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# The Voice as a Strategy for Advancing Aboriginal and Torres Strait Islander Rights and Interests on Climate Change Mitigation and Adaptation

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*A new and meaningful relationship between Indigenous peoples and political institutions, as the Voice intends, is needed to address climate change adaptation and mitigation. Indigenous peoples in Australia, and globally, are already experiencing the impact of climate change. With rights and interests recognised over their land, this land estate is increasingly vital to addressing the immediate term net-zero targets and longer-term reduction of carbon in the atmosphere along with advancing Indigenous knowledges in new economies and rights to country.*

This contribution highlights the critical need for a new and meaningful relationship between Indigenous peoples and political institutions to address the greatest challenge of our time: climate change. I detail the public policy context that has given rise to the consensus position to work towards a Voice enshrined in the Constitution (followed by treaty and truth telling) and, with reference to the impact of climate change on Indigenous peoples and government commitment to invest in climate change responses, how the Voice will be vital to ensure Indigenous rights and interests are realised, with wide reaching benefit for all.

Since 2010, successive national Australian governments have committed to some form of process to recognise Aboriginal and Torres Strait Islander peoples in the Constitution. Indigenous peoples' sustaining argument is that because ancient pre-colonial law and governance have not been adequately recognised, the Indigenous polity has neither a clear nor a just relationship to Australian political institutions.<sup>1</sup> Consensus to pursue a constitutionally guaranteed mechanism for Indigenous participation and consultation in the political process has emerged slowly. The 2017 Uluru Statement from the Heart was the culmination of regional and national conferences and called for Voice, Treaty and Truth, as a sequence of reforms, that advance towards a just settlement with First Peoples.<sup>2</sup> The Voice proposal eschews a rights framework in favour of providing "the impetus for a profound paradigmatic shift between Indigenous peoples and the state"<sup>3</sup> focused on securing the "power of influence" in the policy process to advance Indigenous rights.<sup>4</sup> But this "power of influence" is more than improved policy and programs and service, it is anticipated the Voice will shape a new and meaningful relationship between Indigenous Peoples and political institutions.

## HISTORY OF THE RELATIONSHIP BETWEEN INDIGENOUS PEOPLES AND POLITICAL INSTITUTIONS

The agreed position to pursue a constitutionally guaranteed mechanism for Indigenous participation and consultation (or voice) in the political process has immediate genesis in the last 25 years of policy chaos,

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<sup>1</sup> Marcia Langton, "Dominion or Dishonour: A Treaty between Our Nations?" (2001) 4(1) *Postcolonial Studies* 13.

<sup>2</sup> *Uluru Statement from the Heart* (26 May 2017).

<sup>3</sup> Noel Pearson, "There Is No Such Thing as Minimal Recognition – There Is Only Recognition" in Megan Davis and Marcia Langton (eds), *It's Our Country: Indigenous Arguments for Meaningful Constitutional Recognition and Reform* (Melbourne University Press, 2016) 174.

<sup>4</sup> ABC Radio National, Nick Baker and Damien Carrick, "Former High Court Justice Kenneth Hayne Backs Voice to Parliament Details", *The Law Report*, 29 March 2023.



inefficiency and lack of progress achieving better outcomes for Indigenous people. The 1970s marked a new relationship between Indigenous peoples and Australian political institutions: the Commonwealth government recognised the right to Indigenous community led self-determination and land rights and established the first Indigenous representative and advisory body to government. The election of the Howard government in 1996, however, began a wind back of the central elements of earlier progressive reforms.

Aboriginal and Torres Strait Islander representative bodies advised government and formed the architecture of self-determination. The National Aboriginal Consultative Committee (1973–1977), National Aboriginal Conference (1977–1985) and the Aboriginal and Torres Strait Islander Commission (ATSIC) (1989–2005) all held some mandate from their respective communities that elected them. With the establishment of ATSIC as a statutory authority, something more substantial commenced. Political scientist, Will Sanders writes enthusiastically about what ATSIC achieved: an emerging Indigenous “order of Government”, recognition of “peoples” as distinct from “populations”, and financial support for the Indigenous community-controlled sector were defining features that characterised self-determination.<sup>5</sup>

ATSIC had a permanent staff of public servants, and a deep network that scaffolded regional, zone and national councillors, making it a representative body within Australian political institutions and beyond through participation in international forums autonomous of the Australian government. ATSIC funded research to support policy reforms and make interventions in policy discussion, established policy frameworks and standards, and was a vital source of advice to government on a range of policy. The Commission also funded Indigenous services and community-controlled organisations, and held assets.

Simple and swift abolition of ATSIC in 2004–2005 marked the beginning of chaos in Indigenous affairs policy and programs. But the Commission’s axing had already been foreshadowed. On coming to office in 1996, the incoming federal government announced an audit of ATSIC. Their suspicion heralded a new level of hostility to Indigenous rights. In 1997, in one of the early decisions of the new federal government, the Commonwealth authorised the building of a bridge in a small and isolated region of South Australia connecting the mainland to Hindmarsh Island against the wishes of a group of Ngarrindjeri women seeking to protect this place of significance to women and children.<sup>6</sup> The Howard Government made it abundantly clear that a small and isolated group of women – and indeed, Indigenous people – would not stand in the way of progress and the majority interests.

The dynamics that contributed to an apparent reluctance among Aboriginal and Torres Strait Islander peoples to defend ATSIC and its elected representatives offers salient lessons. Media reportage of Indigenous political aspirations reveals limited comprehension of Indigenous perspectives and an overriding ideological agenda from certain media corporations.<sup>7</sup> Even mainstream media reportage on ATSIC was overwhelmingly hostile. The relentless negative characterisation of elected Indigenous representatives, appeared to closely align with the Commonwealth government’s reform ambitions and interests of capital. Characterisation of ATSIC in national political discourse as a “failed” “experiment in separate representation”<sup>8</sup> became so entrenched it continues to be repeated today without evidence of its failings.

The impact of the loss of a representative body was recognised immediately. Aboriginal and Torres Strait Islander Social Justice Commissioner Bill Jonas identified in his 2004 Annual Report the necessity for “ensuring meaningful participation of Indigenous peoples in government processes”.<sup>9</sup> His successor, Tom

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<sup>5</sup> Will Sanders, “Missing ATSIC: Australia’s Need for a Strong Representative Body” in Deirdre Howard-Wagner, Maria Bargh and Isabel Altamirano Jiménez (eds), *The Neoliberal State, Recognition and Indigenous Rights: New Paternalism to New Imaginings* (ANU Press, 2018) 113, 114.

<sup>6</sup> Margaret Simons, *The Meeting of the Waters: The Hindmarsh Island Affair* (Hodder Headline, 2003).

<sup>7</sup> Archie Thomas, Andrew Jakubowicz and Heidi Norman, *Does the Media Fail Aboriginal Political Aspirations? 45 Years of News Media Reporting of Key Political Moments* (Aboriginal Studies Press, 2020).

<sup>8</sup> Sanders, n 5, 117.

<sup>9</sup> William Jonas and Darren Dick, “Ensuring Meaningful Participation of Indigenous Peoples in Government Processes: The Implications of the Decline of ATSIC” (2004) 23(2) *Dialogue* 4, 13.

Calma, also raised concerns over “the absence of principled engagement with Indigenous peoples”.<sup>10</sup> In the almost 20 years that have followed, the administration of Aboriginal policy and programs has been chaotic and dysfunctional. Competitive contractualism, mainstreaming, normalisation and neo-paternalism have wrought havoc on what has remained of an Indigenous order of government. It has also failed to address chronic disadvantage for many Indigenous Australians.

The call for a Voice speaks to three points. First, it emerges in the context of the material conditions and everyday lived consequences of poor government decisions in Indigenous policy. Second, it recognises that Indigenous policies and programs will be much improved by meaningfully engaging the people with knowledge and expertise, “on the ground” and in local conditions and contexts. Third, representation addresses the relationship of Indigenous peoples in the national political discourse. The Voice offers this promise as it will be a constitutionally enshrined representative body empowered to make representations to the Executive Government and the Parliament on laws and policies that relate to First Nations people. One of the issues the Voice will likely talk about is climate change.

## CLIMATE CHANGE

One of the most critical issues facing the world today is climate change. The 2021 State of the Environment Report highlights that Indigenous peoples are on the front line in terms of climate change impacts and mitigation and that they are manifest across Australia, present in all landscapes, seascapes, and ecosystems.<sup>11</sup> These impacts are already being felt. Over the last few years, significant drought (2019), bushfires (2020) and floods (2022), and rising temperatures have affected Barkandji, Bundjalung, Gomeroi, and Yuin Aboriginal communities, along with many others.<sup>12</sup> Climate change presents new risks of dispossession experienced as food and water insecurity, damaged landscapes and cultural heritage, and an inability to remain on country.

Indigenous people are guardians of local and traditional knowledge systems and have long contested the extractive and exploitative impact of colonialism on land and water and asserted that the climate crisis must be addressed through restituted Indigenous relationships to land and country. Therefore, the agenda for Indigenous land justice addresses historical dynamics of colonialism *and* climate change.

First Nations people are pursuing a range of actions to force action by government to protect their country and people from climate change. In central Queensland, the Wangan and Jagalingou traditional owners set a precedent by exposing the inherent bias of the Australian native title system towards colonial extraction.<sup>13</sup> In the Torres Strait, Islanders are on the frontline of the climate crisis: King tides, erosion, inundation and coral bleaching are threatening the lives and cultures of Torres Strait Islander people.<sup>14</sup> Urgent action is needed to ensure they can remain on their island homes. In 2022, a group of claimants, known as the #TorresStrait8, successfully brought a human rights complaint against the Australian Government to the United Nations Human Rights Committee over the Government’s inaction on climate change.

In a ground-breaking decision, the Human Rights Committee found the Australian Government’s failure to adopt measures to protect Torres Islanders against the adverse impacts of climate change violated their rights to enjoy their culture and be free from arbitrary interferences with their private life, family

<sup>10</sup> Tom Calma, *Social Justice Report 2006* (Human Rights and Equal Opportunity Commission, 2007) 107.

<sup>11</sup> Terri Janke et al, “Indigenous” in *Australia: State of the Environment 2021* (Department of Climate Change, Energy, the Environment and Water, 2021) <<https://soe.dccceew.gov.au/indigenous/introduction>>.

<sup>12</sup> Heidi Norman, *Friday Essay: Death on the Darling, Colonialism’s Final Encounter with the Barkandji* (5 April 2019) The Conversation <<https://theconversation.com/friday-essay-death-on-the-darling-colonialisms-final-encounter-with-the-barkandji-114275>>; Bhiemie Williamson, *Like Many Disasters in Australia, Aboriginal People Are Over-Represented and Under-Resourced in the NSW Floods* (4 March 2022) The Conversation <<https://theconversation.com/like-many-disasters-in-australia-aboriginal-people-are-over-represented-and-under-resourced-in-the-nsw-floods-178420>>.

<sup>13</sup> Kristen Lyons, Morgan Brigg and John Quiggin, *Unfinished Business: Adani, the State and the Indigenous Rights Struggle of the Wangan and Jagalingou Traditional Owners Council* (2017).

<sup>14</sup> Daniel Billy v Australia (Torres Strait Islander Petition), *Communication under the Optional Protocol to the International Covenant on Civil and Political Rights* (13 May 2019).

and home.<sup>15</sup> The Torres Strait Islanders successfully argued that changes in weather patterns have direct harmful consequences on their livelihood, their culture and traditional way of life. This complaint was the first legal action brought by people of low-lying islands vulnerable to climate damage against a nation state and creates a pathway for action by individuals where national governments have failed to protect people most vulnerable to the impacts of climate change on the enjoyment of their human rights.<sup>16</sup> The decision puts further pressure on the Australian Government to act on climate change to ensure the safe existence of the people of the Torres Strait Islands. In making representations on these issues, the Voice could strengthen the Torres Strait Islanders position; as they explain, they seek to ensure “their voices are heard and their lived experience influences policy and decision makers”.<sup>17</sup>

In the country where the author is connected, the plains and forest lands of north-western New South Wales (NSW), Gomeroi people have been on the frontline of climate action. In 2022, Gomeroi people argued before the National Native Title Tribunal that our ability to exercise Native Title rights and interests would be impacted as a result of the greenhouse gas emissions of a mining project on country. The Narrabri Gas Project has backing from all relevant governments in Australia but was overwhelmingly opposed by Gomeroi people at our 2022 Native Title claimant group meeting. The President of the Tribunal, John Dowsett, ruled in favour of Santos:

The Gomeroi applicant submitted that the ... Narrabri Gas Project would result in grave and irreversible consequences for the Gomeroi People’s culture, lands and waters and would contribute to climate change. The Tribunal does not doubt that the Gomeroi applicant’s concerns are genuine. However, the Tribunal concluded that the Gomeroi applicant had failed to justify its assertions that the proposed grants would have such effect.<sup>18</sup>

The Tribunal concluded that the proposed grants “would provide a public benefit, significantly outweighing the Gomeroi applicant’s concerns, particularly having regard to the limited and imprecise evidence provided in connection with such concerns”.<sup>19</sup> Justice Dowsett did not accept evidence about the impacts of the project on Gomeroi People, including the impacts on native title rights and interests, cultural heritage and the greenhouse gas contribution of the project to climate change. Nevertheless, we should expect more legal action and political organising defending country from the impacts of climate change and growing clarity on the role of government to give due consideration of the rights and interests of Indigenous peoples.

## GOVERNMENT ACTION AT LAST

After decades of inaction, the 2022 federal election returned a Parliament that overwhelmingly accepts that climate change is occurring because of human action and rapid energy transition is required to avert the worst effects of a changing climate. The Indigenous land estate is increasingly vital in developing renewable energy projects and decarbonisation. However, the rapid acceleration of the energy transition represents significant challenges and opportunities for Indigenous peoples and their land estate. Whereas other economic activity that has taken place on Indigenous lands have not generated the anticipated benefit, including wealth for Indigenous land holders, the energy revolution should deliver benefit for Indigenous peoples. At this critical juncture in Indigenous futures on our land, there is a vital need for Indigenous representation and perspective in Government policy and program that affect our communities.

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<sup>15</sup> Human Rights Committee, *Views Adopted By the Committee under Article 5(4) of the Optional Protocol, concerning communication No 3624/2019*, 135<sup>th</sup> sess, UN Doc CCPR/C/135/D/3624/2019 (22 September 2019).

<sup>16</sup> Kristen Lyons, *Australia Violated the Rights of Torres Strait Islanders By Failing to Act on Climate Change, the UN Says. Here’s What That Means* (26 September 2022) *The Conversation* <<https://theconversation.com/australia-violated-the-rights-of-torres-strait-islanders-by-failing-to-act-on-climate-change-the-un-says-heres-what-that-means-191329>>.

<sup>17</sup> Our Islands Our Home, *About* <<https://ourislandsourhome.com.au/about-the-campaign/>>.

<sup>18</sup> *Santos NSW Pty Ltd v Gomeroi People* [2022] NNTTA 74 (Determination Summary).

<sup>19</sup> *Santos NSW Pty Ltd v Gomeroi People* [2022] NNTTA 74 (Determination Summary).

The new federal Government's response outlined in their "Powering Australia Plan" commits to significantly boosting renewable energy and in turn creating new jobs, cheaper energy supply and reducing emissions.<sup>20</sup> Powering Australia commitments include ratifying the Paris Agreement and enshrining targets in the *Climate Change Act 2022* (Cth). These targets include a Nationally Determined Contribution of 43% emissions reduction by 2030 and a net zero target by 2050. The plan also includes enhanced contribution, participation and leadership in regional and international climate change forums. This covers funding (\$42.6 million over four years as part of the 2022–2023 Budget) to extend capacity of the Climate Change Authority to provide independent climate change advice to government and funding (\$7.1 million over two years in the 2022–2023 Budget) to develop a plan for the Australian Public Service to reach zero emissions by 2030. It includes a suite of initiatives, including developing a carbon credits scheme, a \$1.9 billion "Powering the Regions Fund" to support clean energy industries and jobs and decarbonisation of existing industries, more than \$100 million to build workforce capability and \$15 billion to establish the National Reconstruction Fund to diversify Australian industry and drive sustainable economic growth.

### ABORIGINAL LAND, CLIMATE CHANGE AND VOICE

The Aboriginal land estate is critical in the response to climate change. Over the last 50 years there has commenced a land titling revolution.<sup>21</sup> Indigenous peoples have recognised land interests over more than half the continent, nearly four million square kilometres, with more under claim. Indeed, in the recent refresh of the predominant overarching public policy tool, known as "Closing the Gap", restitution of land and water to Aboriginal community control is a measured objective.<sup>22</sup> The land estate has been recovered through common law recognition of native title, and a suite of state and federal legislation. While it is difficult to clearly delineate, one estimate suggests that Indigenous peoples hold exclusive possession native title and fee simple to around 26% of Australia's landmass. When non-exclusive native title is included, that number rises to 54% of the country.<sup>23</sup> It covers National parks, conservation areas, and vast expanses of the continent.

The land estate will inevitably prove highly significant in climate change mitigation. Many areas under Aboriginal title hold high biodiversity and regeneration value, as evident in the declaration of 81 Indigenous Protected Areas, comprising half of Australia's conservation estate.<sup>24</sup> But the significance of Indigenous land holding is more than just the measure of square kilometres, with land in urban areas and some in coastal zones and sea. These lands are governed by Traditional Owner groups and Aboriginal Land Councils and afford, in many cases, authority and status in political decision-making and cultural responsibility, care and protection. Often, they operate separately to service organisations yet overlap significantly with interests in resource management and culture and heritage protection. They are increasingly operating as "nations", with a land and economic base, and seeking to advance recognition through treaty and agreement-making processes. A constitutional Voice will further support their aspirations.

Government and industry are recognising the centrality of the role of the Indigenous land estate and Indigenous knowledges in responding to climate change. In November 2022, South Australian Minister for Energy and Mining, Tom Koutsantonis spoke with Traditional Owners in Port Augusta. The Minister foregrounded Aboriginal-owned land, knowledge and interests as integral to the government's commitment to energy system transformation, explaining: "we can't transform without you, we can't

<sup>20</sup> Australian Government, Department of Climate Change, Energy the Environment and Water, *Powering Australia* <<https://www.energy.gov.au/government-priorities/australias-energy-strategies-and-frameworks/powering-australia>>.

<sup>21</sup> Sue Jackson, "Land Rights: A Postcolonial Revolution in Land Title" in Sue Jackson, Libby Porter and Louise Johnson (eds), *Planning in Indigenous Australia: From Imperial Foundations to Postcolonial Futures* (Routledge, 2017) 155.

<sup>22</sup> *National Agreement on Closing the Gap* (2020) Outcome 15.

<sup>23</sup> Josh Nicholas et al, "Who Owns Australia?", *The Guardian*, 17 May 2021 <<https://www.theguardian.com/australia-news/ng-interactive/2021/may/17/who-owns-australia>>.

<sup>24</sup> National Indigenous Australians Agency, *Indigenous Protected Areas* (2022) <<https://www.niaa.gov.au/sites/default/files/ipa-nat-map-april22.pdf>>.

decarbonise without you, we can't disturb your land without you." He announced his government was "coming to the oldest civilisation in the world for help, to lead us on the journey".<sup>25</sup> In New South Wales, the government's Electricity Infrastructure Roadmap to transition the NSW economy to net zero within two decades includes some consideration of Aboriginal community interests. At the Commonwealth level, the federal government announced in February 2023 the development of a First Nations Clean Energy Strategy and has initiated a First Nations Clean Energy and Emissions Reduction advisory group.

Indigenous landholders are interested in clean energy and decarbonisation projects as social and business enterprises.<sup>26</sup> However, they experience barriers in capacity, knowledge, expertise, and capital to engage in the transformation that is already underway, and which will intensify over the coming decades. In New South Wales, an area that is the focus of the author's research, there are significant opportunities for Aboriginal land holders to be engaged in the new energy economy that ensures Indigenous values, cultural heritage and community advancement are built into the structural economic change. Clearer and stronger recognition of Indigenous peoples could spark major reform for the renewable energy sector. Yet, research reveals that Aboriginal land holder interests are consistently marginal in policy development, at best an afterthought. Policy reforms are often not achieved until the last minute and only when raised by ally parliamentarians following lobbying from Aboriginal Land Councils. Multiple examples emerge of missed opportunities to consult with Aboriginal stakeholders. Other groups, such as farmers and producers have direct lines of communication and political interests vested in the political system. They are also unconfined by the discourse of "minority interests" and are enabled by the ideology of progress.

The rapidly escalating government interest in responding to climate change and the belated inclusion of Indigenous interests in climate change mitigation and adaptation is significant. Consideration of Aboriginal land, interests, and opportunities can only be enhanced through consultation with Aboriginal communities. The Voice will ensure the perspectives of Indigenous peoples across the country will be represented as policy and programs develop. Keeping in mind the range of tenure arrangements and diversity of the restituted Indigenous land estate, the input of local information, knowledge and aspirations will be the key. The following sections address six examples where input of Indigenous interests and voice can make a significant contribution.

## Renewable Energy Transition

The energy transition currently underway will transform land-use patterns across many parts of regional Australia. While the risk of exclusion for Indigenous peoples is significant, opportunities that will come with meaningful participation are enormous.

A recent study of the NSW Renewable Energy Zone pilot site found there was limited Indigenous land holder engagement in clean energy. While a First Nations reference group was convened and First Nation Guidelines prepared detailing how renewable energy operators should consult with communities, there was limited support in the way of resourcing and expertise to enhance Aboriginal political leadership. The inclusion of Indigenous perspectives, while welcome, was belated in the policy process and did not give sufficient weight to Indigenous interests. For example, the First Nations guidelines prioritised jobs and Indigenous business procurement, while Local Aboriginal Land Councils prioritised energy security and activation of their land estate in renewable energy projects, economic development, and enhancing the resilience of communities in the face of climate change.

Clean energy projects are more likely to provide lasting benefits to Indigenous communities as "mid-sized" renewable energy projects built on Indigenous-owned land.<sup>27</sup> Other decentralised energy models, such

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<sup>25</sup> Minister Tom Koutsantonis was speaking with Traditional Owners in Port Augusta on 8 November 2022. Notes from his address were shared with the author by an attending policy officer with the First Nations Clean Energy Network.

<sup>26</sup> Heidi Norman, Chris Briggs and Therese Apolonio, "Advancing Aboriginal Interests in the New South Wales Renewable Energy Transition" (CAEPR Discussion Paper, 2023).

<sup>27</sup> Heidi Norman and Chris Briggs, *How Can Aboriginal Communities Be Part of the NSW Renewable Energy Transition?* (5 May 2022) The Conversation <<https://theconversation.com/how-can-aboriginal-communities-be-part-of-the-nsw-renewable-energy-transition-181171>>.

as renewable energy micro-grids, could also deliver energy security for remote communities, enabling economic opportunities and the development of social services. Successful decarbonisation ventures (eg, savanna burning in Northern Australia, Indigenous ranger groups, native agriculture, endangered species regeneration, carbon abatement, biodiversity stewardship, and community-owned renewables) could be accelerated more widely to provide secure and profit-generating ventures for communities. The Voice could make representations on these issues early in the policy cycle, bringing “on the ground” and research informed perspectives that convey the aspirations of Indigenous land holders.

## Aboriginal Land and Net Zero Emissions Targets

The NSW 2020 Net Zero Plan sets out how the NSW government will cut emissions by 70% in 2035 and reach net zero emissions by 2050.<sup>28</sup> The plan commits to the creation of a “Primary Industries Productivity and Abatement Program”; one of its key priorities will be to “[connect] landholders, including Aboriginal landholders, to carbon markets”.<sup>29</sup> Many other governments across Australia are also embarking on policy reform in relation to carbon abatement, as reflected in the announced review of the Emissions Reduction Fund. These efforts have largely marginalised Indigenous land holders in favour of more dominant political interests and oriented to agricultural and pastoral production landscapes.

## Caring for Country

Approaches to care that reflect Aboriginal worlds can be seen in the discourse “caring for country” and in the delivery of culturally affirming health services. “Caring for Country” refers to Indigenous peoples’ approaches to land and water management and relational connection to place, based “in the laws, customs and ways of life that Indigenous people have inherited from their ancestors and ancestral beings”.<sup>30</sup> It encompasses approaches to land and sea management and is increasingly documented as generative of social-political, cultural, economic, and physical and emotional wellbeing of Indigenous people.<sup>31</sup> The literature reveals that caring for country is increasingly measured as maintaining cultural life, identity, autonomy, and health.<sup>32</sup>

Across the tropical savanna, Indigenous ranger groups are already contributing to Australia’s emission-reduction goals. In New South Wales, land returned to Aboriginal community control is small, with more awaiting return – some claims have been unresolved since the 1980s. Yet even this small and fragmented estate is significant in the context of stemming the worst effects of climate change. Indigenous presence in the urban areas of greater Sydney is high: in at least two local government areas Aboriginal land holdings are second in size only to those of government. In New South Wales where the Indigenous population is significant and where colonisation most sustained, as much as 80% of these urban lands are zoned “conservation”, meaning that for many Aboriginal land holders the ability to develop their land and generate much needed collective wealth is limited. Yet in the context of urban land clearing and development, Aboriginal land often forms the critical “green corridors” that provide habitat for animals, public space and the vital “lungs” of our cities. More effective representation of Aboriginal aspirations in relation to land, including advancing climate change mitigation and adaptation through the Voice mechanism could lead to improved outcomes for all.

<sup>28</sup> NSW Climate and Energy Action, *Net Zero Plan* <<https://www.energy.nsw.gov.au/nsw-plans-and-progress/government-strategies-and-frameworks/reaching-net-zero-emissions/net-zero>>.

<sup>29</sup> NSW Department of Planning, Industry and Environment, *Net Zero Plan Stage 1: 2020–2030* (2022) <<https://www.energy.nsw.gov.au/sites/default/files/2022-08/net-zero-plan-2020-2030-200057.pdf>>.

<sup>30</sup> Jessica Weir, Claire Stacey and Kara Youngetob, *The Benefits of Caring for Country, Literature Review* (Australian Institute for Aboriginal and Torres Strait Islander Studies, 2011) 1.

<sup>31</sup> Weir, Stacey and Youngetob, n 30.

<sup>32</sup> Weir, Stacey and Youngetob, n 30, 3.

## Indigenous Climate Change Strategy

The February 2023 meeting of the Energy and Climate Change Ministerial Council (ECMC) focused discussion on national energy, climate change and adaptation priorities. National, state and local governments were represented at the meeting where Ministers agreed on five strategic priorities for 2023. This included energy transformation to meet net zero emission targets, reduced emissions, investing in adaptation and resilience to climate change and “[e]mpowering and comprehensively engaging with Australia’s regions and remote communities, including First Nations, on the pathway to decarbonization and Australia becoming a renewable energy superpower”.<sup>33</sup> While the ECMC met and committed to empowering Indigenous people, First Nations representation was not evident. The Voice is critical in ensuring both early and sustained involvement in policy, to help create opportunities for First Nations people.

## First Nations Clean Energy Strategy

The Australian Government has committed \$5.5 million to support the co-design of a “First Nations Clean Energy Strategy”.<sup>34</sup> The strategy is a key priority under the Commonwealth’s National Energy Transformation Partnership and is intended to ensure First Nations people have a say in energy policies and programs in the transition to net zero and identify priority reforms and areas for future investment. The Department of Climate Change, Energy, the Environment and Water, the National Indigenous Australians Agency and in collaboration with the First Nations Clean Energy Network (FNCEN) are leading Aboriginal community forums to develop this work.

On climate change and the now urgent attention to net zero, the Voice could make a difference. There are some impressive industry and community voices already doing significant work, such as the Indigenous Carbon Industry Network (ICIN) for carbon and FNCEN for renewables. These networks have emerged in the absence of a national representative body. Through careful negotiation, the Voice will be able to support and complement these specialist groups by advocating for Indigenous land holders and helping them to survive on country, to develop strategies to ameliorate the worst impacts of climate change and to contribute to achieving net zero. Representations to the executive government and the Parliament early in the policy development process can help ensure our rights and interests are elevated.

## Resourcing and Supporting Indigenous Land Holders

Indigenous land holders want to address climate change in ways that support their ambitions to generate prosperity and rebuild nations and economies that align with Indigenous values, including land regeneration and connecting with country.<sup>35</sup> For Indigenous land holders to participate and lead climate change mitigation and adaptation they need independent and informed research, policy advocacy, evaluation tools, technical expertise, and capital. There is a critical need for research for and with Indigenous communities supporting their engagement in climate change mitigation and adaptation work. Support for Aboriginal land holders interested in clean energy and decarbonisation enterprises must enable access to the rapidly emerging opportunities. What is needed is best practice models for Indigenous peoples, drawing on domestic and international experience, that can inform Aboriginal land holder projects and agreement-making. Climate change and land management research also needs to be translated for use and application by Indigenous land holders to assess Aboriginal land suitability for climate adaptation and mitigation projects, to access economic opportunities, and contribute to national and international energy transition and decarbonisation targets.

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<sup>33</sup> Australian Government Department of Climate Change, Energy, the Environment and Water, *Energy and Climate Change Ministerial Council* (Meeting Communique, 24 February 2023) <<https://www.energy.gov.au/government-priorities/energy-and-climate-change-ministerial-council/meetings-and-communicues>>.

<sup>34</sup> Australian Government Department of Climate Change, Energy, the Environment and Water, *First Nations Clean Energy Strategy* <<https://www.energy.gov.au/government-priorities/energy-and-climate-change-ministerial-council/priorities-national-energy-transformation-partnership/first-nations-clean-energy-strategy>>.

<sup>35</sup> Heidi Norman et al, “Booming Contributions By First Nations to Address Australia’s Environmental Crisis Must Be Recognised” (Arena, 3 August 2022) <<https://arena.org.au/first-nations-environmental-work/>>.



## **CONCLUSION**

The transition to clean energy and decarbonising our atmosphere will accelerate over the coming years. The Indigenous land and sea estate and its people as managers and custodians will be key players. The value of this estate, and the work involved to regenerate landscapes and provide vital habitats is a necessary part of any transition plan. In order to ensure this transition does not replicate established patterns of colonial dispossession and absence of informed consent, Indigenous representation early in the policy process is necessary to ensure adequate protections and opportunities are realised. This critical work will be assisted by a constitutionally enshrined Voice to government and Parliament.

Representation of Indigenous interests and aspirations in relation to their land estate will be a key function of the Voice. Limited benefits have been secured for Indigenous land holders from the mining boom; the energy revolution must be more equitable and provide real opportunities for Indigenous peoples. Our very survival on country depends on vastly improved government leadership supporting and enabling Indigenous aspirations. This has the greatest likelihood of success through Indigenous representation early in the policy development process.