



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Human Rights (Healthy Environment) Amendment Bill 2023

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**CONSERVATION
COUNCIL** ACT REGION

Submission to Standing Committee on Justice and
Community Safety

Inquiry into the Human Rights (Healthy Environment) Amendment Bill 2023

December 2023

The Conservation Council ACT Region is the peak non-government environment organisation for the Canberra region. Since 1981, we have spoken up for a healthy environment and a sustainable future for our region. We harness the collective energy, expertise and experience of our more than 40 member groups to promote sound policy and action on the environment.

We campaign for a safe climate, to protect biodiversity in our urban and natural areas, to protect and enhance our waterways, reduce waste, and promote sustainable transport and planning for our city. Working in the ACT and region to influence governments and build widespread support within the community and business, we put forward evidence-based solutions and innovative ideas for how we can live sustainably.

At a time when we need to reimagine a better future, we understand that the changes we need will only happen with the collective support of our community.

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Introduction

The Conservation Council of the ACT Region welcomes the opportunity to provide feedback to the Standing Committee on Justice and Community Safety on the Human Rights (Healthy Environment) Amendment Bill 2023 (“the Bill”).

As one of the key organisations named by the Hon Jo Clay MLA in a motion passed on 10 February 2022 calling on the ACT government to investigate the inclusion of the right to a healthy environment into the *Human Rights Act 2004* (ACT),¹ we are pleased to see that a Bill has now been introduced into the Legislative Assembly to recognise the right. We note that, despite our inclusion in that motion and our role as a peak environmental organisation in the ACT, we have unfortunately had limited opportunities to engage in the development and introduction of the Bill to date. We strongly recommend the ACT Government to uphold the right to public involvement in government decision-making, which forms part of the human right to a healthy environment.

We are disappointed that a number of the recommendations we made to the Justice and Community Safety Directorate’s Discussion Paper on the Right to a Healthy Environment are not reflected in the Bill.² In particular, we strongly advocate for the inclusion of nature-based rights and for the ACT Legislative Assembly to investigate options to impose stricter obligations on the government to take action against issues such as:

- Wood burners;
- Gas use and indoor air quality;
- Environmental health;
- Plastic pollution, particularly from industrial and commercial sources; and
- Access to environmental information.

The following submission sets out our support for the recognition of the human right to a healthy environment in ACT law, and our recommendations for strengthening the content of the Bill.

Enshrining the Right to a Healthy Environment

The Conservation Council acknowledges that the right to a healthy environment, as well as discourses and approaches to land management that recognise the intrinsic relationship between people and nature are foundational to Indigenous cultures across the world,³ and reflected in Ngunnawal and Ngambri lore and customs. The draft *Caring for Dhawura Ngunnawal: A natural resource plan for the ACT 2022-2042* acknowledges:

¹ Jo Clay MLA, Motion: to investigate the inclusion of the human right to a healthy environment in the Human Rights Act (10 February 2022),

https://www.parliament.act.gov.au/__data/assets/pdf_file/0003/1946226/NP-38-10-February-2022.pdf.

² See Conservation Council ACT Region, *Submission to the Justice and Community Safety Directorate: Right to a Healthy Environment in the ACT* (Submission, August 2022).

³ Mihnea Tanasescu, ‘Rights of Nature, Legal Personality, and Indigenous Philosophies’ (2020) 9(3) *Transnational Environmental Law* 429.

Ngunnawal people's kinship systems and songlines follow the waterways including the Murrumbidgee, Molonglo and Cotter rivers, which flow through the ACT. These rivers and their tributaries represent the Ngunnawal people's Dreaming, their cultural roots, sense of belonging, identity and purpose. Community are entrusted with the responsibility to care for Country.⁴

We emphasise the importance of continued engagement with the First Peoples of the ACT Region in respect of the recognition of the right to a healthy environment, as well as building from the recognition of the right to a healthy environment to explore further mechanisms to integrate First Peoples philosophies and approaches to environmental management into government policies, including through a rights-of-nature model if appropriate.

As the ACT's peak environmental advocacy organisation, bringing together over 40 member groups from across the region, we are pleased to commend the introduction of a bill that seeks to recognise and protect the human right to a healthy environment.

The human right to a healthy environment is a well-established human right under international law with over fifty years of international recognition, jurisprudence and application by domestic governments across the globe.

The right to a healthy environment was first articulated under the *Stockholm Declaration 1972*,⁵ and has been reiterated in a number of major international environmental treaties since then, including within the preambular paragraphs of the *Paris Agreement 2015*.⁶ The human right to a healthy environment is protected by a majority of countries across the globe in either regional or domestic human rights instruments, including many of Australia's neighbours. For example, the *ASEAN Human Rights Declaration 2012*, sets out that every person has the "right to a safe, clean and sustainable environment".⁷

In 2021 the human right to a healthy environment was recognised by the UN Human Rights Committee, and in 2022 the UN General Assembly adopted resolution A/76/L.75 recognising "the right to a clean, healthy and sustainable environment as a human right". Australia supported the resolution.

In Australia, both New South Wales and Victoria have introduced the human right to a healthy environment as a guiding principle for the future development of environmental and climate laws.

We strongly support the current articulation of the right to a healthy environment, as follows at s 27C of the Bill:

⁴ EPSDD, *Caring for Dhawura Ngunnawal: A natural resource plan for the ACT 2022-2042* (Draft Plan, 2022), 8.

⁵ *Report of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1973, adopted 16 June 1972) 3 [1] ('*Stockholm Declaration*').

⁶ *Paris Agreement*, opened for signature 22 April 2016 (entered into force 4 November 2016) preamble [11].

⁷ *ASEAN Human Rights Declaration* (entered into force November 19 2012) art 28(f).

Right to a healthy environment

- (1) Everyone has the right to a clean, healthy and sustainable environment.
- (2) Everyone is entitled to enjoy this right without discrimination.

The current wording of the Bill reflects well established international environmental and human rights law and will allow the ACT Government and other stakeholders to draw on established commentary, jurisprudence, and policies from other jurisdictions in the interpretation and application of the human right to a healthy environment.

We recommend:

1. The articulation of the right to a healthy environment under s 27C of the Bill, be retained and passed without amendment.

Ensuring the Right to a Healthy Environment is Enforceable and Impactful

The Conservation Council ACT Region is disappointed and concerned, however, that the Bill currently rejects the enforceability of the right to a healthy environment by deeming the right non-justiciable (see s 40C(5A) and (5B) of the Bill). It is not sufficient that the Bill includes review clause after five years (see s 43 of the Bill), particularly since that review clause contains no commitment to make the right justiciable after five years.

We are deeply concerned that by making the right to a healthy environment non-justiciable, a hierarchy of human rights will be created in the Territory reducing the normative impact of the introduction of the right to a healthy environment. We are concerned that, by limiting the justiciability of the right, that the ACT government will not act upon its increased obligations to protect the right and take action against environmental issues in the Territory for the first five years. This is unacceptable given the Bill was introduced because of the government's "recognition of the triple planetary threat of climate change, environmental pollution and biodiversity loss and the increasingly urgent need for action."⁸

If s 40C is retained in its current form, the right to a healthy environment will not be fully enforceable within the ACT until 2029, a mere year before 2030 and the ACT's deadline for reducing its greenhouse gas emissions by 60-75%.⁹ The ACT will undertake the majority of its transition to a renewable economy before the right is enforceable, significantly weakening the right to a healthy environment's potential normative impact on that process.

A consistent theme arising from reviews of the *Human Rights Act 2004* (ACT), is that the Act has not been a vehicle for spurious or overwhelming amounts of litigation. Rather it has performed an important role in increasing government awareness of the

⁸ Minister Tara Cheyne MLA, Explanatory statement: Human Rights (Healthy Environment) Amendment Bill 2023 (26 October 2023).

⁹ Climate Change and Greenhouse Gas Reduction (Interim Targets) Determination 2018, cl 3.

human rights of Canberrans and the human rights impacts of government decisions, resulting in a human rights-informed dialogue model within the Territory between government, the ACT Legislative Assembly, the ACT Human Rights Commission, civil society and the public.¹⁰ Similarly, quantitative studies of the experiences of other jurisdictions shows that the full recognition of the human right to a healthy environment – including through the protection of all procedural aspects of the right – has contributed to a human rights-informed dialogue within environmental and planning law processes.¹¹

The ACT can, once again, lead Australia in recognising and fully protecting the human right to a healthy environment, including by ensuring the right is fully justiciable. We urge the ACT Legislative Assembly to meet that level of ambition. The alternative is that the ACT may set a dangerous precedent by seeking to protect environmental rights only on paper, rather than engaging in the far more important process of integrating environmental rights into government decision-making and ensuring government decision-makers are held accountable if they breach those rights.

We therefore urge the following:

2. Ensure that the right to a healthy environment is enforceable and impactful across the Territory by removing s 40C from the Bill.

Appropriate Funding for Government and Civil Society Engagement

Finally, we emphasise to the Standing Committee that the passage of the Bill is only the first step forwards in integrating the right to a healthy environment into government decision-making practices and in raising awareness within the community of their rights.

We support the proposed amendments to the *Human Rights Act 2004* (ACT) that would establish an accessible human rights complaints mechanism within the ACT Human Rights Commission,¹² and urge the Committee to consider the need for the Human Rights Commission to receive funding that is appropriate for that new conciliatory function. We further support additional funding for the ACT Human Rights Commission to invest in its environmental rights expertise, noting that breaches of environmental rights tend to be managed by specialist environmental courts and tribunals.¹³

Furthermore, we call on the ACT Government and Legislative Assembly to champion environment and climate organisations in the Territory. Many of the government strategies and policies that will contribute to the progressive realisations of the

¹⁰ See, eg, ACT Justice and Community Safety Directorate, *Government Response: Australian National University Human Rights Research Project Report The Human Rights Act 2004 (ACT): The First Five Years of Operation* (March 2012).

¹¹ Chris Jeffords and Lanse Minkler, 'Do Constitutions Matter? The Effect of Constitutional Environmental Rights Provisions on Environmental Outcomes' (2016) 69(2) *Kyklos* 294.

¹² Human Rights (Complaints) Legislation Amendment Bill 2023.

¹³ See UNEP, *Environmental Courts and Tribunals – 2021: A Guide for Policy Makers* (Report, 2021).

substantive aspects of the right to a healthy environment, such as a safe climate, rely on the engagement and voluntary contributions of environment and climate community organisations.

Increased costs across the Territory have eroded the funding base for environment and climate community organisations, and funding uncertainty has compounded these problems impacting upon our ability to invest in our people and systems, plan for the future and retain staff. Consequently, the Conservation Council cannot continue to operate at the capacity level required to contribute fully to environmental and climate action in our region, including to support the implementation of the right to a healthy environment and to raise public awareness of environmental rights.

We urge that the Standing Committee consider in its final report the need to:

3. Investigate and commit to further funding of the ACT Human Rights Commission, to ensure it is appropriately empowered to protect the right and conciliate any breaches, and to fund civil society to proactively engage in the interpretation and implementation of the right to a healthy environment.

Summary and Recommendations

The Conservation Council ACT Region supports the enshrinement of the right to a healthy environment under ACT law, however, we recommend that the ACT Legislative Assembly amend the Bill to ensure the right is fully justiciable and further that the ACT Government commit to additional funding and measures to ensure the right to a healthy environment is protected in practice, not just on paper.

Our recommendations are as follows:

1. The articulation of the right to a healthy environment under s 27C of the Bill, be retained and passed without amendment.
2. Ensure that the right to a healthy environment is enforceable and impactful across the Territory by removing s 40C from the Bill.
3. Investigate and commit to further funding of the ACT Human Rights Commission, to ensure it is appropriately empowered to protect the right and conciliate any breaches, and to fund civil society to proactively engage in the interpretation and implementation of the right to a healthy environment.