

**Government Response to the Report of the Justice and Community Safety
Committee on the Inquiry into the Human Rights (Workers Rights)
Amendment Bill 2019**

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Background

On 27 November 2019, the Human Rights (Workers Rights) Amendment Bill 2019 (the Bill) was introduced as a Private Member's Bill by Ms Bec Cody MLA.

Pursuant to standing order 174, the Assembly referred the Bill to the Standing Committee on Justice and Community Safety for inquiry on 27 November 2019. The Committee was originally scheduled to table its report in the Legislative Assembly on by the end of February 2020.

The Government values the role played by the Committee in inquiring into the Bill. The Government made a submission to the Committee's inquiry on 10 February 2020 and appeared at the committee's public hearing on 27 February 2020.

In its submission, the Government noted that it had yet to finalise its position in relation to the Bill due to the need to fully assess questions of risks and benefits. The submission nevertheless noted that, overall, the inclusion of the right to work and work-related rights in the *Human Rights Act 2004* would represent a progressive step in continuing to extend protections for economic, social and cultural rights (ESCR) in the ACT. The Government further noted that, while some aspects of workers' rights, such as freedom of association, non-discrimination and the right not to be subject to forced labour are already protected in the Human Rights Act, the Bill has the potential to further clarify the application of these rights in employment context and to provide additional protection for rights such as the right to work and the right to just and favourable conditions of work.

Committee's report and Government response

The ACT Government welcomes the Committee's Report, which was handed down on 13 March 2020 and which provides two recommendations. These are set out along with the Government responses below.

Recommendation 1

The Committee recommends that, having regard to the considerations set out in evidence and the submission from the ACT Government to this inquiry, that the Government - as part of its response to this report – provide updated advice on the matters which the government considers it will need to address in any process required for adoption of proposed Section 27B as an amendment to the Human Rights Act.

Response: Agreed

The Government agrees with this recommendation and has decided to support the Bill subject to a number of technical amendments. These amendments are as follows:

1. Clause 4 will be amended to:
 - a) change the title of proposed section 27B to read: 'right to work and work-related rights' in order to better reflect that the rights set out in proposed section 27B cover both the right to work and work-related rights (such as the right to just and favourable conditions at work);
 - b) move proposed section 27B(3) to section 27B(5) in order to clarify that the right to non-discrimination set out in applies to all rights in proposed section 27B. The current drafting is ambiguous and may lead a person to error as to the scope of the obligation of non-discrimination; and
 - c) amend proposed section 27B(4) (now amended to 27B(4)) to refer to 'trade union' explicitly (e.g. 'Everyone has the right to form or join a work-related organisation, including trade union, with the objective of promoting or protecting their economic or social interests'), in order to more closely reflect the language of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which refers to 'trade union' in addition to 'work-related organisation.' This is because the scope of work-related organisation will also capture employer associations and other bodies which are not trade unions.
 - d) insert new a clarification that that some aspects of section 27B are considered at international law to be subject to an obligation of progressive realisation, and that, in deciding whether a limit on these rights is reasonable, the factors in section 28 will apply. This note also clarifies that Article 8(4) of the Optional Protocol to the

International Covenant on Economic, Social and Cultural Rights will also be relevant to the consideration of these rights under section 31.

2. Clause 5 will be amended to:

- a) retain article 6 of ICESCR as the source of 27B(1) but also include further references as outlined below;
- b) add the source proposed section 27B as article 7 of ICESCR, in order to reflect the fact that proposed section 27B(2) reflects the preliminary part of article 7 of the ICESCR, which protects ‘the right of everyone to the enjoyment of just and favourable conditions of work.’;
- c) add the source of proposed section 27B as article 2(2) of ICESCR, in order to reflect the fact that the obligation of non-discrimination set out in proposed section 27B(3) (now section 27B(5)) mirrors article 2(2) of the ICESCR (in addition to article 6(1));

Recommendation 2

That, subject to presentation of its response to this report’s recommendations, the Legislative Assembly move to consider the amendments proposed by the Human Rights (Workers Rights) Bill 2019, and that debate on the Bill proceed as soon as possible.

Response: Agreed

The Government agrees with this recommendation and debate on the Bill will be scheduled for the next appropriate sitting period.