



Environmental
Defenders Office

**EDO submission to the AEIC Review of community
engagement practices**

1 October 2023

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to:

Community Engagement Review Taskforce

AEIC Review of community engagement practices
Department of Climate Change, Energy, the Environment and Water
Via: [DCCEEW Consultation Hub](#)

For further information on this submission, please contact:

Rachel Walmsley
Head of Policy and Law Reform
T: (02) 9262 6989
E: rachel.walmsley@edo.org.au

Frances Medlock
Government and Parliamentary Liaison
T: 0407 560 205
E: frances.medlock@edo.org.au

Acknowledgement of Country

The EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonization.

Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to provide input into the Australian Energy Infrastructure Commissioner (**AEIC**) Review of community engagement practices.

To meet the Paris Agreement Goal of limiting global temperature rise to 1.5 degrees Celsius, there needs to be a large-scale energy transition from fossil fuels to renewable energy. There are significant opportunities for Australia to be a leader in renewable energy technology and production, and there is an urgent need for renewable energy projects and transmission capacity to be operational as soon as possible to meet legislative targets. Australia also has a role in supplying minerals necessary for the energy transition.

However, EDO acknowledges that renewable energy projects will have impacts and, in some instances, significant consequences. The urgency of the decarbonisation task should not be to the detriment of First Nations communities, ecological sustainability and environmental integrity, Australia's human rights obligations, or our Pasifika neighbours. The climate and biodiversity crises – and solutions – are intrinsically linked, and tackling emissions reductions to the detriment of biodiversity is not an ecologically sound approach.

The energy transition presents an opportunity to engage with environmental concerns, community consultation processes, and First Nations cultural heritage protection in a different way than has been the historical experience in respect to the fossil fuel industry and other mining developments. Laws can, and should, be designed to deliver outcomes for climate, nature and communities. The social licence for the energy transition is critical, and the governments at all levels must ensure that environmental approval processes which deal with new renewable projects are robust, transparent, and that communities can have confidence that decisions will be made in the public interest.

Crucially, this means not only that community engagement and participation requirements for renewable energy transition projects are clear and enshrined in law, but that environmental protections in approval processes engender community confidence. Governments need to invest resources in ensuring these processes are done properly.

The Review is an opportunity to address concerns about renewable energy transition in a holistic way which upholds and maintains community licence. While this submission is focused on EDO's best practice principles for decision-making about renewable energy infrastructure, it is critical these principles are translated into policy and legal reform, which is then enacted and enforced. Best practice principles and standards must be embedded in law to be effective. EDO recommends the Review provide governments at all levels with tangible and achievable recommendations so that communities at the forefront of the energy transition can have trust and confidence in decision making processes.

Recommendation 1: Best practice community engagement principles must underpin all renewable energy infrastructure development.

Recommendation 2: Best practice principles for environmental decision-making will support the social licence for renewable energy transition projects.

Recommendation 3: Governments must invest resources in early and iterative community engagement and robust environmental assessment processes to facilitate the energy transition.

Introduction

The work of the EDO is underpinned by an environmental justice and human rights framework. Such a framework recognises that the human rights of certain people and communities are disproportionately impacted by environmental harm and guides EDO to focus on empowering overburdened people and communities to fight for environmental justice. Importantly, EDO is of the view that environmental justice must be upheld regardless of the type of project or development in question. This view informs the [EDO's 12 Principles for Renewable Energy Transition Projects](#), which are expanded on below.

This work also builds on the recommendations in the [EDO Roadmap for Climate Reform](#), produced by EDO in 2022, which sets out a suite of reforms for implementation in this term of federal government to address climate change, including to:

Provide a **clear pathway for assessment and approval of ecologically sustainable renewable energy projects and associated transmission infrastructure** – by establishing national ecologically sustainable development standards and principles for renewable energy projects. This includes, for example, frameworks to ensure that renewable energy projects are appropriately located, sited, designed and operated to ensure development avoids, minimises and mitigates adverse impacts on the natural environment (fauna and flora), water resources, First Nations heritage, cultures and access to Country, and associated ecological processes. This must include clear mandatory requirements for free prior informed consent and extensive consultation with impacted First Nations communities.

Recommendation 22, EDO Roadmap for Climate Reform

To meet the Paris Agreement goal of limiting global temperature rise to 1.5 degrees Celsius, it's clear there needs to be a large-scale energy transition from fossil fuels to renewable energy. The urgency of the climate crisis dictates that at the same time as preventing new or expanded fossil fuels, governments must urgently support the rapid scale up of renewable energy, including the required transmission. Social licence and the support of communities who will host these new

renewable projects is essential for this transition, as failing to bring along the Australian public will ultimately slow what must be a rapid energy shift to protect the global climate.

This means renewable energy projects should not be exempt from thorough environmental impact assessment processes just because of their role in the energy transition. This includes, for example, renewable energy projects, including large-scale wind and solar farms and associated transmission infrastructure, green hydrogen, as well as projects relating to extraction and processing of minerals required for the renewable energy transition. Industry carve-outs historically have been to the detriment of nature, community and human rights, and will likely undermine community confidence in environmental approvals, the social licence of the renewable transition, and ultimately slow the transition.

Instead, best practice principles for environmental approvals should apply. The energy transition is an opportunity to engage with environmental concerns, community consultation processes, and First Nations cultural heritage protection in a different way than has been the historical experience for fossil fuel developments and infrastructure. To uphold the social licence of the urgently needed renewable energy transition, laws must avoid and minimise impacts, and deliver outcomes for climate, nature, and communities. Communities must be able to have trust that renewable projects, just like any other projects, are subject to rigorous assessment, clear environmental guidelines, and that project approval conditions will be enforced. This means not only that community engagement requirements and accountability measures are clear and enshrined in law but that environmental protections in approval processes engender community confidence.

Recommendation 1: Best practice community engagement principles must underpin all renewable energy infrastructure development.

Communities must be able to participate effectively in decision-making about renewable energy infrastructure, informed by comprehensive information within reasonable timeframes, and have access to justice mechanisms in cases where decisions are not taken in line with the law. This approach must encompass multiple forms of engagement, be done in an iterative and culturally sensitive way, and ultimately should be in service of the community and its vision for renewable energy development in the region – not as a result of pre-decided conclusions. On the other hand, community rights to participation and engagement must be backed in by transparency and accountability measures.

EDO recommends the following **principles in relation to renewable energy infrastructure and decision-making** be adopted:

- **First Nations consultation and consent:** Any proposed renewable energy transition project must involve consultation with First Nations Communities that is early, iterative, and culturally appropriate; and that adheres to the standard of free, prior and informed consent under United Nations Declaration on the Rights of Indigenous Peoples. First

Nations Communities must be empowered and resourced to engage in the design, delivery and benefits of projects, policies, and decision-making processes relating to transition minerals mining and renewable energy infrastructure, as they see fit.

- **Community engagement and consultation:** Proposals for renewable energy related projects and regional energy planning should be supported by best practice community engagement and consultation. There are significant benefits of early and open engagement with communities about project siting, design, impacts and benefits. This can reduce land-use conflicts, delays and costs. The agency/decision maker responsible for developing regional energy plans, and assessing/ approving individual projects and developments, should ensure that best practice community consultation is undertaken in seeking local community's social licence to operate. This includes early iterative, culturally appropriate consultation. This community consultation should complement principles relating to ensuring FPIC of First Nations. For example, planning and approval regimes should enshrine and enforce:
 - Commencement of consultation and participation of community members early in the assessment process, with adequate time for internal deliberation and decision-making processes to occur;
 - Statutory minimums for consultation periods;
 - Transparent reporting of feedback provided by community members, where appropriate, including demonstration of how community feedback has been taken into account;
 - Timely public access to best available information, including all information taken into account by a decision-maker; and,
 - Provision of reasons by decision-makers for all decisions.

- **Transparent and accountable decision-making:** Assessment and decision-making in relation to all renewable energy transition projects must be transparent and comprehensive. Merits review rights should be available to provide for better scrutiny of decisions, and to ensure decision-maker accountability. Strong third-party enforcement rights similarly empower citizens to hold decision-makers and proponents to account, and these measures must be backed up by easily accessible and timely information on all projects, decisions, and conditions. Open standing for citizens to review or appeal decisions is essential.

Recommendation 2: Best practice principles for environmental decision-making will support the social licence for renewable energy transition projects.

For communities to trust in environmental and planning systems and decision-making processes, environmental protections must be clear and legally enforceable. The Australian public must be able to trust that where renewable energy projects do have impacts on the environment, ecological sustainability, environmental integrity and human rights are upheld. The climate and biodiversity crises – and solutions – are intrinsically linked, and tackling emissions reductions to the detriment of biodiversity is not an ecologically sound approach.

EDO recommends the following **principles for environmental decision-making** be adopted:

- **Rapid energy transition:** Australia must reduce greenhouse gas emissions consistent with a carbon budget based on science and our international commitments to keep global warming under 2 degrees Celsius and pursue a limit of 1.5 degrees Celsius above pre-industrial levels. The scientific, social, economic, human rights and environmental imperatives for limiting warming to 1.5 degrees Celsius are clear. This requires laws that prohibit new fossil fuel projects, and facilitate an economy-wide transition to renewable energy.
- **Human rights and environmental justice:** All decisions and activities relating to renewable energy transition projects must be consistent with and consider Australia's international and domestic human rights obligations, and in particular the substantive and procedural elements of the right to a healthy environment, and environmental justice principles. Particular attention should be given to the rights and needs of overburdened people and communities, including First Nations Peoples. Government departments and Australian corporations must also act consistently with their responsibilities under the United Nations Guiding Principles on Business and Human Rights (**UNGPs**), including the corporate responsibility of Australian corporations to respect human rights, and Australia's responsibility to protect against human rights abuses from third parties including Australian corporations.
- **Ecologically sustainable development:** Development of renewable energy transition projects must be undertaken in accordance with principles of ecologically sustainable development. The principles include the precautionary principle, conservation of biological diversity and the principle of intergenerational equity.ⁱⁱⁱ
- **Regional energy planning and strategic environmental assessment –**
Appropriate/optimal siting of renewable energy related projects should be consulted upon early and strategically (and within a coherent strategic framework designed to meet state energy and emissions reduction targets). Regional renewable energy planning and robust strategic environmental assessment (**SEA**) should be used to:
 - o collect environmental data for areas identified for potential renewable energy related development. In addition to data on available resources (e.g: wind or solar, transition minerals), this includes (but is not limited to) data on biodiversity, ecology and ecosystem services, hydrology – groundwater, surface water, wetlands, and natural and cultural heritage;
 - o identify/prioritise projects on land which has previously been developed, impacted or degraded, including existing infrastructure corridors, (noting that where this land may still have cultural value, including intangible values, impacts are avoided);
 - o identify sensitive areas to be off limits (including, for example, national parks, World Heritage areas and values, high conservation value land, critical habitat, wetlands, culturally significant sites);
 - o consider and address/mitigate cumulative impacts; and

- based on environmental sensitivity mapping and comprehensive data collection (noting that not all values can be mapped), identify renewable energy precincts or renewable energy zones where projects and infrastructure can be prioritised and developed.
- **Unacceptable impacts:** Areas where proposals will be clearly unacceptable should be identified and protected upfront. This should include, for example, culturally significant sites, national parks, World Heritage areas and values, national heritage areas; marine parks; high conservation value land; critical habitat, wetlands, as identified under the *Environment Protection & Biodiversity Conservation Act 1999* (Cth) and/or relevant state or territory legislation. Water availability and hydrological impacts may also be unacceptable for some projects under climate change. Renewable energy developments and renewable energy products such as solar panels and wind turbines must not use deep sea mined minerals in projects or manufacture. Australia must also support an international moratorium on deep sea mining.
- **Project design to avoid and minimise impacts:** Relevant government departments (including the new national EPA) must be adequately resourced to assist proponents of renewable energy related projects to understand their obligations under relevant legislation and locate and design projects in a way that will meet relevant legislation/ National Environmental Standards. As noted for energy planning, project design requirements must prioritise use of existing infrastructure or corridors, and where new developments are required, avoid impacts on nature, then demonstrably minimise impacts by project design adjustments.
 - Offsets must only be used as a genuine last resort - any residual impacts that are unavoidable (ie, cannot be avoided or mitigated) should be offset, applying best practice offset principles including clear requirements for net gain, like for like, additionality and in perpetuity protection. Law reform is needed to improve existing inadequate offsetting regimes that lack integrity and fail to deliver environmental outcomes. The option to pay into a 'conservation fund' to destroy nature, without securing a like for like offset, does not reflect these best practice principles. Offset projects that have co-benefits and that align with First Nations interests should be supported.
- **Science-based decision-making:** Decision-making must be based on the best available science and apply the precautionary principle where there is a lack of scientific certainty.
- **Optimise co-benefits where possible:** Some renewable energy projects (for example, solar) can provide opportunities to go beyond traditional mitigation practice and create further/additional biodiversity and community benefits, for example through on-site habitat enhancement. Such proactive conservation actions (PCAs) can help amplify the positive environmental impacts of renewable energy and build stakeholder support for scaling up these technologies (Source: IUCN). EDO supports exploring co-benefits for local and First Nations communities.
- **Minimise impacts on water resources:** Renewable energy projects must demonstrably avoid, mitigate or minimise (within clear limited allocations) impact on natural surface

and groundwater flows, for the cleaning and maintenance of large scale renewable energy assets, for green hydrogen and in the development, construction, use and operation of transition mineral projects.

- **Full life cycle recycling, rehabilitation and restoration:** Where appropriate there should be fully funded rehabilitation, restoration, and recycling plan for end of project works (ie, full lifecycle impacts addressed). Projects should be funded to ensure that the rehabilitation and restoration of project sites is addressed, including early in the approval process. In relation to transition minerals, recycling and re-use should be prioritised and factored into demand projections, rather than policy designed on unlimited extraction.
- **Mandatory due diligence and enforceable remedies:** To ensure Australia and Australian corporations abide by the standards set out under Pillars I and III of the UNGPs, and to address adverse environmental and human rights risks arising out of Australian mining and energy corporations' domestic and global operations and renewable energy supply chains, Australia must implement mandatory environmental and human rights due diligence and enforceable remedies via national legislation. This legislation must impose mandatory due diligence obligations on Australian domiciled corporations, that require the identification of risks of environmental harm and human rights abuses arising out of the corporation's domestic and extraterritorial activities, subsidiary activities, contractor and commercial partner's activities and in their supply and value chains. These due diligence obligations must be enforceable by affected parties and provide a mechanism for effective remedy for the victims of an Australian corporation's activities, subsidiary activities, contractor and commercial partner's activities and in their supply and value chains. This remedy mechanism must be accessible and applicable for victims of extraterritorial environmental harm and human rights abuses.

Recommendation 3: Governments must invest resources in early and iterative community engagement and robust environmental assessment processes to facilitate the energy transition.

We know that undertaking early and iterative community consultation on individual project proposals designs, regional plans, rezoning proposals etc takes time and effort. Collating and assessing information on a range of environmental impacts can also take time and resources. Given the urgency of the renewable energy transition imperative, governments must invest dedicated resources into this crucial work to do this properly.

Instead of fast-tracking or exempting projects from detailed assessment or consultation, resources – for example in terms of departmental assessment teams, data and information, community consultation outreach teams – need to be directed at these processes. Instead of removing accountability mechanisms, governments can invest in improving access to information by publishing fulsome and timely data, ensure iterative community consultation to identify and address conflicts early, and provide efficient review rights. For example, the independent review of the EPBC Act recommended a rapid merits review pathway, recognising third party review mechanisms, while rarely used, are an essential for decision-making accountability but can be

improved to focus on merit and outcomes, and not just process. Clear, legally enforceable national standards – as proposed under the Nature Positive reforms – will also help provide certainty for industry and communities.

EDO recommends that fulsome community engagement and environmental assessment processes be established and well-resourced to facilitate the necessary energy transition. We would support redirection of fossil fuel subsidies to provide resourcing for this essential work.

Conclusion

The social licence for the energy transition is critical, and governments at all levels must ensure that environmental and planning approval processes which deal with new renewable projects are robust, transparent, and well-resourced, and that communities can have confidence that decisions will be made in the public interest. The above best practice principles, when enshrined in law, and enforceable on the ground, provide a way in which this can be achieved.

EDO would be pleased to provide further information or detail in consultation with the Review, and welcomes further engagement with the Commissioner on this important topic.