



Environmental Defenders Office

Inquiry into Planning Bill 2022

Opening statement by Melanie Montalban, Managing Lawyer (ACT), Environmental Defenders Office Ltd

1. My name is Melanie Montalban. I am the Managing Lawyer of the ACT Practice of the Environmental Defenders Office. I am appearing today along with my colleague Frances Bradshaw, who is a Senior Solicitor in the ACT Practice. We thank the Standing Committee for the opportunity to participate in the hearing for this Inquiry into the Planning Bill 2022.
2. The Environmental Defenders Office (**EDO**) is a community legal centre that specialises in public interest environmental law. The ACT Practice falls within EDO's Healthy Environment and Justice Program (**HEJ Program**). The HEJ Program is founded on the principles of environmental justice and the human right to clean, healthy and sustainable environment (the '**right to a healthy environment**').
3. On 17 June 2022, EDO provided a submission on the draft Bill to the Environment, Planning and Sustainable Development Directorate (**first submission**). Our first submission analysed the draft Bill by examining the extent to which the draft Bill promotes environmental justice and the right to a healthy environment.
4. At the time of writing our first submission, the ACT Government was investigating including the right to a healthy environment in the *Human Rights Act 2004 (ACT)* (**Human Rights Act**).
5. In our first submission, we submitted that, although the right to a healthy environment is not yet recognised in ACT law, it is comprised of a number of elements that are derived from Australia's existing obligations under international human rights treaties and multilateral environmental agreements.¹ Many rights that form part of the right to a healthy environment are rights that are already protected under the Human Rights Act, such as the right to life,² the right to culture,³ the right to freedom of expression including access to information,⁴ and the right to participate in public affairs.⁵
6. More recently, on 29 November 2022, the ACT Minister for Human Rights announced that the ACT Government will introduce the right to a healthy environment in the Human Rights Act, becoming the first jurisdiction in Australia to expressly recognise the right in its laws. We

¹ The international sources for the right to a healthy environment are listed under Framework Principles 1 and 2: Office of the UN High Commissioner for Human Rights, *Selected Sources for Framework Principles on Human Rights and the Environment* (February 2018) p 2.

² *Human Rights Act 2004 (ACT)* s 9.

³ *Ibid*, s 27.

⁴ *Ibid*, s 16.

⁵ *Ibid*, s 17.

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commend the ACT Government's commitment. Following this commitment, it is more critical than ever that the draft Bill is prepared in a way that is consistent with the right to a healthy environment.

7. In our first submission, we had made 35 recommendations which, if accepted by the ACT Government, will better protect the ACT's environment from harm caused by development, and better protect the rights of people in the ACT to participate in the planning system and to live in a clean, healthy and sustainable environment. Our recommendations are also consistent with the objectives of the Bill to support and enhance the ACT's liveability and prosperity, and promote the well-being of residents by creating an effective, efficient, accessible and enabling planning system.⁶
8. On 10 November 2022, EDO provided a submission to the Standing Committee in relation to this Inquiry and attached a copy of our first submission (**'second submission'**).
9. In our second submission, we identified that it appears that the ACT Government has incorporated only 2 of our 35 recommendations in the draft Bill, namely our recommendations that the principles of good consultation should be enshrined in the Bill (recommendation 29), and that the principles of good consultation should reflect best practice (recommendation 30). We commend these changes, which we consider go some way towards improving the ACT community's right to participate in environmental decision-making, which is one of the procedural elements of the right to a healthy environment.
10. However, the majority and remainder of our recommendations have not yet been incorporated into the Planning Bill.⁷
11. From our review of the Planning Bill, there is much to be done to ensure that the Bill is consistent with the right to a healthy environment when it is enshrined in ACT law, and that the Bill is consistent with its own objects.
12. We strongly encourage the Standing Committee to consider and uphold our remaining 33 recommendations from our first submission, which are consistent with the object of the Bill as well as the right to a healthy environment.
13. Broadly, our recommendations address:
 - a. general concepts of the Bill including its objects and the definition of ecologically sustainable development;
 - b. justice as recognition, focusing on the rights of overburdened individuals and communities – including First Nations Peoples, children and young people, and people who are financially disadvantaged – to enjoy access to environmental benefits and access to procedural rights;

⁶ Planning Bill 2022, s 7(1).

⁷ We acknowledge that some of our recommendations are addressed at the Territory Plan, which was released for public comment on 1 November 2022. At the time of writing, we have not yet reviewed the Territory Plan. However, we intend to review it and make further submissions during the public consultation period. In those submissions, we will consider the extent to which the Territory Plan incorporates the recommendations from our submission of 17 June 2022.

- c. distributive justice, focusing on how the Bill deals with issues of climate change and greenhouse gas emissions, biodiversity and offsets, and consultation with First Nations Peoples including their right to free, prior and informed consent;
- d. procedural justice, focusing on the ACT community's right to access information, participate in decision-making, and access to justice.

14. We are happy to elaborate on any of our recommendations during today's hearing.



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