



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

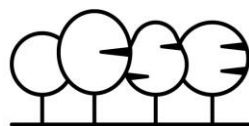
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair), Mr Andrew Braddock MLA

## Submission Cover Sheet

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

**Submission Number: 004**

**Date Authorised for Publication: 06 December 2023**



To whom it may concern,

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

The Commissioner for Sustainability and the Environment is an independent statutory position established by the *Commissioner for Sustainability and the Environment Act 1993*. My Office embraces transformative change for an environmentally sustainable future and encourages sound environmental practices and procedures to be adopted by the Territory.

My Office strongly supports the introduction of a right to healthy environment into the *Human Rights Act 2004*. Doing so recognises the intrinsic interconnection of environmental and human health, and puts the ACT alongside more than 80% of United Nations (UN) member States who have already recognised this right in law.<sup>1</sup>

We commend the ACT Government for initiating this important legislative reform, and note that the Bill has a number of important strengths. However, we also hold vital concerns over the Bill's proposal to limit the justiciability of the right, and strongly oppose this provision.

#### ***Articulation of the right***

We commend the Bill's articulation of the right to a healthy environment. Adopting the language used in the UN General Assembly's landmark 2021 resolution<sup>2</sup> aligns the ACT with international human rights benchmarks and is sufficiently broad to allow the right to evolve consistently with international law. The Bill's explanatory statement also follows the UN Special Rapporteur's core framework principles for the right to a healthy environment,<sup>3</sup> meaning the chosen approach is supported by more than 50 years of development and refinement at the international level since the right was first crystallised in the 1972 Stockholm Declaration.<sup>4</sup>

#### ***Principle of non-regression***

We also support the explanatory statement's inclusion of the principle of non-regression, which will come into immediate effect once passed. Ensuring environmental regulations, standards and policies cannot be weakened by successive governments is an important element of ensuring environmental equity for future generations.

#### ***Justiciability***

We strongly oppose the proposed Bill's lack of justiciability. By definition, human rights are universal, inalienable and indivisible. Enshrining a provision that excludes this right from the legal recourse that is granted to all other rights sets up an unacceptable hierarchy in which the right to a healthy environment is positioned as inferior.

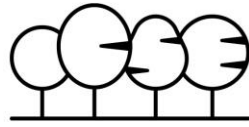
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<sup>1</sup> United Nations, 2020. Right to a healthy environment: good practices, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/HRC/43/53, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/355/14/PDF/G1935514.pdf?OpenElement>.

<sup>2</sup> United Nations, 2021. Resolution adopted by the Human Rights Council on 8 October 2021 A/HRC/RES/48/13, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/289/50/PDF/G2128950.pdf?OpenElement>

<sup>3</sup> United Nations, 2018. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment A/HRC/37/59, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/017/42/PDF/G1801742.pdf?OpenElement>

<sup>4</sup> United Nations, 1972. Report of the United Nations Conference on the Human Environment, <https://digitallibrary.un.org/record/523249?ln=en>



As noted by the Special Rapporteur on Human Rights and the Environment, 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, which includes the right to information, the right to participate in decision-making, and access to justice.<sup>5</sup> Under the Act, the direct statutory right of action to the ACT Supreme Court for a breach by a public authority will initially not apply and will be subject to a mandatory statutory review after five years. In addition, if a complaint cannot be resolved through the ACT Human Rights Commission there are no further avenues for recourse.

The absence of a provision within the Act to access justice at either the ACT Supreme Court or the ACT Civil and Administrative Tribunal undermines the enforceability of the right to a healthy environment and compromises the implementation of its substantive elements. As such, we strongly encourage the ACT Government to amend the Bill to ensure the right to a healthy environment is justiciable now.

**Recommendation 1:** Remove the clause that limits justiciability.

### ***Resourcing for conciliation***

We support the mechanism to enable individuals to bring complaints to the ACT Human Rights Commission for conciliation. However, 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 to carry out these processes effectively and meet conciliatory outcomes.

**Recommendation 2:** Ensure the commission is sufficiently resourced to effectively address prospective complaints, which may be technical in nature.

Thank you for your consideration and please do not hesitate to contact me if you have any queries.

Yours sincerely

Dr Sophie Lewis  
Commissioner for Sustainability  
and the Environment

29 November 2023

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<sup>5</sup> David R. Boyd, 2019. Special Rapporteur on Human Rights and the Environment, Right to a healthy environment: good practice A/HRC/43/53, <https://www.ohchr.org/en/documents/thematic-reports/ahrc4353-good-practices-right-safe-clean-healthy-and-sustainable>