



**Legislative Assembly for the
Australian Capital Territory**

Standing Committee on Justice and
Community Safety

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

Legislative Assembly for the Australian Capital Territory
Standing Committee on Justice and Community Safety

Approved for publication

Report 22
10th Assembly
January 2024

About the committee

Establishing resolution

The Assembly established the Standing Committee on Justice and Community Safety on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Electoral Commission
- ACT Integrity Commission
- Gaming
- Minister of State (JACS reporting areas)
- Emergency management and the Emergency Services Agency
- Policing and ACT Policing
- ACT Ombudsman
- Corrective services
- Attorney-General
- Consumer affairs
- Human rights
- Victims of crime
- Access to justice and restorative practice
- Public Trustee and Guardian

You can read the full establishing resolution [on our website](#).

Committee members

Mr Peter Cain MLA, Chair

Dr Marisa Paterson MLA, Deputy Chair

Mr Andrew Braddock MLA

Secretariat

Ms Kathleen de Kleuver, Committee Secretary

Ms Alicia Coupland, Assistant Secretary

Ms Erin Dinneen, Assistant Secretary

Mr Satyen Sharma, Administrative Officer

Contact us

Mail Standing Committee on Justice and Community Safety
Legislative Assembly for the Australian Capital Territory
GPO Box 1020
CANBERRA ACT 2601

Phone (02) 6207 0524

Email LACommitteeJCS@parliament.act.gov.au

Website parliament.act.gov.au/parliamentary-business/in-committees

About this inquiry

The Human Rights (Healthy Environment) Amendment Bill 2023 was presented in the Assembly on 26 October 2023 and referred to the Standing Committee on Justice and Community Safety. Standing order 174 refers all bills presented to the Assembly to the relevant standing committee for inquiry. A Committee has three weeks from the date of presentation, or one week after the tabling of the relevant scrutiny report, whichever is later, to advise the Speaker on whether it will undertake an inquiry.

If the Committee does decide to undertake an inquiry, it must report within three months from the date of presentation of the bill, with the exception of bills presented in the last sitting period of a calendar year, in which case the Committee has four months to inquire and report.

The committee decided to inquire into the bill on 8 November 2023. The report was due on 26 January 2024, a public holiday due to Australia Day, therefore the report had to be tabled by 25 January 2024.

Contents

About the committee	i
Establishing resolution	i
Committee members	i
Secretariat	i
Contact us	i
About this inquiry	i
Acronyms	iii
Recommendations	iv
1. Conduct of the inquiry	1
2. Introduction	2
Background to the Bill	2
The right to a healthy environment	2
Legal proceedings and complaints mechanisms	2
Mandatory statutory review	3
Legislative Scrutiny	4
3. Issues raised in evidence	5
Support for the Bill	5
Concerns about the Bill	5
Lack of Justiciability	6
Resourcing of the Human Rights Commission	8
Impact on vulnerable groups	9
Implementation support materials	11
Other suggested legislative amendments	12
4. Conclusion	14
Appendix A: Submissions	15
Appendix B: Dissenting report by Mr Peter Cain MLA	16

Acronyms

Acronym	Long form
ACT	Australian Capital Territory
ACTCOSS	Australian Capital Territory Council of Social Services
The Bill	Human Rights (Healthy Environment) Amendment Bill 2023
The Commission	ACT Human Rights Commission
The Committee	Standing Committee on Justice and Community Safety
ESCR	Economic, Social, and Cultural Rights
HRA	Human Rights Act 2004
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MLA	Member of the Legislative Assembly
The Territory	The Australian Capital Territory
UN	United Nations
UNHRC	United Nations Human Rights Council

Recommendations

Recommendation 1

The Committee recommends that the ACT Government amend the Bill so that the mandatory statutory review takes places after three years instead of five and requiring that consideration of the justiciability issues must be undertaken as part of this review.

Recommendation 2

The Committee recommends that the ACT Government insert a sunset clause into proposed section 40C (5A) and (5B), which limits the right for individuals to take complaints to the supreme court, so that the section will automatically expire after a period of four years.

Recommendation 3

The Committee recommends the ACT Government consider the need for additional resources for the Human Rights Commission, given the new complaints mechanism is the only recourse in relation to the new right to a healthy environment.

Recommendation 4

The Committee recommends the ACT Government provide additional dedicated resourcing to the ACT Human Rights Commission to conduct a human rights audit in relation to the right to a healthy environment, pursuant to S 41 of the *Human Rights Act 2004*.

Recommendation 5

The Committee recommends that the ACT Government undertake further consultation with Aboriginal and Torres Strait Islander peoples, both prior to the Assembly debating the proposed Bill, and on an ongoing basis in relation to the realisation of this right.

Recommendation 6

The Committee recommends that the ACT Government implement a process for directorates to consider the impact of implementing this new right for vulnerable people.

Recommendation 7

The Committee recommends the ACT Government provide additional funding for the development of educational resources, for both public authorities and individuals, about the proposed right. The Government should ensure these resources are accessible by considering translated materials and using a range of mediums.

Recommendation 8

The Committee recommends the ACT Government consider the necessity of S 27 (C) (2) – ‘Everyone is entitled to enjoy this right without discrimination’. A review of Part 3A – Economic, social and cultural rights - of the Act should be considered as well, because this phrase is also included for each right listed in this section.

Recommendation 9

The Committee recommends the ACT Government review and reconsider the categorisation of the right to a healthy environment as part of the mandatory statutory review outlined in proposed Section 43.

Recommendation 10

The Committee recommends the Assembly pass the Bill following consideration of the ACT Government's responses to the recommendations made in this report.

1. Conduct of the inquiry

- 1.1. The Committee received 14 submissions to the inquiry. These are listed in Appendix A.
- 1.2. The Committee requested an extension to the required reporting date of 26 January 2024 by motion in the Assembly on 28 November 2023. The extension was not granted.¹
- 1.3. Several organisations requested an extension to the submission closing date of 29 November 2023:
 - a) ACT Government
 - b) Associate Professor Cristy Clark and Dr Erin O'Donnell
 - c) Australian Land Conservation Alliance
 - d) Human Rights Law Centre
 - e) ACT Human Rights Commission
 - f) Australian Lawyers for Human Rights
 - g) Conservation Council ACT
 - h) Green Law
 - i) Environmental Defenders Office
 - j) Canberra Community Law
- 1.4. As the reporting date was not extended (see 1.4), some of these extensions were not granted in full.
- 1.5. Because of the Christmas break, public hearings were not able to be considered as part of the Inquiry due to the timing constraints.
- 1.6. Some submissions noted the short time frame for submissions:
 - a) Australian Lawyers for Human Rights commented on the 'relatively short time frame for receipt of submissions on the Bill. Pursuant to Article 25 of the ICCPR the ACT Government should ensure that it upholds the right of all Canberrans to take conduct in public affairs.'²
 - b) Associate Professor Cristy Clark and Dr Erin O'Donnell states that 'the time period allowed for consultation in relation to this inquiry has also been notably truncated.'³

¹ ACT Legislative Assembly, *Minutes of Proceedings*, No 107, 28 November 2023, p1606.

² *Submission 14*, p 24.

³ *Submission 11*, p 2-3.

2. Introduction

Background to the Bill

- 2.1. The Parliamentary and Governing Agreement outlined a commitment to consider legislating the right to a healthy environment.⁴
- 2.2. In recent years, discussion about the right to a healthy environment has been recognised by:
 - a) The United Nations Human Rights Council (UNHCR) in a resolution on 8 October 2021. The resolution outlines the ‘human right to a clean, healthy and sustainable environment’ and calls on states to build their capacity to protect the environment.⁵
 - b) The United Nations General Assembly (UN) in a resolution on 28 July 2022, noting ‘the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights’.⁶
- 2.3. The Human Rights (Healthy Environment) Bill 2023 (The Bill) seeks to amend the *Human Rights Act 2004*. In the explanatory statement, it is explained that the above UN resolutions were used to guide the language used in this bill.⁷
- 2.4. The Bill has been identified as a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.⁸
- 2.5. The Bill comprises three new sections, outlined below:

The right to a healthy environment

- 2.6. The Bill proposes to insert a new section into the Act. Proposed section 27C – right to a healthy environment - provides that everyone, without discrimination, is entitled to a clean, health and sustainable environment.⁹

Legal proceedings and complaints mechanisms

- 2.7. The Bill will insert two new proposed subsections, (5a) and (5b), into section 40C.¹⁰
- 2.8. Section 40C states that individuals may take action against public authorities in the Supreme Court if the rights outlined in the Act have been contravened.

⁴ 10th Legislative Assembly ACT, Parliamentary and Governing Agreement, Appendix 2.

⁵ 43rd meeting of the United Nations Human Rights Council, HRC res 48/13, UN Doc A/HRC/RES/48/13 (18 October 2021, adopted 8 October 2021)

⁶ 67th session of the United Nations General Assembly, GA Res 76/300, UN Doc A/RES/76/300 (1 August 2022, adopted 28 July 2022)

⁷ Human Rights (Healthy Environment) Amendment Bill 2023, *Explanatory Statement*, p 4.

⁸ Human Rights (Healthy Environment) Amendment Bill 2023, *Explanatory Statement*, p 1.

⁹ Proposed section 27C, Human Rights (Healthy Environment) Amendment Bill 2023.

¹⁰ Human Rights (Healthy Environment) Amendment Bill 2023, *Explanatory Statement*, p 15.

- 2.9. Proposed subsection (5a) states that the remedies listed in section 40C will not initially apply to this right. This means a person cannot take action in the Supreme Court in relation to the right to a healthy environment.¹¹
- 2.10. Proposed subsection (5b) clarifies that in instances where a complaint overlaps the right to a healthy environment and another right/s, action may still be taken in the Supreme Court in relation to the other right/s.¹²
- 2.11. The Assembly has passed a separate bill – The Human Rights (Complaints) Legislation Amendment Bill 2023.¹³ It will amend both the Human Rights Act and the *Human Rights Commission Act 2005*, once notified.¹⁴ These amendments allow individuals to bring complaints to the Human Rights Commission for conciliation. This aims to provide an additional mechanism for addressing human rights complaints (in addition to taking action in the Supreme Court when that becomes available).¹⁵
- 2.12. Given the proposed subsections (5a) and (5b) of the Human Rights (Healthy Environment) Amendment Bill 2023 outlined above, this new mechanism would be the key avenue for redress in relation to complaints solely concerning the right to a healthy environment.
- 2.13. The explanatory statement indicates that the intent of this limitation is to allow public authorities sufficient time to develop processes that support the realisation of the right to a healthy environment.¹⁶

Mandatory statutory review

- 2.14. Proposed section 43 requires the Minister to conduct a review of the new provisions in section 27C and 40C([5a] and [5b]) that were discussed above.¹⁷
- 2.15. Under this proposed section, the Minister of the day would be required to present this review to the Legislative Assembly. The review would be undertaken as soon as possible once the Act has been in force for five years.¹⁸
- 2.16. In discussing the mandatory statutory review, the explanatory statement draws specific attention to the limitation: ‘This period will provide greater clarity on the obligations owed before this right becomes justiciable.’¹⁹

¹¹ Proposed section 40C (5a), Human Rights (Healthy Environment) Amendment Bill 2023.

¹² Proposed section 40C (5b), Human Rights (Healthy Environment) Amendment Bill 2023.

¹³ Legislative Assembly for the ACT minutes of proceedings, 28 November 2023, p1616-17.

¹⁴ Proposed section 2, Human Rights (Complaints) Legislation Amendment Bill 2023.

¹⁵ Human Rights (Complaints) Legislation Amendment Bill 2023, *Explanatory statement*, p 1.

¹⁶ Human Rights (Healthy Environment) Amendment Bill 2023, *Explanatory Statement*, p 8.

¹⁷ Proposed section 43, Human Rights (Healthy Environment) Amendment Bill 2023.

¹⁸ Proposed section 43 (2), Human Rights (Healthy Environment) Amendment Bill 2023.

¹⁹ Human Rights (Healthy Environment) Amendment Bill 2023, *Explanatory Statement*, p 8.

Legislative Scrutiny

- 2.17. The Bill was considered by the Standing Committee on Justice and Community Safety (Legislative Scrutiny role) in its Scrutiny Report 37 of 21 November 2023. The Committee made no comment on the Bill.²⁰

²⁰ Standing Committee on Justice and Community Safety (Legislative Scrutiny role), Scrutiny Report 37, p 1.

3. Issues raised in evidence

- 3.1. This chapter summarises the evidence received by the committee through submissions.
- 3.2. It outlines support for the bill from a range of stakeholders and lists a number of concerns about certain aspects of the proposed bill.

Support for the Bill

- 3.3. All submissions received by the committee were broadly supportive of adding the right to a healthy environment to the Human Rights Act 2004.
- 3.4. In particular, several organisations²¹ voiced support for section 27 (C) (1) which says ‘everyone as the right to a clean, healthy and sustainable environment.’²²
- 3.5. This wording was observed as mirroring the UN General Assembly Resolution, and was considered a good choice because:
 - a) The ACT will benefit from emerging international understandings of the right to a healthy environment; and
 - b) The law can evolve in a way that is consistent with international jurisprudence.²³
- 3.6. Doctors for the Environment Australia observed that the Bill has the potential to positively impact human health, in particular noting the clear body of evidence demonstrating the negative impact of climate change on health.²⁴
- 3.7. Advocacy for Inclusion highlighted the importance of protecting the right to a healthy environment for people with a disability, given their vulnerability to the impacts of climate change.²⁵
- 3.8. Although every submission received has raised concerns and/or suggested improvements for the Bill, some organisations indicated they would not oppose the Bill passing in its existing form.²⁶

Concerns about the Bill

- 3.9. Despite broad support in submissions, there were several concerns raised about aspects of the proposed Bill:

²¹ See, for example, Office of the Commissioner for Sustainability and the Environment, *Submission 4*, p 1.

²² Proposed section 27C (1), Human Rights (Healthy Environment) Amendment Bill 2023.

²³ Associate Professor Cristy Clark and Dr Erin O’Donnell, *Submission 11*, p 2.

²⁴ *Submission 2*, p 1.

²⁵ *Submission 1*, p 2.

²⁶ See for example, ACT Human Rights Commission, *Submission 5*, p 6; Doctors for the Environment, *Submission 2*, p 2.

Lack of Justiciability

- 3.10. Concern that action to the ACT Supreme Court against public authority breaches of the new right to a healthy environment would not initially be possible was the most frequently raised issue. It was mentioned in 10 of 14 submissions.²⁷
- 3.11. Associate Professor Cristy Clark and Dr Erin O'Donnell cautioned that an 'absence of an enforcement mechanism undermines the value of introducing this right'²⁸.
- 3.12. There were a range of other reasons provided to expand upon this concern:
- a) It establishes a hierarchy of human rights where the right to a healthy environment is inferior;²⁹
 - b) It limits the normative value of the right- that is, the perspective amongst the community about how important or valued the right to a healthy environment is;³⁰ and
 - c) It undermines the fostering of a human rights compliance culture amongst public authorities.³¹
- 3.13. Although action cannot be taken in the Supreme Court, there will be a pathway to make a complaint about an alleged breach of this right to the ACT Human Rights Commission.³²
- 3.14. In its submission, the ACT Government emphasised the importance of this new complaint mechanism, pointing out it provides an 'accessible mechanism for individuals to raise and resolve concerns'.³³
- 3.15. The ACT Government's submission also points out that the right to a healthy environment is a new development, having only recently been recognised by the UN.³⁴ Therefore 'public authorities [need] time to fully understand, implement and institutionalise the right to a healthy environment in decision-making, policies and legislation'.³⁵
- 3.16. The ACT Human Rights Commission considered that concerns regarding uncertainty in government agencies about the potential impacts of environmental human rights litigation did not warrant the caution approach taken in the bill in preventing access to the ACT Supreme Court in respect of breaches.³⁶

²⁷ See, for example, Australian Lawyers for Human Rights, *Submission 14*, p 23.

²⁸ *Submission 11*, p 2.

²⁹ See, for example, Office of the Commissioner for Sustainability and Environment, *Submission 4*, p 2.

³⁰ See, for example, Environmental Defenders Office, *Submission 12*, p 8.

³¹ Green Law, *Submission 13*, p 7.

³² Human Rights (Healthy Environment) Amendment Bill 2023, *Explanatory Statement*, p 8-9.

³³ *Submission 8*, p 9.

³⁴ *Submission 8*, p 8.

³⁵ *Submission 8*, p 8.

³⁶ ACT Human Rights Commission, *Submission 5*, p 5.

- 3.17. Some submissions acknowledged that the requirements for public authorities in relation to the proposed right will mean time is needed to review policies and processes but did not support the absence of the ability to take action to the Supreme Court.³⁷
- 3.18. Several organisations indicated that, although the removal of proposed Sections 40C (5A) and (5B) would be preferable, there were other ways to improve access to justice.³⁸
- 3.19. Suggestions included:
- a) Removing sections 40C(5A) and (5B) which preclude the ability to take action in the ACT Supreme Court in respect of breaches of the new right to a healthy environment;³⁹
 - b) Amending proposed section 43 – mandatory statutory review – to state the review must take place within a shorter timeframe than five years, for example in two years⁴⁰ and ensuring that consideration of justiciability is a mandatory component of the review;⁴¹ or
 - c) ‘Sunsetting’ proposed new section 40C (5A) and (5B) so that at a given date this section is automatically removed.⁴²
- 3.20. Five years was seen as an ‘excessive’ amount of time to wait to review the proposed amendment. Many submissions suggested that this time frame did not match the urgency of the climate crisis.⁴³
- 3.21. The Committee makes the following two recommendations in relation to improving the justiciability of the right to a healthy environment:

Recommendation 1

The Committee recommends that the ACT Government amend the Bill so that the mandatory statutory review takes place after three years instead of five and requiring that consideration of the justiciability issues must be undertaken as part of this review.

Recommendation 2

The Committee recommends that the ACT Government insert a sunset clause into proposed section 40C (5A) and (5B), which limits the right for individuals to take complaints to the supreme court, so that the section will automatically expire after a period of four years.

³⁷ See, for example, Australian Land Conservation Alliance, *Submission 7*, p 1.

³⁸ See, for example, ACT Human Rights Commission, *Submission 5*, p 6.

³⁹ Australian Lawyers for Human Rights, *Submission 14*, p 18.

⁴⁰ ACT Greens, *Submission 10*, p 5.

⁴¹ ACT Greens, *Submission 10*, p 6.

⁴² Australian Land Conservation Alliance, *Submission 7*, pp 1-2.

⁴³ See, for example, Environmental Defenders Office, *Submission 12*, p 8.

Resourcing of the Human Rights Commission

- 3.22. The recently passed Human Rights (Complaints) Legislation Amendment Bill 2023 to allow individuals to bring complaints to the Human Rights Commission for conciliation.⁴⁴
- 3.23. Several submissions raised concerns about the ability of the Commission - at its current capacity - to develop and manage this complaints mechanism.
- 3.24. The Conservation Council ACT Region highlighted the need for the Human Rights Commission to 'to invest in its environmental rights expertise, noting that breaches of environmental rights tend to be managed by specialist environmental courts and tribunals'.⁴⁵
- 3.25. Lawyers for Human Rights Australia contended that 'there are no rights without remedy'. Given this mechanism is the only way to pursue complaints in relation to the right to a healthy environment, ensuring it is adequately resourced is critical.⁴⁶
- 3.26. The Office of the Commissioner for Sustainability and the Environment made clear its concerns, stating:
- ... owing to the anticipated complex nature of prospective complaints and level of technical expertise required, it is critical that appropriate resourcing and support is provided to the ACT Human Rights Commission.⁴⁷
- 3.27. The Committee notes that the new complaints mechanism is designed to provide an accessible mechanism for all human rights complaints. However, it is the only way to make a complaint about the right to a healthy environment, under the proposed Bill.⁴⁸

Recommendation 3

The Committee recommends the ACT Government consider the need for additional resources for the Human Rights Commission, given the new complaints mechanism is the only recourse in relation to the new right to a healthy environment.

- 3.28. In its submission, the Human Rights Commission also noted that Section 41 of the *Human Rights Act 2004* provides that the Commission can undertake reviews of the impact of territory laws on human rights and would be open to do so if suitably resourced to do so.⁴⁹
- 3.29. The Commission suggested that this function would be useful in the realisation of the right to a healthy environment, given public agencies would need to consider how their policies promote, or not, this right:

⁴⁴ Human Rights (Complaints) Legislation Amendment Bill 2023, *Explanatory statement*, p 1.

⁴⁵ *Submission 9*, p 4.

⁴⁶ *Submission 14*, p 23.

⁴⁷ *Submission 4*, p 2.

⁴⁸ Human Rights (Complaints) Legislation Amendment Bill 2023, *Explanatory statement*, p 1.

⁴⁹ *Submission 5*, p 7.

There would be benefit in undertaking a baseline audit in the first 18 to 24 months following commencement. A human rights audit under s 41 would serve to ascertain the extent to which the right to a healthy environment and related rights are currently implemented under ACT legislation and operational practice. We believe a collaborative audit conducted in cooperation with agencies would help build their capacity to navigate and apply the new right. It would promote vital awareness among staff and relevant stakeholders, while identifying any gaps in protection or opportunities to better realise the right to a healthy environment.⁵⁰

- 3.30. The Committee notes the Government highlighted in its submission the need for ‘building capacity of public authorities’ during the implementation period.⁵¹

Recommendation 4

The Committee recommends the ACT Government provide additional dedicated resourcing to the ACT Human Rights Commission to conduct a human rights audit in relation to the right to a healthy environment, pursuant to S 41 of the *Human Rights Act 2004*.

Impact on vulnerable groups

Aboriginal and Torres Strait Islander peoples

- 3.31. Several organisations raised concerns about the impact of this Bill on Aboriginal and Torres Strait Islander peoples. Of particular concern was the lack of apparent engagement of Aboriginal and Torres Strait Islanders in the drafting of the proposed Bill.⁵²
- 3.32. The Committee was urged to consult directly with Aboriginal and Torres Strait Islander peoples as part of this Inquiry,⁵³ although this was not possible in the time available to the Committee.
- 3.33. The Committee notes the following:
- a) The ‘Your Say Report’ on the Right to a Healthy Environment records consultation with community by Government on this issue. The report indicates engagement with Aboriginal and Torres Strait Islander health research individuals or groups⁵⁴, although does not specify whom.

⁵⁰ *Submission 5*, p 7.

⁵¹ *Submission 8*, p 9.

⁵² See, for example, Human Rights Law Centre, *Submission 6*, p 5.

⁵³ ACT Human Rights Commission, *Submission 5*, p 3; Human Rights Law Centre, *Submission 6*, p 3; Environmental Defenders Office, *Submission 12*, p 12.

⁵⁴ ACT Government, *Your Say Report – Right to A healthy Environment – Report on what we heard*, November 2022, p 2.

- b) The *Human Rights Act 2004*, in both the preamble and S 27 (2), recognises this group as holding distinct cultural rights.⁵⁵
- 3.34. Notwithstanding the above, the ACT Human Rights Commission suggested the Committee should prioritise hearing from Aboriginal and Torres Strait Islander peoples about this Bill, as they should be an ‘active partner’ in its development given their relationship with Country.⁵⁶
- 3.35. The Human Rights Law Centre also suggested proactive engagement with this community, highlighting the disproportionate impacts of climate change, and their understanding of the environment as a living entity that we are part of.⁵⁷
- 3.36. The Conservation Council (ACT Region) advocated for continued engagement of Aboriginal and Torres Strait Islander people, commenting that their approaches to environmental management can support the realisation of this right.⁵⁸
- 3.37. Australian Lawyers for Human Rights reiterated the importance of Aboriginal and Torres Strait engagement in human rights, noting ‘the government has an obligation to consult with these communities’.⁵⁹

Recommendation 5

The Committee recommends that the ACT Government undertake further consultation with Aboriginal and Torres Strait Islander peoples, both prior to the Assembly debating the proposed Bill, and on an ongoing basis in relation to the realisation of this right.

Vulnerable community members

- 3.38. Several organisations described the disproportional negative impacts felt by vulnerable community members such as those with disabilities, low socioeconomic status, the elderly, and chronically ill.⁶⁰ These impacts come not only from environmental harm, but also in the form of cost barriers in relation to policy actions.⁶¹
- 3.39. Advocacy for Inclusion pointed out that costs associated with implementing the proposed right to a healthy environment such as actions associated with waste reduction, energy efficiency, and electrifying transport may be difficult for vulnerable people to meet.⁶²
- 3.40. Similarly, ACT Council of Social Services (ACTCOSS) cautioned that policy in relation to this right ‘must not exacerbate inequality for vulnerable people’.⁶³

⁵⁵ Human Rights Act 2004, preamble and s 27.

⁵⁶ *Submission 5*, p 3.

⁵⁷ *Submission 6*, pp 4-5.

⁵⁸ *Submission 9*, p 2.

⁵⁹ *Submission 14*, p 24-5.

⁶⁰ See, for example, ACT Human Rights Commission, *Submission 5*, p 4.

⁶¹ ACT Council of Social Service (ACTCOSS), *Submission 2*, p 2.

⁶² *Submission 1*, p 2.

⁶³ *Submission 3*, p 2.

- 3.41. Environmental Defender's Office emphasised that vulnerable people 'are at the most risk of environmental harm, but who are often least responsible for such harm'.⁶⁴

Recommendation 6

The Committee recommends that the ACT Government implement a process for directorates to consider the impact of implementing this new right for vulnerable people.

Implementation support materials

- 3.42. In addition to the collaborative audit recommended by the Committee, several submissions noted the importance of the provision of educational materials in relation to the proposed new right.
- 3.43. The Conservation Council ACT Region noted that they, and other similar organisations, would be well suited to proactively engage with the community in relation to the proposed right. The advocated for the provision of funding to such groups.⁶⁵
- 3.44. Australian Lawyers for Human Rights suggested that education efforts around the proposed right are essential if it is to be fully and fairly realised. They also contended that any such resources or programs must be accessible to marginalised and disadvantaged groups.⁶⁶
- 3.45. The ACT Human Rights Commission also highlighted this issue, noting that information should be clear, accessible, and developed for both public authorities and individuals in the community.⁶⁷

Recommendation 7

The Committee recommends the ACT Government provide additional funding for the development of educational resources, for both public authorities and individuals, about the proposed right. The Government should ensure these resources are accessible by considering translated materials and using a range of mediums.

⁶⁴ *Submission 12*, p 6.

⁶⁵ *Submission 9*, p 5.

⁶⁶ *Submission 14*, p 24.

⁶⁷ *Submission 5*, p 7.

Other suggested legislative amendments

- 3.46. Three organisations – the ACT Human Rights Commissions, Human Rights Law Centre, and Environmental Defenders Office⁶⁸ – were concerned about the inclusion of proposed section 27 (C) (2) – ‘Everyone is entitled to enjoy this right without discrimination.’⁶⁹ It was suggested:
- a) Section 8 (2) of the *Human Rights Act 2004*, ‘Everyone has the right to enjoy his or her human rights without distinction or discrimination of any kind’⁷⁰, already recognises this;
 - b) This may result in the right being interpreted in a more limited way than other rights in the act;⁷¹ and
 - c) Duplication is unnecessary and undesirable.⁷²
- 3.47. The Committee notes, however, that this sentence is also included with the right to education and the right to work in the Act.⁷³ These rights, alongside the right proposed in the Bill, are listed under Part 3A, Economic, social and cultural rights.

Recommendation 8

The Committee recommends the ACT Government consider the necessity of S 27 (C) (2) – ‘Everyone is entitled to enjoy this right without discrimination’. A review of Part 3A – Economic, social and cultural rights - of the Act should be considered as well, because this phrase is also included for each right listed in this section.

- 3.48. There was also concern about the proposed right’s categorisation in the Bill.
- 3.49. As discussed, the proposed right is to be inserted in Section 3A, defining it as an economic, social, and cultural right. It was suggested that this categorisation carries the risk of the right being viewed as ‘subject only to progressive realisation’.⁷⁴
- 3.50. GreenLaw and Australian Lawyers for Human Rights also argued that the human right to a healthy environment is not an economic, social, and cultural human right, as evidenced by UN Treaty Bodies, regional instruments or domestic courts, Special Rapporteurs, and international jurisprudence.⁷⁵
- 3.51. The Committee notes that the Human Rights Commission considers the distinction between Section 3 and Section 3A to be ‘arbitrary’.⁷⁶

⁶⁸ *Submission 5*, p 4, *Submission 6*, p 6, and *Submission 12*, p 7.

⁶⁹ Proposed section 27C (2), Human Rights (Healthy Environment) Amendment Bill 2023.

⁷⁰ Human Rights Act 2004, s 8.

⁷¹ Human Rights Law Centre, *Submission 6*, p 6; Environmental Defenders Office, *Submission 12*, p 7.

⁷² *Submission 5*, p 4, and *Submission 6*, p 6.

⁷³ Human Rights Act 2004, s 27A (3) (a) and s 27B (5).

⁷⁴ ACT Human Rights Commission, *Submission 5*, p 3-4.

⁷⁵ *Submission 13*, p 6 and *Submission 14*, p 16.

⁷⁶ *Submission 5*, p 3-4.

- 3.52. ACTCOSS supported this notion, arguing that economic, social, and cultural rights should have the same status as civil and political rights.⁷⁷
- 3.53. The Committee also notes that Australian Lawyers for Human Rights argued that the proposed right to a healthy environment should be listed as a ‘standalone human right to best reflect international practice’.⁷⁸

Recommendation 9

The Committee recommends the ACT Government review and reconsider the categorisation of the right to a healthy environment as part of the mandatory statutory review outlined in proposed Section 43.

⁷⁷ *Submission 3*, p 2.

⁷⁸ *Submission 14*, p 17.

4. Conclusion

- 4.1. The Committee notes that all submissions to this inquiry were generally supportive of the inclusion of the right to a healthy environment in the *Human Rights Act 2004*.
- 4.2. Despite this, there were several concerns raised about the proposed bill that should be considered by the Government.

Recommendation 10

The Committee recommends the Assembly pass the Bill following consideration of the ACT Government's responses to the recommendations made in this report.

- 4.3. The Committee has made ten recommendations.
- 4.4. The Committee wishes to thank all those organisations and individuals who made submissions to this Inquiry.

Peter Cain MLA
Chair
January 2024

Appendix A: Submissions

No.	Submission by	Received	Published
1	Advocacy for Inclusion	29/11/2023	07/12/2023
2	Doctors for the Environment Australia	29/11/2023	07/12/2023
3	ACT Council of Social Services (ACTCOSS)	29/11/2023	07/12/2023
4	Office of the Commissioner for Sustainability and Environment	29/11/2023	07/12/2023
5	ACT Human Rights Commission	30/11/2023	07/12/2023
6	Human Rights Law Centre	01/12/2023	07/12/2023
7	Australian Land Conservation Alliance	01/12/2023	07/12/2023
8	ACT Government	01/12/2023	07/12/2023
9	Conservation Council ACT Region	06/12/2023	13/12/2023
10	ACT Greens	08/12/2023	13/12/2023
11	Dr Christy Clark and Dr Erin O'Donnell	08/12/2023	13/12/2023
12	Environmental Defenders Office	08/12/2023	13/12/2023
13	GreenLaw	08/12/2023	13/12/2023
14	Australian Lawyers for Human Rights	11/12/2023	13/12/2023

Appendix B: Dissenting report by Mr Peter Cain MLA

1. It is disappointing that the Bill denies the opportunity for Supreme Court review of allegations that a public authority has breached this new human right. The government's justification that public authorities need time "to fully understand, implement and institutionalise the right to a healthy environment in decision-making, policies and legislation,"⁷⁹ is very weak as judicial review provides the opportunity for public authorities to be guided by the third arm of government as to their obligations. Further, judicial review, more broadly, provides the opportunity of seeing whether the policy intention of this new right is being implemented as well as to highlight any unintended consequences that may arise in decision-making.
2. I note that several submissions recommend that the denial of supreme court review should be removed from the Bill by the omission of clause 7, Legal proceedings in relation to public authority actions: New section 40C (5A) and (5B). I note as well that, as stated in the submission from the Australian Lawyers for Human Rights⁸⁰, the non-justiciability of allegations of breaches of this right creates a hierarchy whereby this right does not have legal avenues that are available to other rights in the *Human Rights Act 2004*, diminishing its standing. While there may be valid reasons for limiting avenues available to a particular right, in this case the government's justification that its own directorates and statutory bodies need more time highlights the lack of consultation on this Bill with government Ministers and their senior executives.

Recommendation

That the right to Supreme Court review of allegations of breaches of this new right be supported by removing clause 7 of the Bill.

3. In addition, consistent with this committee's recommendation following its Inquiry into Petition 32-21 (No Rights Without Remedy)⁸¹, unresolved complaints about breaches of human rights should be subject to review by the ACT Civil and Administrative Tribunal (ACAT). As Members would be aware, I sought leave to move amendments to the Human Rights (Complaints) Legislation Amendment Bill 2023 in November last year to incorporate ACAT review of allegations of human rights breaches following unresolved conciliation by the Human Right Commission. Unfortunately, Labor and Greens MLA's, blocked debate on these amendments. I raise this afresh, in the hope that the government would reconsider its refusal to allow ACAT review of unresolved human rights complaints, at least with respect to this new right.

⁷⁹ ACT Government Submission, Standing Committee on Justice and Community Safety Inquiry into the Human Rights (Healthy Environment) Amendment Bill 2023, November 2023, p8.

⁸⁰ Australian Lawyers for Human Rights, Submission: Inquiry into the Human Rights (Healthy Environment) Amendment Bill 2023, December 2023, p 4.

⁸¹ https://www.parliament.act.gov.au/__data/assets/pdf_file/0006/2023764/JCS-Report-7-Report-into-the-Inquiry-into-Petition-32-21-No-Rights-Without-Remedy.pdf

Recommendation

That the right to ACAT review of allegations of breaches of this new right, following unsuccessful conciliation in the Human Rights Commission, should be incorporated into the Bill.

Mr Peter Cain MLA

January 2024