 'dark' donations: 2023-24's political finance data released](#)' *SBS News* (3 February 2025).

<sup>36</sup> Hannah Ritchie, '[Rupert Murdoch: How magnate transformed Australia's media](#)' *BBC* (22 September 2023).

<sup>37</sup> Graham Redfern, '[News Corp gasses up 'green' fossil fuels in a series on future energy – but does it pass the sniff test](#)' *The Guardian* (14 September 2023).

<sup>38</sup> Ian Verrender, '[Gas giants are threatening to decamp after a move to cap prices — but to where?](#)' *ABC News* (19 December 2022).

<sup>39</sup> '[Indigenous Peoples' Rights](#)', *Amnesty International*.

<sup>40</sup> '[Limitations of Native Title](#)' *Australian Museum* (10 April 2024).

<sup>41</sup> '[Our Fight - Stop Adani destroying our land and culture](#)' *Wangan & Jagalingou Family Council*; Lisa Cox, '[We need help: traditional owners accuse land council of facilitating fracking](#)' *The Guardian* (20 June 2023).

<sup>42</sup> Anything over one billion tonnes is considered a carbon bomb: See Kjell Kühne et al, '["Carbon Bombs" - Mapping key fossil fuel projects](#)' (2022) 166 *Energy Policy* 112950: 1–10.

more than 0.5% of the world carbon budget for limiting warming to 2°C<sup>43</sup> – and the Beetaloo fracking project is expected to produce up to 3.2 billion tonnes of CO<sub>2</sub>.<sup>44</sup>

- **Lack of investment and poor socio-economic outcomes in remote Indigenous communities.** Fossil fuel companies provide very limited employment opportunities, infrastructure, and royalties<sup>45</sup> in places where opportunities may be scarce and there are persistent poor socio-economic conditions for the First Nations residents.<sup>46</sup> Poverty rates are much greater for First Nations people who live in remote Australia, with extremely high rates seen in remote areas (41%) and further still in very remote areas (57%),<sup>47</sup> while 60% of resource projects occur on land covered a native title determination or claim.<sup>48</sup>

## Regulatory Gaps in Climate Change-Related Human Rights Impacts in Australia

Australia's domestic laws are ill-equipped to regulate emissions and prevent harm from fossil fuel projects, leaving loopholes that enable ongoing pollution and climate inaction that contribute to human rights violations. The flaws in Australia's regulation of fossil fuel industries include:

- **Inadequate emissions reductions targets with no penalties for failure to reach those targets.** Australia's Nationally Determined Contribution (NDC) under the Paris Agreement, which commits to only a 43% reduction on 2005 levels by 2030, is far below the 68% reduction required to align with the 1.5°C pathway.<sup>49</sup> Worse, Scope 3 emissions—those from exported coal and gas—are not counted by Australia, significantly underrepresenting the country's true

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<sup>43</sup> Cameron Amon and Tom Swann (The Australian Institute), [Carmichael in Context: Quantifying Australia's threat to climate action](#) (Report, November 2015) 4.

<sup>44</sup> Climate Analytics, [Beetaloo fracking and Middle Arm emissions wildly underestimated: analysis](#) (Press Release, 31 October 2023).

<sup>45</sup> Samy Andres Leyton-Flor and Kamaljit Sangha, [The socio-ecological impacts of mining on the well-being of Indigenous Australians: A systematic review](#) (2024) 17 *The Extractive Industries and Society* 101429: 1–14.

<sup>46</sup> Tanuja Barker, [Employment outcomes for Aboriginal People: An exploration of experiences and challenges in the Australian minerals industry](#) (Research Paper No 6, Centre for Social Responsibility in Mining Sustainable Minerals Institute University of Queensland, Australia, October 2006).

<sup>47</sup> Senate Standing Committee on Community Affairs, Parliament of Australia *Inquiry into the extent and nature of poverty in Australia* (Report, February 2024) [Ch 3 - First Nations people and communities](#).

<sup>48</sup> Department of Industry, Science and Resources, 'Critical Minerals Strategy 2023-2023' (20 June 2023) [3. First Nations engagement and benefit sharing](#).

<sup>49</sup> [Australia](#) Climate Action Tracker (Web Page, 13 November 2024).

emissions footprint.<sup>50</sup> Australia has repeatedly delayed releasing its 2035 target citing the U.S. election as a cause.<sup>51</sup>

- **Overreliance on offsets to reduce emissions.** The Safeguard Mechanism,<sup>52</sup> introduced to cap emissions from major polluters, has failed to drive actual emission reductions, allowing businesses to purchase unlimited offsets in the form of Australian Carbon Credit Units or Safeguard Mechanism Credits enabling continued high-emission operations.<sup>53</sup> Carbon offset projects have consistently failed to deliver real emissions reductions, with studies showing that less than 16% of issued carbon credits represent actual climate benefits.<sup>54</sup> The repeal of the carbon pricing scheme in 2014 further weakened regulatory efforts, removing one of the most effective mechanisms that the Australian government held to limit fossil fuel emissions and incentivise clean energy investment.<sup>55</sup>
- **Environmental assessments of fossil fuel projects do not include climate change impacts.** Australia's primary piece of environmental legislation, the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*, governs the approval of fossil fuel projects. It does not contain any reference to climate change nor does it explicitly require the decision-maker to assess the climate impacts of a proposed fossil fuel project.<sup>56</sup> This issue has been subject to litigation in Australia, most recently in *Environment Council of Central Queensland Inc (ECoCeQ) v Minister for the Environment and Water (No 2)* (known as the **Living Wonders** case). In that case, the Full Federal Court rejected the argument made by EJA's client, ECoCeQ, that the Minister was required to take into account the climate impacts of fossil fuel projects and in doing so noted that this litigation underscored the "ill-suitedness" of the EPBC Act "to the assessment of environmental threats such as climate change and global warming and their impacts on [protected species and places] in Australia."<sup>57</sup>

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<sup>50</sup> Gillian Moon and Tasha Lea, '[Too much hot air? Human rights and Australia's gas and coal exports](#)' (Edited version of paper delivered at Online Symposium: 'Realising the Right to A Healthy Environment in Australia', UNSW, Thursday 6 October 2022), 4-5; See also Tom Swann, 'Scope of this Reporting: Submission on National Greenhouse and Energy Reporting Amendment (Transparency in Carbon Emissions Accounting) Bill' (The Australia Institute, 2020).

<sup>51</sup> Dan Jervis-Bardy, '[Australia 'not giving up' on Paris climate agreement despite Trump withdrawal, Bowen says](#)' *The Guardian* (23 January 2025).

<sup>52</sup> The Safeguard Mechanism is enacted through the *National Greenhouse and Energy Reporting Act 2007* (Cth) ('the NGER Act').

<sup>53</sup> Polly Hemming, Richie Merzian and Alia Armistead (The Australia Institute), '[Trade with no cap](#)' Submission to draft legislation for Safeguard Mechanism Credits (October 2022) 1–8.

<sup>54</sup> Benedict S Probst et al, '[Systematic assessment of the achieved emission reductions of carbon crediting projects](#)' (2024) 15 *Nature Communications* 9562:1–14, 2.

<sup>55</sup> Matt Grudnoff (The Australia Institute), '[The Carbon Pricing Mechanism under the Gillard Government](#)' (Report, August 2020) 1–5.

<sup>56</sup> Australia's legislative scheme governing the approval of fossil fuel projects is enshrined in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

<sup>57</sup> *Environment Council of Central Queensland Inc. v the Minister for Environment and Water* [2024] FCAFC 56, [140].

- **No net zero plan.** The Australian Government has not released its Net Zero Plan which will inform the transition to net zero greenhouse gas emissions by 2050.<sup>58</sup>
- **Fossil fuel subsidies.** In 2023–24, fossil fuel companies received AU\$14.5 billion (~US\$9 billion) in government subsidies,<sup>59</sup> undermining its climate commitments and transition to clean energy sources.
- **Minimal protection of human rights.** International treaties are not part of domestic law unless incorporated through specific legislation as Australia has a dualist legal system.<sup>60</sup> Human rights have not been given comprehensive and consistent legal protection in Australia. Whilst there has been some success using state-level human rights legislation to draw attention to human rights harms from fossil fuel expansion,<sup>61</sup> there is no national Bill of Rights and there is limited protection of rights under the *Australian Constitution*, further limiting legal avenues for communities to hold fossil fuel corporations accountable for climate-related human rights violations.<sup>62</sup>

## A Rights-Based Just Transition: An Imperative for Australia

So far, Australia has relied on a top-down, voluntary, and industry-driven approach to the energy transition, which lacks institutional oversight, fails to provide legally binding protections for workers and Indigenous land rights, and leaves transition efforts fragmented and ineffective.<sup>63</sup> The ‘Future Made in Australia’ plan – a federal government initiative investing \$22.7 billion over a decade to support Australia’s transition<sup>64</sup> – has been repeatedly undermined by Australia’s continued expansion of the fossil fuel industry<sup>65</sup> and the absence of a national transition authority or framework.<sup>66</sup>

The super profits and significant influence of fossil fuel companies in Australia highlight that a just transition cannot be left to market forces alone. Australia needs a federal transition authority with a legislative mandate to ensure a structured, equitable shift

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<sup>58</sup> ‘[Net Zero](#)’, *Department of Climate Change, Energy, the Environment and Water*.

<sup>59</sup> Rod Campbell et al (The Australia Institute), [Fossil fuel subsidies in Australia 2024](#) (Report, May 2024) 1.

<sup>60</sup> See ‘[Human Rights Explained: Australia and Human Rights Treaties](#)’, *Australian Human Rights Commission*; *Youth Verdict* (n 16).

<sup>61</sup> Australian Human Rights Commission, ‘[Government must seize the moment for a National Human Rights Act](#)’ (Media Release, 30 May 2024).

<sup>62</sup> Al Rainnie and Darryn Snell, ‘Just Transition in Australia – depoliticization?’ (2024) 19(1-3) *Contemporary Social Science* 21.

<sup>63</sup> ‘[Future Made in Australia](#)’, *Australian Government*.

<sup>64</sup> In 2024 alone, the Australian Government approved seven coal mine expansions or extensions, with three projects approved to run until 2053, 2062 and 2088. The lifetime emissions of these seven projects total 2,293 million tonnes.

<sup>65</sup> See Peter Adey et al, *Just Transitions in Australia: Moving towards low carbon lives across policy, industry and practice* (The British Academy, June 2022) 1–25; Gareth A.S Edwards et al, *Towards a just transition from coal in Australia?: Just Transitions to Decarbonisation in the Asia-Pacific* (The British Academy, June 2022) 133, Al Rainnie et al, *Just Transition in Australia – depoliticalisation?* (Contemporary Social Science, February 2024) 21–20.

away from fossil fuels. Without this, Australia risks an unjust transition, where economic and social burdens fall disproportionately on coal-dependent communities, Indigenous groups, and lower-income households while fossil fuel corporations continue to benefit from weak regulations and public subsidies.<sup>67</sup>

Alongside a federal transition authority, Australia must implement the following key policies to ensure a just and equitable transition:

- **Refuse new fossil fuel projects and phase out existing projects based on a fair share contribution.** In line with the best available science, Australia must refuse approvals for new fossil fuel projects.<sup>68</sup> Further, Australia should implement a framework to phase out existing fossil fuel projects in alignment with its fair share of global emission reductions.<sup>69</sup> To uphold transparency in climate commitments, Australia must undertake rigorous climate assessments on existing and proposed fossil fuel projects, accounting for full lifecycle emissions, including Scope 3 emissions from exports, to prevent carbon leakage and greenwashing.
- **Eliminate fossil fuel subsidies and implement energy affordability protections.** Fossil fuel subsidies prolong climate harm by enabling projects that would otherwise be economically unviable and diverting public funds from the clean energy sector. While subsidy removal is essential, it must be accompanied by targeted policies to shield vulnerable populations from rising energy costs, particularly low-income households, renters, and remote communities. Without such protections, energy affordability challenges will continue to reinforce social inequities.
- **Prioritise renewable energy while avoiding false solutions.** Australia must prioritise renewable energy expansion. Importantly, renewable projects must integrate Indigenous leadership, co-governance mechanisms, and land rights protections to prevent the repetition of extractive models that exploit Indigenous lands without fair benefit-sharing. Further, Australia must avoid reliance on "false solutions" like carbon capture and storage (CCS), which prolong fossil fuel dependency rather than advancing genuine decarbonisation. Studies show that most large-scale CCS projects globally have failed or underperformed—Chevron's Gorgon project, the world's largest CCS initiative in Western Australia, has to date captured only 30% of the CO<sub>2</sub> it removed from its reservoir. Further, Chevron is indemnified under Commonwealth and Western

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<sup>67</sup> Hannah McGlade, '[Clean energy policy must address power inequality](#)' *National Indigenous Times* (28 January 2025).

<sup>68</sup> IPCC, *Synthesis Report: Climate Change 2023* (IPCC Assessment Report 6, 2023) 82.

<sup>69</sup> SEI, Climate Analytics, E3G, IISD, and UNEP. (2023). *The Production Gap: Phasing down or phasing up? Top fossil fuel producers plan even more extraction despite climate promises*. Stockholm Environment Institute, Climate Analytics, E3G, International Institute for Sustainable Development and United Nations Environment Programme, 54; Civil Society Equity Review, *The 2023 Fair Shares Deficit: A Civil Society Equity Review Of The NDCS And 2035 Mitigation Fair Shares* (Report, Dec 2023) 6.

Australian legislation against long-term future damages caused by CO<sub>2</sub> leaks from the project, meaning that Chevron faces no penalties for harm caused by the Gordon project. These flawed mechanisms demonstrate that no real transition will be achieved under the current approach.