



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

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8 December 2023

Recommendation 1: Retain the broad, principled language of the UN General Assembly Resolution that everyone has 'the right to a clean, healthy and sustainable environment' in the final version of the legislation.

Recommendation 2: Delete the proposed s 40C from the final version of the legislation and ensure that full and effective enforcement mechanisms are provided for s 27C (the right to a healthy environment).

Recommendation 3: Ensure that sufficient consultation processes are taken with the Ngunnawal Council and all other local Indigenous communities before proceeding to a final Human Rights (Healthy Environment) Amendment Bill 2023.

Thank you for this opportunity to submit to the Standing Committee on Justice and Community Safety's Inquiry into the Human Rights (Healthy Environment) Amendment Bill 2023.

We welcome the language and framing of the right to a healthy environment under the proposed s 27C. As noted in the Explanatory Memorandum, adopting the broad, principled language of the UN General Assembly Resolution that everyone has 'the right to a clean, healthy and sustainable environment' will allow the right to evolve and develop consistently with international law. This approach is consistent with the broad approach adopted under the *Human Rights Act 2004* (ACT) ('HRA') and will ensure that the right to a healthy environment in the ACT remains relevant and able to benefit from emerging and developing international jurisprudence. It is essential that this language is kept in the final version of the legislation.

Recommendation 1: Retain the broad, principled language of the UN General Assembly Resolution that everyone has 'the right to a clean, healthy and sustainable environment' in the final version of the legislation.

We note that this new right will have the benefit of being considered by public authorities due to their obligations under s 40B of the HRA, and of being a subject matter of the new complaints mechanism that will be administered by the ACT Human Rights Commission. However, we are very concerned by the proposed introduction of the new s 40C which would preclude the judicial enforcement of the new right to a healthy environment. Effective enforcement of environmental rights is a core element of the internationally recognised right to a healthy environment, and the absence of an enforcement mechanism undermines the value of introducing this right. As David Boyd, Special Rapporteur on human rights and the environment, explained in his 2019 report, '[t]he procedural elements [of the right to a healthy environment] are access to information, public participation, and *access to justice and effective remedies*.'¹ In addition, exclusion of enforcement would create a problematic hierarchy between the rights that are currently given full protection under the HRA and the right to a healthy environment, contrary to the principle that all rights are equal, interdependent, and indivisible.²

Recommendation 2: Delete the proposed s 40C from the final version of the legislation and ensure that full and effective enforcement mechanisms are provided for s 27C (the right to a healthy environment).

We note that the ACT Government held a public consultation process following the release of a Discussion Paper in June 2022,³ and the Justice and Community Safety Directorate then engaged 'primarily with Government directorates and agencies to inform the development of the Bill and key implementation measures.'⁴ However, there is no information in the Explanatory Memorandum to indicate that the Ngunnawal Council or other local Indigenous

¹ David Boyd, 'A/HRC/43/53: Good practices on the right to a safe, clean, healthy and sustainable environment' (December 2019) (emphasis added).

² United Nations, *Vienna Declaration and Programme of Action* (June 1993).

³ ACT Government, *Right to a Healthy Environment*, Discussion Paper, https://www.justice.act.gov.au/_data/assets/pdf_file/0007/2072383/Discussion_Paper_-_Right_to_a_Healthy_Environment.pdf.

⁴ Human Rights (Healthy Environment) Amendment Bill 2023, Explanatory Statement and Human Rights Compatibility Statement (*Human Rights Act 2004*, S 37).

communities have been consulted with, despite the recognition of the significance of this right for Aboriginal and Torres Strait Islander Peoples, including its implications for the interpretation and implementation of s 27(2). The time period allowed for consultation in relation to this inquiry has also been notably truncated. This is inconsistent with the ACT Government's commitment to upholding the right to self-determination for Aboriginal and Torres Strait Islander Peoples.

Recommendation 3: Ensure that sufficient consultation processes are taken with the Ngunnawal Council and all other local Indigenous communities before proceeding to a final Human Rights (Healthy Environment) Amendment Bill 2023.