



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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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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# **ACT Green's Submission to the Standing Committee on Justice and Community Safety Commission's Inquiry Into Human Rights (Healthy Environment) Amendment Bill 2023**

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# **Inquiry Into Human Rights (Healthy Environment) Amendment Bill 2023**

The ACT Greens welcome the opportunity to make a submission to the Justice and Community Safety Committee's inquiry into the Human Rights (Healthy Environment) Amendment Bill 2023. While we understand that submissions opened on 8 November and that they closed on 29 November, we ask that you consider this late submission as part of your inquiry and apologise for not meeting the deadline.

The ACT Greens are pleased to see this bill come forward. The ACT Greens have long advocated for the Right to a Healthy Environment and campaigned on it in 2020 based on strong community calls and the urgent need to protect our environment and climate. ACT Greens Member, Jo Clay, brought forward a motion to enshrine this right in law, which the Assembly passed in February 2022. Environment Minister Vassarotti has strongly supported this right, and the Government consultation received strong community support to recognise it.

Locally and internationally, it is well understood that the right to a healthy environment, like any right, must be enforceable for it to be effective. As drafted in the bill, this right is not enforceable. The ACT Greens are concerned that the amendment bill falls short of community expectations and will not be effective. Specifically we call for amendments to:

- 1) Allow the Supreme Court to adjudicate breaches and issue remedies from the day of commencement;
- 2) Failing this, amend the statutory review provision to take place in two years rather than five years; and
- 3) Ensure that the statutory review will make recommendations about how to provide remedies and enforcement.

## International law

There is an established body of law internationally on the right to a healthy environment.

This right was first recognised 50 years ago - see EDO paper:

<https://www.edo.org.au/publication/the-right-to-a-healthy-environment/>.

Many countries have recognised the right to a healthy environment and applied it for decades. It is a well established right internationally. The right to a healthy environment received universal recognition when the UN General Assembly passed a landmark resolution reaffirming it.

The bill's Explanatory Statement refers to the 16 framework principles set out by the Special Rapporteur to the UN General Assembly. These include:

- *'States should provide for access to effective remedies for violations of human rights and domestic laws relating to the environment';*
- *'States should ensure the effective enforcement of their environmental standards against public and private actors.'*

The Special Rapporteur further recognises that there are four substantive elements that must be implemented, including 'access to justice'.

## Legal enforcement

Locally and internationally, it is well understood that the right to a healthy environment, like any right, must be enforceable for it to be effective. We have outlined key enforcement gaps below and made three suggestions for amendments.

The Listening Report, which summarises community feedback from submissions and consultation sessions, indicates that *'several participants noted that we should ensure access to effective remedies for environmental harms by introducing accessible human rights complaints mechanism or enabling third parties to seek merits review of environmental decisions'*.

Clause 7 of this bill exempts the right to a healthy environment from being enforced in legal proceedings in relation to public authority actions in the Supreme Court. This means that where someone can enforce other breaches of human rights, they cannot enforce this one.

The right to a healthy environment is therefore positioned as a lesser right than other rights. The Explanatory Statement gives no reason for this.

Other measures in the bill to enliven the right to a healthy environment are useful. These include trying to ensure that all bills are compatible with this right and asking courts to interpret laws consistently with this right. While people can also complain to the Human Rights Commission about a breach, the Human Rights Commission has mediation powers only and cannot take enforcement action or issue remedies if they find a breach. These are good measures but they are not sufficient. There is a reason that other human rights in our Act are enforceable in the Supreme Court. There is no reason why this one should be carved out and made a lesser right.

### **Statutory review**

The bill provides that statutory review must be tabled as soon as practicable five years after the new right commences. That appears to be the first opportunity for review. The statutory review will look at enforcement options but there is no obligation to make recommendations for change. This means that until 2029, Canberrans will have no effective remedy for a violation of their right to a healthy environment and no access to justice. Even when it is reviewed in 2029, there is no guarantee that the Minister will recommend introducing enforcement options. The Minister must only consider them.

No reason is given in the Explanatory Statement as to why Canberrans must wait until 2029 for the Minister to consider whether Canberrans should be offered enforcement options. International law and the local community want and recognise a right to a healthy environment.

The Government is prepared to recognise the right but does not appear prepared to enforce it. The ACT Greens are deeply concerned about this.

We are also concerned about the impact this might have on legislation and discussion about the right to a healthy environment around Australia. The ACT will be the first Australian jurisdiction to enshrine the right to a healthy environment. If we pass an amendment that does not have remedies or enforcement options, other jurisdictions may follow our lead, ignoring community feedback and failing to meet the community's expectations.

## Access to justice

This bill comes in the context of a recent Government decision against providing better access to justice under the Human Rights Act. A community petition called on the Assembly to enable the Human Rights Commission to conciliate breaches and, where this is not successful, to allow complainants to take the matter to the ACT Civil and Administrative Tribunal for resolution. This petition was started because the petitioners said that the *'Human Rights Act 2004 was drafted to protect individuals against violations of their human rights by government and government agencies but fails to provide an accessible way to make complaints about breaches'*.

The petitioners noted that a Supreme Court review is difficult and expensive to access and does not provide compensation for harm done. Supreme Court enforcement is a good option, but allowing ACAT review as well would be even better.

The committee recommended that the ACT Government enact the terms of the Rights to a Remedy petition and provide enforcement and access to justice as requested via the Supreme Court and ACAT. However, the Human Rights (Complaints) Legislation Amendment Bill 2023, which recently passed, does not provide this option. It allows Canberrans to complain to the Human Rights Commission, but it does not allow them to take the matter to ACAT where conciliation fails. It allows a right to complain, but no right to a remedy.

The right to a healthy environment bill is even worse. Not only does it prohibit ACAT remedies, it also prohibits Supreme Court actions against a public authority. The only options are to complain. There are no remedies or enforcement options.

## Proposed amendments

There are several ways the bill could be amended in order to properly recognise and enforce the right to a healthy environment. We recommend the following:

- 1) Amend the bill before passage to allow the Supreme Court to adjudicate breaches and issue remedies from the day of commencement.
- 2) If Government insists that they are ready to recognise this right but cannot allow enforcement from the day of commencement, amend the statutory review provision to take place in two years not five years.

3) Amend the legislation to ensure that the statutory review will make recommendations about how to provide remedies and enforcement, rather than leaving this matter to the discretion of the Minister of the day.

## **Conclusion**

We strongly urge amending this bill to achieve consistency in enforcement for a right to a healthy environment consistent with other human rights, as the ACT community deserves..

Sincerely,

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