



**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

**Submission Number: 012**

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Environmental  
Defenders Office

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

**8 December 2023**

## **About EDO**

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

***Successful environmental outcomes using the law.*** With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

***Broad environmental expertise.*** EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

***Independent and accessible services.*** As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

**[www.edo.org.au](http://www.edo.org.au)**

### **Submitted to:**

Standing Committee on Justice and Community Safety  
ACT Legislative Assembly  
GPO Box 1020  
Canberra ACT 2601

By email: [LACommitteeJCS@parliament.act.gov.au](mailto:LACommitteeJCS@parliament.act.gov.au)

### **For further information on this submission, please contact:**

Isobel Brinin  
Senior Solicitor

### **Acknowledgment of funding from ACT Government**

We acknowledge and are grateful to the ACT Government for its ongoing funding of EDO's ACT Practice, without which it would not be possible for the ACT Practice to run.

### **Acknowledgement of Country**

EDO recognises First Nations Peoples as the Custodians of the land, seas, and rivers of Australia. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present, and emerging, and aspire to learn from traditional knowledge and customs so that, together, we can protect our environment and cultural heritage through both Western and First Laws. In providing submissions, we pay our respects to First Nations across Australia and recognise that their Countries were never ceded and express our remorse for the deep suffering that has been endured by the First Nations of this country since colonisation.

**A note on language on ‘First Nations’**

We acknowledge that there is a legacy of writing about First Nations without seeking guidance about terminology. We also acknowledge that where possible, specificity is more respectful. In the domestic context, where possible, we have used specific references. Further, when referring to First Nations in the context of a particular Country we have used the term ‘Traditional Owners’. More generally, we have chosen to use the term ‘First Nations’. We acknowledge that not all Aboriginal and Torres Strait Island Peoples will identify with that term and that they may instead identify using other terms or with their immediate community or language group.

## Executive Summary

Environmental Defenders Office (**EDO**) welcomes the opportunity to comment on the Human Rights (Healthy Environment) Amendment Bill 2023.

EDO strongly supports the ACT Government's introduction of the Healthy Environment Bill to the Legislative Assembly to amend the *Human Rights Act 2004* (ACT) to include the right to a clean, healthy and sustainable environment. The amendment introduces a new section 27C into Part 3A 'Economic, social and cultural rights' of the Act providing explicit statutory recognition that everyone has the right to a clean, healthy and sustainable environment.

While EDO supports the Bill, we have concerns regarding the enforceability of Bill and the consultation process regarding the Bill to date. Accordingly, we make the following three key recommendations.

### Summary of Recommendations

- 1. Ensure that all aspects of the right to a healthy environment are immediately realisable by:**
  - a. Removing the proposed s 27C(2) regarding the non-discrimination of the right to a healthy environment, and**
  - b. Amending note 1 to Part 3A to acknowledge the right to a healthy environment is also derived from some ICCPR rights and remove notes 2 and 3.**
- 2. Ensure the right to a healthy environment is fully enforceable and justiciable immediately for people whose right has been adversely impacted by:**
  - b. Removing proposed subsections 40C (5A) and (5B) so the right to a healthy environment is justiciable immediately.**
  - c. Providing adequate resourcing and funding for ACT Human Rights Commission to fulfill its accessible complaints mechanism.**
- 3. Ensure the Committee proactively engages with the community, and in particular, First Nations communities in the ACT throughout the Inquiry process.**

## Introduction

Environmental Defenders Office (**EDO**) supports the ACT Government's introduction of the Human Rights (Healthy Environment) Amendment Bill 2023 (**'the Bill'**) to enshrine the right to a clean, healthy and sustainable environment (**'right to a healthy environment'**) in the *Human Rights Act 2004* (ACT) (**'the Act'**).

This submission addresses the following aspects of the Bill:

- EDO's support for the Bill
- Definition and characterisation of the right to a healthy environment
- Enforceability and justiciability of the right to a healthy environment
- Consultation with the ACT community, specifically First Nations communities

EDO made a submission in August 2022 addressing the ACT Government's Discussion Paper on the introduction of a right to a healthy environment in the Act (**'Discussion Paper'**). In that submission, we made 17 recommendations to ensure that, if the right to a healthy environment is included in the Act, it is appropriately defined and can be effectively implemented effectively. The submission identified gaps in the ACT's planning, environmental, and human rights laws. It also presented findings on the deteriorating state of the ACT's environment and the impact on the health and wellbeing of ACT residents. Importantly we also addressed the disproportionate impact of environmental harm on overburdened communities in the ACT, particularly First Nations communities.

This submission does not seek to repeat the findings of our previous submission. However, we draw on our previous analysis in arguing that an enforceable and justiciable right to a healthy environment is critical to protecting the ACT's environment and the health and wellbeing of people in the ACT.

We have annexed copies of key documents relevant to the right to a healthy environment to this submission as follows:

- **Annexure A:** Environmental Defenders Office, *Submission on the Right to a Healthy Environment*, Submission to the Justice and Community Safety Directorate (31 August 2022)
- **Annexure B:** Environment Defenders Office, *Submission to Parliamentary Joint Committee on Inquiry into Australia's Human Rights Framework* (23 June 2023)
- **Annexure C:** Environmental Defenders Office, *A Healthy Environment is a Human Right* (Report, 25 August 2022)
- **Annexure D:** Environmental Defenders Office, *Submission to Inquiry into Petition 32-21 (No Rights Without Remedy)*, Submission #22 to the ACT Legislative Assembly Standing Committee on Justice and Community Safety (7 April 2022)

## Support for the Bill

EDO strongly supports the inclusion of the right to a healthy environment in the Act. This is both a significant opportunity for the ACT Government to better protect the ACT environment and health and wellbeing of ACT residents as well as to provide leadership nationally as the first Australian jurisdiction to legislate a standalone right to a healthy environment.

The interdependence between the environment and human health has been recognised extensively, including by the UN High Commissioner for Human Rights who described the triple planetary crises of climate change, biodiversity loss, and pollution as the 'single greatest challenge to human rights in our era'.<sup>1</sup>

Currently in the ACT, there are a variety of laws, systems, and processes that protect components of the environment and human rights, to some extent. However, people in the ACT are witnessing unacceptable levels of harm to the natural environment and human health from pollution, unsustainable development practices, destruction of significant First Nations' cultural heritage, and climate change.<sup>2</sup>

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<sup>1</sup> UN Office of the High Commissioner on Human Rights, 'Environmental Crisis: High Commissioner Calls for Leadership by Human Rights Council Member States' (Web Page, 13 September 2021).

<sup>2</sup> Commissioner for Sustainability and the Environment, *ACT State of the Environment Report* (Report, 2019).

Environmental harm has a disproportionate impact on overburdened people and communities – such as First Nations, culturally and linguistically diverse communities, LGBTIQ+ communities, older people, young people, women, and people with a disability – who are at the most risk of environmental harm, but who are often least responsible for such harm. It is clear that our existing laws – broad in subject matter though they may be – are not doing enough to fulfill our right to a healthy environment. Accordingly, the Bill presents an important step towards ensuring all people in the ACT have the right to a healthy environment.

### Definition and characterisation of the right to a healthy environment

The proposed new s 27C(1) adopts the language of the UN General Assembly’s Resolution that everyone has the right to a clean, healthy and sustainable environment. EDO strongly supports this broad, principled definition that will allow the right to evolve and develop consistently with international law. The interpretation of the scope and content the right will be informed by international human rights case law and commentary of the UN treaty bodies.

The Bill seeks to include the right to a healthy environment in Part 3A of the Act with a proposed note providing that the primary sources of the Part 3A rights are the *International Covenant on Economic, Social and Cultural Rights* and the United Nations General Assembly, *The human right to a clean, healthy and sustainable environment, A/RES/76/300* (28 July 2022). It further notes that some aspects of economic, social and cultural rights are considered at international law to be subject to an obligation of progressive realisation, meaning the ACT Government is required to implement those rights over time, using the best available resources.<sup>3</sup>

The Bill proposes an insertion at s 27C(2) which states that “everyone is entitled to enjoy this right without discrimination.” It is unclear what the purpose of this proposed sub-section is, other than reiterating a clear aspect of the right subject to immediate realisation, which is already provided for at s 8 of the Act (the right to non-discrimination and equality before the law).

### The right to a healthy environment should be immediately realisable

The Explanatory Memorandum refers to the *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, and in particular, the Special Rapporteur’s comments regarding Framework Principle 11 and the progressive realisation of rights. The section referred to relates to the progressive realisation of rights in the context of States with limited resources.<sup>4</sup> The Explanatory Memorandum proceeds to repeat the Special Rapporteur’s comments that States have obligations to take deliberate, concrete and targeted measures towards that goal, but have some discretion in deciding what means are appropriate in light of available resources. The Explanatory Memorandum acknowledges that the discretion is not unlimited and provides that the “two general obligations” that require immediate action from the Government are:

- a) to ensure non-discrimination in the enjoyment of the right to a healthy environment; and
- b) to avoid any unjustified retrogressive measures that may deprive people of rights currently enjoyed.

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<sup>3</sup> *International Covenant on Economic, Social and Cultural Rights*, art 2(1)

<sup>4</sup> Human Rights Council A/HRC/37/59, Special Rapporteur on Human Rights and the Environment, *Framework principles on human rights and the environment*, 24 January 2018, refer Framework Principle 11.

However, the Special Rapporteur’s report provides other factors to be considered in assessing whether environmental standards are otherwise upholding human rights. These standards include considering the best available science, complying with all relevant human rights obligations, and being consistent with relevant international environmental, health and safety standards.<sup>5</sup>

EDO is concerned that the Explanatory Memorandum demonstrates a reluctance from the ACT Government to ensure the immediate realisation of the right to a healthy environment. Further to this, EDO notes that the ACT is a wealthy jurisdiction, with ample funding and resources to apply towards immediately realising the right to a healthy environment.

While EDO agrees that the right to a healthy environment may be partially characterised as an economic, social and cultural (**ESC**) right, we have also said it may be characterised as a third-generation collective right. As noted in our submission to the Discussion Paper, the right to a healthy environment is also derived from some *International Covenant on Civil and Political Rights* (**ICCPR**) rights which are also protected under the Act (including the rights to life,<sup>6</sup> home and privacy,<sup>7</sup> and culture)<sup>8</sup>. Further to this, the right to a healthy environment can be implied as a precondition to the rights to life and culture. This is supported by the Explanatory Memorandum which states that the Bill promotes the rights to life, privacy and reputation, and cultural rights. Ultimately, however, we repeat our comments in our *Submission on the Right to a Healthy Environment* (Annexure A, p 18), that:

*“it is unnecessary to categorically define the right to a healthy environment as an ESC and/or collective right and therefore whether it is subject to progressive realisation, as section 28 of the Human Rights Act can operate to limit its implementation of the right in accordance with the government’s best available resources.”*

By way of example, we note the *Human Rights Act 2019* (Qld) does not distinguish between rights derived from the *International Covenant on Economic, Social and Cultural Rights* (**ICESCR**) and those derived from the ICCPR, and all rights are immediately realisable. Accordingly, we recommend that any reference to the progressive realisation of the rights contained in Part 3A of the Act be removed from the notes and the Explanatory Memorandum.

We further recommend against the inclusion of s27C(2), as the right to non-discrimination is already protected under s 8 of the Act. Further to this, s 8 provides for a more fulsome protection of the right to non-discrimination, providing that everyone has the right to equal and effective protection against discrimination on any ground. EDO is concerned that the inclusion of s27C(2), when read with the Explanatory Memorandum, may provide for a narrower reading of the right regarding the aspects that are subject to immediate realisation.

**Recommendation 1: Ensure that all aspects of the right to a healthy environment are immediately realisable by:**

- a) Removing the proposed s 27C(2) regarding the non-discrimination of the right to a healthy environment, and**

<sup>5</sup> Human Rights Council A/HRC/37/59, Special Rapporteur on Human Rights and the Environment, *Framework principles on human rights and the environment*, 24 January 2018, refer Framework Principle 11 [33].

<sup>6</sup> *Human Rights Act 2004* (ACT) s 9.

<sup>7</sup> *Human Rights Act 2004* (ACT) s 12.

<sup>8</sup> *Human Rights Act 2004* (ACT) s 27.

**b) Amending note 1 to Part 3A to acknowledge the right to a healthy environment is also derived from some ICCPR rights and remove notes 2 and 3.**

### Enforceability and justiciability of the right to a healthy environment

Section 40C of the Act creates a direct right of action to the Supreme Court for individuals who have experienced a breach of their human rights under the Act by a public authority. The Bill proposes the insertion of new section 40C(5A) which would create a limitation to the application of s 40C for breaches of the right to a healthy environment. The new subsection 40C(5B) clarifies that the proposed limitation does not prevent the making of a claim for the breach of another human right where the subject matter of the claim is similar or related to a claim for breach of the right to a healthy environment.

Under the Act, public authorities will have obligations to comply with the right to a healthy environment, including in the scrutiny of new Bills<sup>9</sup> and the requirement to check new Bills for compatibility with the right.<sup>10</sup> The Supreme Court can also issue a declaration of incompatibility where a law cannot be interpreted to be compatible with the right to a healthy environment.<sup>11</sup>

However, as noted above, the direct right of action to the ACT Supreme Court for a breach of public authority obligations, and the ability to raise public authority breaches as part of other litigation, set out in s 40C of the Act, will not apply to this right. This means if a public authority breaches an individual's right to a healthy environment, the individual will have limited avenues for recourse. EDO does **not support** the proposed limitation.

The limitation on the justiciability of the right to a healthy environment is unacceptable for the following reasons:

- Access to remedies is an element of the right to a healthy environment,
- It is inconsistent with broader human rights principles, including that human rights are universal and inalienable, by creating a hierarchy of rights,
- The right to a healthy environment will not open the floodgates to vexatious litigation,
- It limits the normative value of the right, and
- Action to address the triple planetary crisis is required immediately.

#### Access to remedies is an element of the right to a healthy environment

The Special Rapporteur on Human Rights and the Environment has defined the right to a healthy environment to include the following substantive elements:<sup>12</sup>

- clean air,<sup>13</sup>
- a safe climate,<sup>14</sup>

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<sup>9</sup> *Human Rights Act 2004 (ACT)* s38.

<sup>10</sup> *Ibid* s 37.

<sup>11</sup> *Ibid* s 32.

<sup>12</sup> See David R Boyd, Special Rapporteur on Human Rights and the Environment, *Right to a Healthy Environment: Good Practices*, UN Doc A/HRC/43/53 (30 December 2019).

<sup>13</sup> David R Boyd, Special Rapporteur on Human Rights and the Environment, *Issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/HRC/40/55 (8 January 2019).

<sup>14</sup> David R Boyd, Special Rapporteur on Human Rights and the Environment, *Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, UN Doc A/74/161 (15 July 2019).

- access to safe drinking water and sanitation,<sup>15</sup>
- healthy biodiversity and ecosystems,<sup>16</sup>
- toxic free environments in which to live, work and place,<sup>17</sup> and
- healthy and sustainably produced food.<sup>18</sup>

The Special Rapporteur recognises that it is not possible to recognise and implement the right to a healthy environment, and its substantive elements, without also implementing the corresponding procedural elements.<sup>19</sup> The procedural elements include the right to information, the right to participate in decision-making, and access to justice.<sup>20</sup>

While we do not recommend that the procedural elements are explicitly stated in the Act, we recommend that the Act should be consistent with the procedural elements of the right to a healthy environment. The procedural elements reflect rights in the ICCPR and developments in international environmental law, such as Principle 10 of the Rio Declaration,<sup>21</sup> the Aarhus Convention,<sup>22</sup> and the Escazú Agreement.<sup>23</sup>

The Bill clarifies that even though there is no direct statutory right of action to the Supreme Court, this will not affect the ability to make a claim in relation to breaches of other related rights. However, the Bill is silent as to how the right to a healthy environment promotes the procedural rights of access to information and participation in decision-making, both of which are protected under the Act to some extent.<sup>24</sup> Access to justice is not protected under the Act at all. As noted above, **without recognition of all the procedural elements, the Bill falls short of recognising the right to a healthy environment.**

It is inconsistent with broader human rights principles, including that human rights are universal and inalienable, by creating a hierarchy of rights

EDO is concerned that the partial non-justiciability of the right to a healthy environment creates a hierarchy of rights. This is inconsistent with the basic human rights principles that human rights are universal, indivisible, interdependent and interrelated.<sup>25</sup> Further to this, EDO is concerned that limiting the justiciability of the right will reduce its normative value and it will not be taken seriously by decision makers.

The right to a healthy environment will not open the floodgates for vexatious litigation

As noted in EDO's Healthy Environment Report, introducing the right to a healthy environment will not open the floodgates for individuals to bring vexatious litigation challenging government decisions and Australian laws. Analysis conducted into legal challenges of decisions made under

<sup>15</sup> David R Boyd, Special Rapporteur on Human Rights and the Environment, Human rights and the global water crisis: water pollution, water scarcity and water-related disasters, UN Doc A/HRC/46/28 (19 January 2021).

<sup>16</sup> David R Boyd, Special Rapporteur on Human Rights and the Environment, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/75/161 (15 July 2020).

<sup>17</sup> David R Boyd, Special Rapporteur on Human Rights and the Environment, The right to a clean, healthy and sustainable environment: non-toxic environment, UN Doc A/HRC/49/53 (12 January 2022).

<sup>18</sup> David R Boyd, Special Rapporteur on Human Rights and the Environment, Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc A/76/179 (19 July 2021).

<sup>19</sup> David R Boyd, Special Rapporteur on Human Rights and the Environment, Right to a Healthy Environment: Good Practices, UN Doc A/HRC/43/53 (30 December 2019) 5-8.

<sup>20</sup> Ibid.

<sup>21</sup> *Rio Declaration on Environment and Development*, 31 ILM 874 (12 August 1992).

<sup>22</sup> *Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters* (Aarhus Convention), opened for signature 25 June 1998 (entered into force 30 October 2021).

<sup>23</sup> *Escazú Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, opened for signature 27 September 2018 (entered into force 22 April 2021).

<sup>24</sup> Ibid ss 19(2), 17(a).

<sup>25</sup> *Vienna Declaration and Programme of Action*, 12 July 1993, A/CONF.157/23, Art 5.

the EPBC Act found that only a negligible number of all EPBC Act decisions are challenged,<sup>26</sup> and that a high percentage of cases brought on public interest grounds were successful, which demonstrates that such claims raised genuine legal questions for the court to consider.<sup>27</sup>

EDO notes that the right to education, which was introduced into Part 3A of the Act in 2012, was also introduced with a limitation on its justiciability.<sup>28</sup> The limitation on its justiciability was removed in the 2016 amendments to the Act.<sup>29</sup> However, EDO has only identified two ACT Supreme Court cases regarding breaches of the right to education under the Act.<sup>30</sup> Further to this, we note the right to a healthy environment is neither new nor novel, and as noted previously in this submission, is recognised extensively internationally.<sup>31</sup> Accordingly, the likelihood of vexatious litigation regarding the right to a healthy environment appears to be remarkably low.

Notwithstanding the unlikelihood of vexatious litigation of the right to a healthy environment, EDO considers public interest court proceedings to play a crucial role in upholding the rule of law, increasing government accountability, improving government decision-making, and making a positive contribution to Australian jurisprudence on a wide range of legal issues. Litigation regarding the right to a healthy environment would play a similarly important role.

#### Human Rights Commission complaints mechanism

EDO notes that the Human Rights (Complaints) Legislation Amendment Bill 2023, which was recently introduced to the ACT Legislative Assembly, will allow individuals to bring human rights complaints to the ACT Human Rights Commission for conciliation, if passed. However, as it is not possible to bring a complaint to ACAT under the Human Rights Act; if conciliation fails there will be no avenue to review that decision.

In EDO's *submission to Petition 32-21 No rights No Remedy* (Annexure D, Recommendation 10), we recommended that the ACT Human Rights Commission should have the necessary expertise and resources to deal with human rights complaints, including ensuring that appropriate staff and resources are dedicated to implementing a new human rights complaints mechanism, and that appropriate training is provided to staff. We repeat this recommendation and confirm that resourcing and training should be provided to ensure that the ACT Human Rights Commission is adequately skilled and resourced to deal with any complainants regarding the right to a healthy environment. Further to this, we repeat our recommendations in our submission to the Discussion Paper to enable a complaint about a breach of the Human Rights Act to be made to the ACT Civil and Administrative Tribunal (**ACAT**).

The Bill provides for a mandatory five-year statutory review period for the new insertions in the Act, including the statutory limit on bringing a direct action to the Supreme Court. EDO considers a five year review period to be unacceptable, given the triple planetary crises of climate change,

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<sup>26</sup> Andrew Macintosh, Heather Roberts and Amy Constable, 'An Empirical Evaluation of Environmental Citizen Suits under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)' (2017) 39(1) Sydney Law Review 85.

<sup>27</sup> Annika Reynolds, Andrew Ray and Shelby O'Connor, 'Green Lawfare: Does the Evidence Match the Allegations? – An Empirical Evaluation of Public Interest Litigation under the EPBC Act from 2009 to 2019' (2020) 37 Environmental and Planning Law Journal 497, 507

<sup>28</sup> Human Rights Amendment Act 2012 (ACT), s40B(3).

<sup>29</sup> Human Rights Amendment Act 2016 (ACT).

<sup>30</sup> *Islam v Director-General of the Department of Justice and Community Safety Directorate* [2018] ACTSC 322 (23 November 2018); *Manny v Commonwealth of Australia*; *Manny v University of Canberra* [2023] ACTSC 160 (29 June 2023).

<sup>31</sup> The right to a healthy environment was first recognised internationally over fifty years ago, in the 1972 Stockholm Declaration. Currently, over 80 percent of UN member states (156 of 193) legally recognise the right to a healthy environment in national constitutions, national legislation and/or regional treaties.

biodiversity loss, and pollution, which has been described by the UN High Commissioner for Human Rights as the ‘single greatest challenge to human rights in our era.’<sup>32</sup> Further to this, we note there is limited guarantee that a review would result in the removal of the statutory limit on the direct right to action to the Supreme Court. Accordingly, EDO recommends that the Bill should be amended to make the right justiciable immediately by removing the proposed new sections 40C(5A) and (5B) (**Recommendation 2**). If the mandatory five-year statutory review period is maintained, that review could consider any concerns regarding the justiciability of the right.

**Recommendation 2: Ensure the right to a healthy environment is fully enforceable and justiciable immediately for people whose right has been adversely impacted by:**

- a) Removing proposed subsections 40C (5A) and (5B) so the right to a healthy environment is justiciable immediately.**
- b) Providing adequate resourcing and funding for ACT Human Rights Commission to fulfill its accessible complaints mechanism.**

## Consultation with the ACT community, particularly First Nations communities

### Consultation regarding the justiciability issue

EDO engaged in the public consultation process which led to the introduction of the Bill. The importance of EDO’s engagement with the right to a healthy environment was recognised by Jo Clay MLA when she moved a motion to explore the inclusion of the right to a healthy environment in the Act.<sup>33</sup> However, the ACT Government’s right to a healthy environment Discussion Paper released in June 2022, does not make any reference to any limitations on the justiciability of the right to a healthy environment.<sup>34</sup> Further to this, at no point was EDO consulted on the proposed s 40C (5A).

The ACT Government reported on its public consultation in the ‘Your Say’ Report tabled in the Legislative Assembly in November 2022.

Regarding the issue of access to justice, the Your Say Report notes:<sup>35</sup>

*A number of 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.*

Again, there is no reference to any limitation on the justiciability of the right to a healthy environment in the Your Say Report. As noted above, the partial non-justiciability of the right to a healthy environment is unacceptable, as it is fundamentally at odds with the right to a healthy environment itself.

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<sup>32</sup> Fernando Coimbra, ‘The triple planetary crisis: Forging a new relationship between people and the earth’ (Speech, Committee of Permanent Representatives, 14 July 2020).

<sup>33</sup> Clay, J. Page 262, Week 1 – Thursday, 10 February 2022 [Hansard] < [Page 262 week01 2022 - 10th Assembly Hansard - ACT Legislative Assembly](#) >.

<sup>34</sup> ACT Justice and Community Safety Directorate, ‘Right to a Healthy Environment’ (Discussion Paper, June 2022) 10.

<sup>35</sup> Legislative Assembly for the ACT, ‘Your say report – right to a healthy environment – report on what we heard’ (paper for tabling, November 2022), accessible <<https://yoursayconversations.act.gov.au/right-healthy-environment/listening-report-released>>.

## Consultation with First Nations Communities

In our submission to the Discussion Paper on the right to a healthy environment, EDO stressed the importance of meaningful and appropriate consultation with First Nations peoples and identified several opportunities for the ACT Government to directly engage with First Nations peoples regarding the implementation of the right to a healthy environment in the ACT.

In that submission, EDO encouraged the ACT Government to ensure that it directly engages with First Nations peoples at all stages of the present consultation process, and during any future consultation on the right to a healthy environment in the ACT, to ensure that First Nations worldviews and concerns are incorporated. Consultation with First Nations peoples should be specifically tailored towards First Nations peoples to ensure that the consultation process is accessible and culturally safe. In some circumstances, it may be appropriate for such consultation to take place in person and on First Nations peoples' Country, allowing First Nations peoples to provide their views to the ACT Government orally.

The Your Say states that the ACT Government consulted with a range of stakeholders during the public consultation process including "Aboriginal and Torres Strait Islander health research", however, there is limited further evidence of consultation with First Nations stakeholders. We note the 'Your Say' report refers to recommendations made about engaging with First Nations peoples in decision-making, however, it is not clear that there has been substantive consultation with First Nations peoples or organisations in the ACT. EDO repeats our recommendations regarding accessible and culturally safe consultation throughout the inquiry process.

**Recommendation 3: Ensure the Committee proactively engages with the community, and in particular, First Nations communities in the ACT throughout the inquiry process.**

## Conclusion

Evidence from decades of experience in other countries that already recognise the right to a healthy environment shows that express recognition of the right to a healthy environment will be a catalyst for several important benefits to human health and the environment. EDO is pleased to see the ACT Government showing leadership towards achieving better outcomes for our environment and health in the ACT.

The Bill presents a significant opportunity towards progressing the recognition and implementation of the right to a healthy environment in Australia. EDO is generally supportive of the proposed reforms, however, has provided key recommendations to strengthen the right to a healthy environment and improve access to justice for people seeking to enforce their rights. In addition, we have provided recommendations to further strengthen the Bill in line with international best practice. EDO notes it is critical that the ACT community, and in particular First Nations Peoples, are appropriately consulted throughout the inquiry process. The amendments recommended strive to ensure the right to a healthy environment is adequately recognised and implemented in the ACT.

We recommend these amendments be made, and the Committee recommends to the Legislative Assembly that it passes the Human Rights (Healthy Environment) Amendment Bill 2023.

*Thank you for the opportunity to make this submission.  
Please do not hesitate to contact our office should you have further enquiries.*