



Environmental  
Defenders Office

**Submission to the Select Committee on PFAS (per-and polyfluoroalkyl substances) on the extent, regulation and management of PFAS**

**19 December 2024**

## **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](http://www.edo.org.au)**

### **Submitted to:**

Select Committee on PFAS (per and polyfluoroalkyl substances)  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Via [Committee website](#)

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## **Acknowledgement of Country**

*EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.*

*EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.*

*First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.*

## **A note on language**

*EDO is a non-Indigenous community legal centre that works alongside First Nations peoples around Australia and the Torres Strait Islands in their efforts to protect their Countries and cultural heritage from damage and destruction. In making our submission, we note that EDO represents First Nations peoples across Australia.*

*Out of respect for First Nations self-determination, EDO has provided high-level recommendations for western law reform to empower First Nations to protect their Countries and cultural heritage. These high-level recommendations comply with Australia's obligations under international law and provide respectful and effective protection of First Nations' Countries and cultural heritage.*

*We acknowledge there is a legacy of writing about First Nations peoples without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. For the purpose of this submission, we have chosen to use the term First Nations. We acknowledge that not all First Nations people will identify with that term and that they may instead identify using other terms or with their immediate community or language group.*

*First Laws is a term used to describe the laws that exist within First Nations. It is not intended to diminish the importance or status of the customs, traditions, kinship and heritage of First Nations in Australia. The EDO respects all First Laws and values their inherit and immeasurable worth. EDO recognises there are many different terms used throughout First Nations for what is understood in the Western world as First Laws.*

## Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission to the Select Committee on PFAS (per- and polyfluoroalkyl substances) on the extent, regulation and management of PFAS. This submission is focused on the terms of reference relating to the effectiveness of federal regulatory frameworks, and opportunities for reform within those legal and policy frameworks. EDO's recommendations are focused on translating existing principles and guidance into enforceable and consistent rules across the states and territories.

EDO urges the Committee to particularly take into account the precautionary principle when it comes to law reform regarding PFAS – noting that it is known that PFAS endanger the health of humans, the environment, and the climate, and that further studies are required to understand the long-term impact of these chemicals across human health and the environment. Lack of full understanding of the long-term impact of PFAS should not stand in the way of regulation to reduce and mitigate PFAS in the environment where there is sufficient understanding of the dangers of PFAS to warrant this regulation.

In our view, reform should be targeted to four key areas.

First, reform is required of the National Environment Protection Measures framework to better regulate PFAS. The National Environment Protection Measures (**NEPM**) framework provides useful federal structure for state and territory pollution management and regulation. However, more should be done to implement and enforce NEPM's consistently across all jurisdictions, particularly when it comes to PFAS relevant NEPMs. For example, through integration of the site contamination NEPM and PFAS National Environmental Management Plan 2.0 into subnational laws; and creation of a water quality NEPM.

Second, health-based guidance values must be operationalised, and more transparency is needed when it comes to possible PFAS risks to human health. Human health-based guidance values are a science-based method used to investigate and assess human health risks throughout Australia. Existing guidance, such as in relation to drinking water and food, should be operationalised and incorporated into enforceable standards. This could be through the NEPM's (in line with recommendation 1) or directly through state/territory legislation.

Communities also need greater transparency when it comes to possible PFAS contamination, and potential risks to human health. A central, accessible resource, such as a database or register, should provide this information on a national scale.

Third, Industrial Chemicals Management Standard (**IChEMS**) should be enforced across all jurisdictions. The IChEMS establishes a national standard for managing the use, import, export, manufacture and disposal of industrial chemicals. With more stringent requirements coming into effect from next year in relation to PFAS management, more clarity is required regarding state and territory implementation, which is currently not consistent.

Finally, the right to a healthy environment should be implemented at the federal level. Adoption of the right to a healthy environment is gathering pace both internationally and in subnational

jurisdictions in Australia. It should be adopted at the national level as another means to facilitate protection of human health and redress in relation to pollution, including PFAS.

### **Summary of Recommendations**

**Recommendation 1: Reform the *National Environment Protection Council Act 1994* to require states and territories to translate National Environment Protection Measures into enforceable subnational law.**

**Recommendation 2: Develop a water quality National Environment Protection Measure to establish enforceable water quality standards, objectives and goals to protect our water systems from PFAS contamination.**

**Recommendation 3: Develop the National PFAS Plan into a distinct PFAS Environment Protection Measure to be created under and in accordance with the *National Environment Protection Council Act 1994*.**

**Recommendation 4: Based on the best available scientific evidence and utilizing a precautionary approach, require the incorporation of health-based guidance values into an enforceable PFAS National Environment Protection Measure and/or integrate the guidance values into existing state and territory legal frameworks.**

**Recommendation 5: Mandate that the monitoring and reporting on PFAS contaminated sites and exposure events be made publicly available, for example through the creation of a consolidated national contaminated sites register.**

**Recommendation 6: Effectively incorporate the ICheMS Register into state and territory laws including consistent enforcement provisions, civil penalty provisions for breaches and consistent frameworks for exemptions to prohibitions, restrictions and other risk management measures.**

**Recommendation 7: Implement a Right to a Healthy Environment in human rights legislation at the national level.**

## Introduction

PFAS (per- and polyfluoroalkyl substances) chemicals endanger the health of humans, the environment, and the climate. The durability of PFAS means they do not break down in the natural environment, which has earned them the nickname “forever chemicals.” They have been detected in soil, household dust, groundwater, wastewater, and even rainfall. Contamination from release of PFAS into the environment has the potential for impacts beyond the site and may remain in the environment over an unknown time period.

PFAS chemicals damage endocrine, reproductive and immune system health of both humans and wildlife. A study on PFAS in three Australian communities with known contamination undertaken by ANU found that there was clear evidence of elevated blood serum concentrations of PFAS in residents and workers in the three PFAS-affected communities, and of increased psychological distress in the three exposed communities.<sup>1</sup> While further studies are required to fully understand the long-term impacts of PFAS on both human health and the environment, contemporary research indicates that exposure to PFAS may lead to adverse health outcomes.<sup>2</sup>

As a general principle of both policy reform and regulatory decision-making, EDO recommends applying the precautionary principle where there is any conjecture about the relative risks of PFAS. The precautionary principle, well-accepted in environmental law, states that a lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.<sup>3</sup> This principle informs our submission.

EDO notes that the terms of reference for this inquiry include:

*(e) the effectiveness of current and proposed federal and state and territory regulatory frameworks, including the adequacy of health-based guidance values, public sector resourcing and coordination amongst relevant agencies in preventing, controlling and managing the risks of PFAS to human health and the environment;*

*(k) areas for reform, including legislative, regulatory, public health and other policy measures to prevent, control and manage the risks of PFAS to human health and the environment, including the phasing out of these harmful substances.*

Accordingly, this submission addresses the current regulatory framework for PFAs management at the federal level, and makes **7 recommendations** in the following areas:

- 1. Reform National Environment Protection Measures framework to better regulate PFAS**
- 2. Operationalise health based guidance values and ensure transparency of health risks**
- 3. Enforce industrial chemicals management standards across all jurisdictions**
- 4. Implement the Right to a Healthy Environment at the federal level**

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<sup>1</sup> [https://nceph.anu.edu.au/files/PFAS%20Health%20Study%20Overall%20Summary\\_Final\\_Dec2021.pdf](https://nceph.anu.edu.au/files/PFAS%20Health%20Study%20Overall%20Summary_Final_Dec2021.pdf)

<sup>2</sup> <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas>

<sup>3</sup> See e.g., *Environment Protection and Biodiversity Conservation Act 1999* (Cth) s 391(2).

## Reform of PFAS management and regulation at the federal level

### 1. Reform required of the National Environment Protection Measures framework to better regulate PFAS

In Australia, pollution is regulated by state and territory governments under state and territory law. The Commonwealth government provides guidance through the *National Environmental Protection Council Act 1994* (Cth) (**NEPC Act**),<sup>4</sup> which provides for the establishment of the National Environment Protection Council (**Council**), to ensure that people enjoy the benefit of equivalent protection from air, water, or soil pollution and from noise, wherever they live in Australia.<sup>5</sup> The Council functions to create national environment protection measures (**NEPM's**) and to measure the implementation and effectiveness of the NEPM's in each of the participating jurisdictions.<sup>6</sup>

NEPM's made under the NEPC Act are legislative instruments which are given effect by individual legislation and guidelines in each state and territory. NEPM's provide nationally agreed guidance in relation to a variety of prescribed environmental matters,<sup>7</sup> and must contain one or more national environmental protection standards, goals, guidelines or protocols.<sup>8</sup> However, under the NEPC Act, there is no legal requirement to enact NEPM's into enforceable national or subnational law.<sup>9</sup> Accordingly, the standards contained in the NEPM's have been unevenly implemented in state and territory jurisdictions, with varying degrees of enforceability.

#### **Site contamination NEPM**

The *National Environment Protection (Assessment of Site Contamination) Measure 1999* (Cth) (**ASC NEPM**) was made under the NEPC Act and is given effect by individual legislation and guidelines in each state and territory.<sup>10</sup>

The purpose of the ASC NEPM is to establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices,<sup>11</sup> in order to provide adequate protection of human health and the environment, where site contamination has occurred.<sup>12</sup> The ASC NEPM is not confined to PFAS-related contamination and instead provides for the investigation, assessment and remediation of sites in which the “condition of land or water where any chemical substance or waste has been added as a direct or indirect result of human activity at above background level and represents, or potentially represents, an adverse health or environmental impact”.<sup>13</sup>

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<sup>4</sup> [National Environmental Protection Council Act 1994 \(Cth\)](#) (**NEPC Act**).

<sup>5</sup> NEPC Act, s 3.

<sup>6</sup> NEPC Act, s 12.

<sup>7</sup> NEPC Act, s 14(1).

<sup>8</sup> NEPC Act, s 14(3).

<sup>9</sup> NEPC Act, s 7(1) provides for a broad intention to implement NEPM's subnationally. See also *National Environment Protection Council Act 1994* (ACT); *National Environment Protection Council (New South Wales) Act 1995* (NSW); *National Environment Protection Council (Northern Territory) Act 1994* (NT); *National Environment Protection Council (Queensland) Act 1994* (Qld); *National Environment Protection Council (South Australia) Act 1995* (SA); *National Environment Protection Council (Tasmania) Act 1995* (TAS); *National Environment Protection Council (Victoria) Act 1995* (Vic); *National Environment Protection Council (Western Australia) Act 1996* (WA)

<sup>10</sup> [National Environment Protection \(Assessment of Site Contamination\) Measure 1999](#) (**ASC NEPM**)

<sup>11</sup> ASC NEPM, s 5(1)

<sup>12</sup> ASC NEPM, s 5(2)

<sup>13</sup> ASC NEPM, s 3 [defn. 'contamination'].

The ASC NEPM has been used to guide the investigation, assessment and management of PFAS contamination on Commonwealth land including at Defence bases,<sup>14</sup> and airports.<sup>15</sup> However, under the ASC NEPM, the implementation and responsibility for site contamination is wholly left to the jurisdiction of states and territories.<sup>16</sup> As the standards contained in the ASC NEPM are not required to be translated into state and territory law, the uptake of the Site Contamination Policy Framework and enforceability of the ASC NEPM between jurisdictions is uneven.

For example, although the Policy Framework provides that the process of assessing and remediated sites should have “due regard should be given to sites of cultural or spiritual significance, in particular, the significance that Indigenous people attach to land”,<sup>17</sup> there is no equivalent requirement within the *Contaminated Sites Act 2003 (WA)*.<sup>18</sup> In order to ensure a consistent regulatory and legislative approach, NEPM’s such as the ASC NEPM must be wholly integrated into enforceable state and territory laws. This will ensure that the enforcement, mitigation and prevention of PFAS contamination is addressed evenly throughout Australia.

**Recommendation 1: Reform the *National Environment Protection Council Act 1994* to require states and territories to translate National Environment Protection Measures into enforceable subnational law.**

### ***Water quality NEPM***

Despite being identified as a prescribed environmental factor by which the Council may make a NEPM,<sup>19</sup> there is currently no NEPM which relates to marine, estuarine and freshwater quality. Given the high solubility of PFAS in water, and the corresponding risk of PFAS travelling through water systems and entering the food chain,<sup>20</sup> there is a critical need to establish enforceable water quality standards, objectives and goals to protect our water systems from PFAS contamination.

**Recommendation 2: Develop a water quality National Environment Protection Measure to establish enforceable water quality standards, objectives and goals to protect our water systems from PFAS contamination.**

### ***PFAS National Environmental Management Plan***

The PFAS National Environmental Management Plan 2.0 (**National PFAS Plan**) was agreed by the Heads of the EPA’s in October 2019, building on the first version and was created outside of the NEPC Act framework.<sup>21</sup> The National PFAS Plan was annexed as an appendix to the Intergovernmental

<sup>14</sup> [Defence approach to PFAS management | About | Defence](#)

<sup>15</sup> [PFAS—your questions answered | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)

<sup>16</sup> ASC NEPM, ss 6(1)-(2).

<sup>17</sup> ASC NEPM, s 6(8).

<sup>18</sup> See generally: *Contaminated Sites Act 2003 (WA)*.

<sup>19</sup> NEPC Act, s 14(1)(b).

<sup>20</sup> PFAS National Environmental Management Plan 2.0, page 8 [1.2.1].

<sup>21</sup> [PFAS National Environmental Management Plan 2.0](#)



Agreement on a National Framework Responding to PFAS Contamination,<sup>22</sup> and is a nationally agreed guidance on the management and prevention of PFAS contamination in the environment.

The National PFAS Plan includes an array of PFAS related measures such as monitoring, inventory, contaminated site prioritisation and assessment, environmental guideline values, transport of PFAS material, and treatment and remediation.<sup>23</sup> In December, Environment Ministers at the federal, state and territory levels agreed to publish an updated National PFAS Plan in early 2025.<sup>24</sup> The Plan will be updated to reflect new guidelines, including for Australian drinking water when finalised. The updated plan complements the standards established under the Industrial Chemicals Environmental Management Standard (discussed below), which will ban, severely restrict, or reduce the environmental impact of three PFAS along with over 500 related substances from 1 July 2025.<sup>25</sup>

Although the National PFAS Plan provides a prescriptive framework for the community, environmental regulators, governments and industry to address PFAS contamination, the National PFAS Plan is not enforceable at law and is not required to be ratified into subnational laws. Accordingly, the National PFAS Plan affords significant discretion to decision-makers and regulators in the extent to which they implement the National PFAS Plan framework. The National PFAS Plan therefore does little to create concrete standards or enforceable mechanisms by which to hold polluters to account.

**Recommendation 3: Develop the National PFAS Plan into a distinct PFAS Environment Protection Measure to be created under and in accordance with the *National Environment Protection Council Act 1994*.**

## 2. Operationalise health-based guidance values and ensure transparency of health risks

Health-based guidance values are used to investigate and assess human health risks throughout Australia. The Department of Health, Food Standards Australia New Zealand (**FSANZ**) and the National Health and Medical Research Council (**NHMRC**) have developed human health-based guidance value for PFAS.<sup>26</sup> The guidance values aim to protect the community from exposure to PFAS from food, drinking water and recreational water.<sup>27</sup>

The guidance values are non-mandatory and do not establish enforceable standards for PFAS exposure in food, drinking water or recreational water. In order to protect the community from

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<sup>22</sup> [Intergovernmental Agreement on a National Framework Responding to PFAS Contamination](#). Note: the Intergovernmental Agreement seeks to enhance collaboration and cooperation between the Commonwealth and the States and Territories in responding to PFAS contamination. The provisions of the Intergovernmental Agreement are not legally enforceable

<sup>23</sup> PFAS National Environmental Management Plan 2.0.

<sup>24</sup> <https://www.dcceew.gov.au/sites/default/files/documents/emm-communique-10-dec-2024.pdf>

<sup>25</sup> <https://www.dcceew.gov.au/sites/default/files/documents/emm-communique-10-dec-2024.pdf> 2.

<sup>26</sup> [Health based guidance values for PFAS for use in site investigations in Australia](#)

<sup>27</sup> [Guidelines for managing risks in recreational water | NHMRC; Hazard assessment report – Perfluorooctane Sulfonate \(PFOS\), Perfluorooctanoic Acid \(PFOA\), Perfluorohexane Sulfonate \(PFHxS\); Australian Drinking Water Guidelines | NHMRC](#). Note: the draft PFAS guidance for the Australian Drinking Water Guidelines closed on 22 November 2024.

exposure to PFAS, the health-based guidance values must be integrated into enforceable standards in national and subnational law.

**Recommendation 4: Based on the best available scientific evidence and utilizing a precautionary approach, require the incorporation of health-based guidance values into an enforceable PFAS National Environment Protection Measure and/or integrate the guidance values into existing state and territory legal frameworks.**

### ***Community notification required of possible health risks of PFAS incidents***

Greater transparency is also needed when it comes to community notification of PFAS incidents, and possible risks to human health. Given the wide range of possible sources of PFAS,<sup>28</sup> the difficulty in knowing where and when PFAS has been used (and thus where might be contaminated), and the evolving understanding of the health issues associated with exposure to PFAS exposure,<sup>29</sup> EDO recognises that some level of discretion in the legislative framework that manages PFAS may be necessary, which is contemplated at the state and territory level.

However, a tangible example of concern around transparency can be seen in the recent PFAS contamination in the Blue Mountains in NSW, wherein the source of the recent Medlow and Greaves Dams PFAS contamination is currently unknown. The current line of inquiry dates back to an incident in 1992 when firefighting foam potentially containing PFAS was used in a petrol tanker accident on the Great Western Highway.<sup>30</sup> There remains uncertainty as to whether this incident was the cause, yet it appears insufficient monitoring was undertaken after this incident to determine the long-term impact. We consider this situation to be a compelling argument for mandatory proactive, prescriptive and periodic testing/monitoring for PFAS in all drinking water supplies, and the need for easily accessible information for possibly affected community.

In a welcome move, following advocacy by Blue Mountains residents and EDO, an advanced PFAS treatment system is now being installed at the Cascade Walter Filtration Plant in Katoomba, which supplies drinking water to more than 40,000 Blue Mountains residents.<sup>31</sup> For more information on PFAS in NSW, see EDO's [submission to the inquiry into PFAS contamination in waterways and drinking water supplies throughout New South Wales](#) (November 2024).

**Recommendation 5: Mandate that the monitoring and reporting on PFAS contaminated sites and exposure events be made publicly available, for example through the creation of a consolidated national contaminated sites register.**

<sup>28</sup> Health Canada, Objective for Canadian Drinking Water Quality, <https://www.canada.ca/content/dam/hc-sc/documents/services/publications/healthy-living/objective-drinking-water-quality-per-polyfluoroalkyl-substances/objective-for-canadian-drinking-water-quality-en-final.pdf>.

<sup>29</sup> Health Canada, Objective for Canadian Drinking Water Quality, <https://www.canada.ca/content/dam/hc-sc/documents/services/publications/healthy-living/objective-drinking-water-quality-per-polyfluoroalkyl-substances/objective-for-canadian-drinking-water-quality-en-final.pdf>, p 12.

<sup>30</sup> Sydney Morning Herald 17 September 2024 "White hot": Cancer-linked chemicals flowing into dam at 50 times safe level" <https://www.smh.com.au/national/nsw/white-hot-cancer-linked-chemicals-flowing-intodam-at-50-times-safe-level-20240916-p5kay1.html>

<sup>31</sup> EDO, [Forever chemicals to be filtered from Blue Mountains drinking water](#) (5 December 2024).

### 3. Enforce industrial chemicals management standards across all jurisdictions

The Industrial Chemicals Management Standard (IChEMS) establishes a national standard for managing the use, import, export, manufacture and disposal of industrial chemicals.<sup>32</sup> The IChEMS is established through the Australian Industrial Chemicals Introduction Scheme which seeks to reduce the impact of industrial chemicals on the environment.

Under the *Industrial Chemicals Environmental Management (Register) Act 2021 (Cth)*,<sup>33</sup> the Minister can make scheduling decisions for industrial chemicals, to manage the use, storage, handling and disposal of chemicals.<sup>34</sup> In December 2023, the Minister for the Environment and Water scheduled a number of PFAS chemicals in Schedule 7 of the IChEMS register being the highest available risk category: “industrial chemicals that are likely to cause serious or irreversible harm to the environment”.<sup>35</sup> The scheduling decision comes into effect on 1 July 2025 and prohibits the import, manufacture, export, production, and use of the PFAS chemicals.<sup>36</sup>

Although all states and territories have agreed to implement the requirements of the IChEMS Register into their jurisdictions, several jurisdictions are lagging in this commitment. The NT and the ACT have not yet indicated how they intend to implement IChEMS, and WA produced draft regulations for consultation in February 2024 which have not yet been finalised.<sup>37</sup> Each State and Territory must ensure that the requirements of the IChEMS Register are implemented in their respective jurisdiction. As noted above, Environment Ministers have agreed to update the PFAS National PFAS Plan to incorporate the IChEMS standards, however the Plan remains non-enforceable.

**Recommendation 6: Effectively incorporate the IChEMS Register into state and territory laws including consistent enforcement provisions, civil penalty provisions for breaches and consistent frameworks for exemptions to prohibitions, restrictions and other risk management measures.**

### 4. Implement the Right to a Healthy Environment at the federal level

Despite being a signatory of several international human rights declarations and conventions,<sup>38</sup> Australia does not have a national bill or charter of human rights. There are limited human rights protections under the Constitution or other national laws.<sup>39</sup> While some states and territories have

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<sup>32</sup> [Industrial Chemicals Environmental Management Standard - IChEMS - DCCEEW](#)

<sup>33</sup> [Industrial Chemicals Environmental Management \(Register\) Act 2021 \(Cth\) \(ICEM Act\)](#).

<sup>34</sup> ICEM Act, s 11.

<sup>35</sup> [Industrial Chemicals Environmental Management \(Register\) Amendment \(2023 Measures No. 1\) Instrument 2023](#)

<sup>36</sup> *Ibid.*

<sup>37</sup> [An Update on IChEMS | Global law firm | Norton Rose Fulbright](#)

<sup>38</sup> See, eg, *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976); *Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007).

<sup>39</sup> See, eg, *Australian Human Rights Commissioner Act 1986 (Cth)*; *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*; *Racial Discrimination Act 1975 (Cth)*; *Sex Discrimination Act 1984 (Cth)*.

human rights laws that protect the rights of people who live in those jurisdictions,<sup>40</sup> the right to a healthy environment is not expressly recognised as a standalone right in national or subnational laws in Australia. This is despite Australia supporting the United Nations General Assembly resolution to recognise the right to healthy environment.<sup>41</sup>

EDO has long advocated for Australia to recognise the right to a healthy environment.<sup>42</sup>

A right to a healthy environment:

- (i) provides comprehensive protection of all components of the environment, which are not adequately protected under current environmental or human rights laws;
- (ii) places people and communities at the heart of environmental protection, empowering citizens to pursue environmental justice and achieve better outcomes for the environment; and
- (iii) is consistent with, and a logical extension of, partial protections that people in Australia already have under current laws in relation to pollution.

The right to a healthy environment is defined to include the right to a clean, healthy and sustainable environment, consistent with the UN General Assembly's July 2022 resolution.<sup>43</sup> This definition facilitates the prevention of environmentally degrading issues, including PFAS contamination, and allow access to remedies and redress for affected communities.

### ***Opportunities for legislative reform to implement a right to a healthy environment***

At the territory level, the ACT government last year amended the *Human Rights Act 2004* (ACT) to include the right to a clean, healthy and sustainable environment. It is the first time the right to a healthy environment has been recognised as a standalone human right in Australia.<sup>44</sup> In NSW, a first step has been taken by the NSW government in recognising the "right to a clean, healthy and sustainable environment" in s 8(5) of the *Climate Change (Net Zero Future Act) 2023* (NSW).

Federally, the Parliamentary Joint Committee on Human Rights completed its Inquiry into Australia's Human Rights Framework in May 2024. The Committee recommended the Commonwealth Government establish comprehensive protection of human rights in legislation through a federal Human Rights Act, and that 'further consideration be given to the drafting of the right to a healthy environment, including consultation with Aboriginal and Torres Strait Islander peoples on how best to recognise the relationship between the right to a healthy environment and the rights to culture, health and self-determination for Aboriginal and Torres Strait Islander peoples'.<sup>45</sup>

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<sup>40</sup> [Charter of Human Rights and Responsibilities Act 2006 \(Vic\)](#) ('Victorian Charter'); [Human Rights Act 2004](#) (ACT); [Human Rights Act 2019](#) (Qld).

<sup>41</sup> *The human right to a clean, healthy and sustainable environment*, GA Res 76/300, UN Doc A/RES/76/300 (1 August 2022, adopted 28 July 2022).

<sup>42</sup> See, EDO: [A Healthy Environment is a Human Right](#) (2022).

<sup>43</sup> UNGA Resolution 76/300.

<sup>44</sup> See, <https://www.edo.org.au/2023/10/31/act-introduces-australia-first-right-to-a-healthy-environment-legislation/>

<sup>45</sup> Parliamentary Joint Committee on Human Rights, Inquiry into Australia's Human Rights Framework (May 2024) recommendation 2.

The introduction of a national legislated human rights framework would be momentous, and the adoption of a right to healthy environment would be an important reform to better protect human health from the impacts of PFAS and to improve how pollution in general, including PFAS, is managed in Australia.

**Recommendation 7: Implement a Right to a Healthy Environment in human rights legislation at the national level.**

## Conclusion

PFAS contamination in land, food and water sources appears to be increasingly identified across Australian communities.<sup>46</sup> While the federal government plays a coordinating role in pollution regulation across the country, more needs to be done to ensure standards and guidance set at the national level are being implemented and enforced at the state and territory level. Given the need to take a precautionary approach when impacts of PFAS on the environment and human health are still being revealed, EDO recommends greater consistency, enforceability, and protection, as key matters for the Committee as it undertakes this inquiry.

*Thank you for the opportunity to make this submission.  
Please do not hesitate to contact our office should you have further enquiries.*

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<sup>46</sup> See, e.g., ABC News: <https://www.abc.net.au/news/2024-12-17/pfas-forever-chemicals-found-biosolids-used-food-production-nsw/104724502>.