

The UN says access to a healthy environment is a human right. Here's what it means for Australia

October 17 2022, by Meg Good



Credit: Pixabay/CC0 Public Domain

The United Nations recently declared that access to a clean, healthy and sustainable environment is a universal human right.

The declaration was the result of a hard-fought global campaign, coming hot on the heels of the UN Human Rights Council's recognition of the right last year. It's been a long road to get here, as the right was first recognized [50 years ago](#) in the landmark Stockholm Declaration.

You might hear this news and wonder what it will mean. After all, UN member states don't have to comply with the resolution. But in fact, it's better news than it sounds.

When the UN passed a resolution in 2010 recognizing the human right to water, [countries around the world](#) set to work changing their constitutions and introducing new programs to improve water management.

So will Australia [join the rest](#) of the world and introduce the right?

These resolutions are catalysts

As David Boyd, the UN's independent expert on [human rights](#) and the environment [explains](#): "These resolutions may seem abstract, but they are a catalyst for action, and they empower [ordinary people](#) to hold their governments accountable in a way that is very powerful."

While most countries have already recognized the right to a healthy environment under law, Australia is one of the last [37 holdouts](#).

Although Australia did vote in favor of the declaration, the government hasn't yet released an official statement in response or included mention of the right under the new Climate Change Act 2022.

If Australia refuses to implement the right under domestic law, it will become even more of a global outlier.

It will also cast into the international spotlight, yet again, the government's failure to create a [federal human rights act](#) –and leave the government with the awkward task of [reporting to the international community](#) on its lack of progress.

Australia's record on environmental and human rights protection is already the subject of global scrutiny, thanks to the UN human rights committee's recent finding that Australia failed to protect Torres Strait Islanders against the impacts of climate change and violated their human rights.

With the UN now backing the right to a healthy environment, it will be much harder for the government to justify excluding it, especially in light of ever-more-visible climate change impacts and the latest damning State of the Environment report.

What would it take to legally recognize the right?

While the [federal government](#) could try to embed the right in the Constitution, it would be extremely unlikely to pass at referendum. That's because constitutional change is very difficult. It's succeeded only eight times since 1901, and no new express human rights have ever been introduced.

As recognition at the federal level would be challenging in the absence of a national charter of rights, the best bet is through state and territory human rights legislation.

At present, the Australian Capital Territory is [consulting](#) on whether to add the right to its human rights act. Queensland missed the opportunity to include the right under its legislation a few years ago, so the ACT stands to become the first Australian jurisdiction to do so.

Recognition would mean the right would have to be considered as part of government decision-making in the ACT. It would give people a legal avenue to challenge public authorities for failing to properly consider or act consistently with the right. And it would give courts the power to declare laws "incompatible" with the right.

Not only that, but all new legislation would have to include accompanying detail addressing impacts on the right. For instance, if the ACT government tried to push through laws which would result in more water pollution or greater greenhouse gas emissions, it would have to formally justify those impacts.

Of course this wouldn't stop the parliament passing legislation which breached the right, but it would ensure legislators turned their minds to the issue before a bill became law.

As others have noted, the ACT and Victorian rights charters make it more likely human rights concerns are raised and fixed before a law is passed.

Giving environmental protection teeth

Clearly, this is not a silver bullet for Australia's environmental woes.

But [legal recognition](#) will help. Across Latin America, Europe and Asia, the right has [helped to strengthen](#) environmental protection laws and policies, and encouraged stronger legislation. Importantly, the right has also prevented governments from [rolling back effective laws](#) introduced by their predecessors.

Legal recognition in Australia could open up new avenues to improve environmental protection and challenge questionable environmental decision-making.

Depending on how the right is recognized, it could also help [climate change litigation](#). Right now, advocates seeking to launch rights-based climate change legal action have to rely on other rights.

That includes the [ground-breaking case](#) challenging a proposed

Queensland coal mine on human rights grounds. With the right to a healthy environment unavailable, objectors have used a range of other rights—such as the right to life—to ground their climate change argument.

Other climate litigation has been forced to turn to other areas of law entirely. For instance, the [federal court's](#) recent [high-profile climate case](#) relied on torts law, which deals with civil wrongs.

The court found the Australian government did not, in fact, owe a duty of care to Australian children to protect them from climate change. If the right to a healthy environment had been available, it's possible the outcome [could have been very different](#).

The time has clearly come for Australia to join the rest of the world and recognize this fundamental human right under the law.

This article is republished from [The Conversation](#) under a Creative Commons license. Read the [original article](#).

Provided by The Conversation

Citation: The UN says access to a healthy environment is a human right. Here's what it means for Australia (2022, October 17) retrieved 6 May 2024 from <https://phys.org/news/2022-10-access-healthy-environment-human-australia.html>

This document is subject to copyright. Apart from any fair dealing for the purpose of private study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.