

# TWS submission: Australian Energy Infrastructure Commissioner review of community engagement practices

Mr Andrew Dyer

Australian Energy Infrastructure Commissioner

By webform:

<https://consult.dcceew.gov.au/aeic-review-of-community-engagement-practices>

30 September 2023

## About the Wilderness Society

The Wilderness Society is an independent, community-based, not-for-profit environmental advocacy organisation. Our vision is to transform Australia into a society that protects, respects and connects with the natural world that sustains us. We are committed to protecting, promoting and restoring wilderness across the continent for the survival and ongoing evolution of life on Earth. From community activism to national campaigns, we seek to give nature a voice to support the life that supports us all. We are powered by more than 150,000 supporters from all walks of life.

## Renewables projects must respect community rights and nature

The Wilderness Society welcomes the Australian Energy Infrastructure Commissioner's investigation into community engagement practices in the context of renewable energy generation and infrastructure, including transmission lines.

To address and mitigate the impacts of climate change on people and nature, Australia needs to expand renewable energy projects and related infrastructure. Yet where and how this happens presents a dilemma. While desperately needed, renewable energy projects risk having significant negative impacts on natural and cultural values and on the human rights of First Nations and local communities. As one of the globe's most biodiverse continents, with the oldest living culture on Earth, Australia has both much to gain and lose in this transition.

**Put simply, how Australia does renewables matters—for climate, for nature, and for people.**

The situation is urgent, yet this does not mean renewables should be exempt from national environment laws. The risk of more regrettable and destructive impacts on human rights and significant natural values is too great. Ignoring legitimate community interests and perspectives and destroying more nature won't mitigate the impacts of climate change, nor support people and nature to adapt to its impacts. The mistakes humanity made in destroying nature through the industrial revolution must not be repeated through the renewables revolution.



## Community rights in environmental decision-making

While human rights are at risk from renewables projects, enacting human rights in laws and practice are an important part of managing the social and biodiversity risk of renewables projects. Research and practice around the world shows that when communities have a genuine and meaningful say in decisions about the environment, outcomes for nature and people are better.<sup>1</sup> Enshrining and implementing the following community rights will be crucial to achieving effective community engagement practices, which enable transparency and accountability, build public trust, and enable proponents to manage and mitigate their material social and biodiversity risks:

1. **The right to know**—to access the information that authorities hold.<sup>2</sup>
2. **The right to participate**—to have a genuine say in decision-making.<sup>3</sup>
3. **The right to challenge**—to seek legal remedy if decisions are made illegally or not in the public interest.<sup>4</sup>
4. **Cultural and self-determination rights of First Nations**, including to give or withhold their **free, prior and informed consent**.<sup>5</sup>

These rights are interdependent and indivisible: enshrining only one or two is not enough. Rather, they operate as an integrity and accountability ecosystem, where each right reinforces the next. For instance, meaningful public participation is impossible without relevant information being accessibly disclosed and shared. Likewise, the absence of channels to legitimately challenge or seek review of poor decisions will undermine the effectiveness of consultations and engagement, given the lack of pressure for decisions to adequately take into account and respond to community input.

The cultural and self-determination rights of First Nations are additional to the first three mentioned rights, which apply to all people. Free, prior and informed consent requirements are also familiar policy requirements in Australia—at both the Commonwealth and State/territory levels.<sup>6</sup>

Currently, community rights are not consistently enshrined and respected in Australia. Research by the Wilderness Society,<sup>7</sup> backed up by the Environmental Defender's Office's jurisdictional analysis, has found that:

1. Australia has a continental and systemic problem with upholding community rights in relation to environmental decision-making.
2. There is no national approach to environmental community rights. Each jurisdiction

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<sup>1</sup> Wilderness Society (2022), Who holds the power? Community rights in environmental decision-making. <https://www.wilderness.org.au/images/resources/WhoHoldsThePowerReport.pdf>

<sup>2</sup> International Covenant on Civil and Political Rights 999 U.N.T.S. 171 (entered into force 23 March 1976) ("ICCPR"), Art. 19(2); Annex I: Rio Declaration on Environment and Development. Report of the United Nations Conference on Environment and Development (A/ CONF/151/26/Rev.1, Vol.1) ("Rio Declaration"), Principle 10.

<sup>3</sup> ICCPR Art 25(a); Rio Declaration, Principle 10.

<sup>4</sup> ICCPR, Art. 2(3); Rio Declaration, Principle 10.

<sup>5</sup> ICCPR, Arts 1 and 27; United Nations Declaration on the Rights of Indigenous Peoples, United Nations General Assembly Resolution 61/295, UN Doc. A/61/L.67 (13 September 2007), Arts. 3, 4, 8, 10-12, 18, 19, 25, 26, 28.

<sup>6</sup> See, e.g., Department of Agriculture, Water and the Environment (2021), Free, Prior and Informed Consent in the work of the Australian Heritage Council. <https://www.dcceew.gov.au/parks-heritage/heritage/organisations/australian-heritage-council/publications/free-prior-informed-consent-work-of-australian-heritage-council>; Partnership agreement on closing the gap: Between the South Australian Aboriginal Community Controlled Organisation Network and the South Australian Government (2022), Arts. 15 and 32. <https://www.agd.sa.gov.au/aboriginal-affairs-and-reconciliation/closing-the-gap/south-australian-partnership-agreement/Partnership-Agreement.pdf>

<sup>7</sup> Wilderness Society (2022), Who holds the power? Community rights in environmental decision-making.



provides for the rights to different degrees, yet overall the extent to which they are upheld is weak to limited.

3. Across the country, there is inadequate transparency and accountability in environmental decision-making.
4. The inconsistent and patchy application of environmental community rights ensures decision-making is weighted in favour of proponents and vested interests.

Winning a just transition to renewable energy will require grappling with these shortcomings in both policy and practice, and should not be reliant on voluntary corporate action; a strong governmental response is needed.

In addition, community rights must be implemented in ways that protect the interests and rights of First Nations and the community. These rights are inherent universal values and exist to protect the dignity and autonomy of all humans. They should not be subverted to enable vested interests, to, for instance, build pressure for unreasonable amounts of compensation or other conditions. Rather, community rights must be enshrined and protected in ways that safeguard the dignity and empowerment of First Nations and local communities, while protecting biodiversity.

## Respecting rights mitigates material risks

As the AEIO notes, a successful roll out of renewable energy projects will depend on public support, and improper community engagement will exacerbate material risks for renewables projects. True support or ‘social licence’ is not about manipulating communities into agreeing to be subject to a proposed project: it is about following international best practices for implementing community rights and co-creating approaches with First Nations.

It is not enough to hold consultations or receive written submissions as tick-the-box exercises. Performative and controlling approaches to community engagement are unlikely to enable proponents to learn from community perspectives and are likely to encourage opposition, which in turn can lead to costly project delays, reputational risk, and even project failure. On the other hand, proponent-community dialogue and engagement that is undertaken early and often as part of a commitment to upholding community rights and a strong commitment to relationship building and learning can improve project design and corporate decision-making, and increase the likelihood of community support for the project.

When communities are excluded, suffer adverse impacts from projects, have expectations that are not fulfilled, or do not share in the benefits of projects, social risk increases and can lead to reputational and material damage to projects and proponents, costly interruptions to production, legal challenges, and termination or abandonment.<sup>8</sup> Investing in early and ongoing meaningful community participation and consultation processes, two-way communication, obtaining free, prior and informed consent (FPIC), and grievance mechanisms are known to be crucial tools for mitigating the risks of costly community conflict.<sup>9</sup>

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<sup>8</sup> Davis, R. and Franks, D., Costs of company-community conflict in the extractives sector, Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School (2014); Locke, A., Munden, L., Feyertag, J. and Bowie, B., “Assessing the Costs of Tenure Risks to Agribusiness,” ODI and TMP Systems (2019); Fredericks, C., et al., Social Cost and Material Loss: The Dakota Access Pipeline, First Peoples Worldwide and University of Colorado Boulder (2018).

<sup>9</sup> Ibid.



## Recommendations

The Wilderness Society recommends that:

1. Governments, renewable energy proponents and related stakeholders commit to absolute best practice around community engagement and the assessment of proposed renewable energy projects, including:
  - a. No project is advanced without the free, prior and informed consent of relevant First Nations peoples;
  - b. Traditional ecological knowledge is appropriately integrated in planning, assessment, implementation and management of any relevant natural and cultural heritage;
  - c. The local community's social licence to operate is genuinely sought and obtained by proponents through faithful implementation of community rights to know, to participate and to challenge;
  - d. Renewables projects and infrastructures are sited on land and sea which has previously been developed or degraded, and greenfield sites are avoided; and
  - e. Governments and proponents ensure that cleaning and maintenance of large scale renewable energy assets is done in ways that ensure the least possible impact on natural surface and groundwater flows.
2. The Commonwealth Government should lead development of a continent-wide plan, to enable the renewables sector to avoid impacts on World Heritage Areas and places of outstanding universal value, including critical habitat for species facing extinction.
3. The Commonwealth Government must make sure that renewables projects are subject to new nature laws (in line with the planned reforms to the *Environment Protection and Biodiversity Conservation Act 1999*), and are not subject to carve outs or exemptions. Such laws should also effectively enshrine community rights to know, participate, and challenge assessment decisions relating to renewable energy projects, and requirements to obtain First Nations' free, prior and informed consent.

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