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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

HUMAN RIGHTS (HEALTHY ENVIRONMENT) AMENDMENT BILL 2023

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by
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Minister for Human Rights**

HUMAN RIGHTS (HEALTHY ENVIRONMENT) AMENDMENT BILL 2023

This Supplementary Explanatory Statement relates to the Human Rights (Healthy Environment) Amendment Bill 2023 (the Bill) – Government Amendments as presented to the ACT Legislative Assembly.

OVERVIEW OF THE BILL

On 26 October 2023, the Minister for Human Rights introduced the Bill into the Legislative Assembly. The Bill amends the *Human Rights Act 2004* (the Human Rights Act) to include the right to a healthy environment in the ACT's human rights framework. In an Australian first, the Bill provides express statutory recognition for the right to a clean, healthy and sustainable environment.

On 8 November 2023, the Standing Committee on Justice and Community Safety (Committee) decided to inquire into the Bill.

The Committee received a total of 14 submissions. All submissions received by the Committee were broadly supportive of adding the right to a healthy environment to the Human Rights Act. A number of submissions raised concerns and/or suggested improvements for the Bill and as part of implementation of the new right.

The Committee released its report on 25 January 2024 making 10 recommendations. The Committee's recommendations have informed the Government's amendments to the Bill.

The proposed Government amendments will:

- a. insert a sunset clause for the litigation bar provision so that the right to a healthy environment will be justiciable after 1 October 2028;
- b. amend the timeframe for the statutory review of the operation of the amendments made by the Bill so that the Minister must begin the review no later than 1 October 2027 and table the report of the review as soon as practicable after it is completed; and
- c. provide specifically that the statutory review will consider:
 - i. whether the limitation on justiciability under section 40C(5A) remains appropriate, notwithstanding the sunset clause; and
 - ii. the categorisation of the right in Part 3A (Economic, Social and Cultural Rights) of the Human Rights Act.

CONSULTATION ON THE PROPOSED APPROACH

In November 2022, the Government committed to introduce an amendment to the Human Rights Act to include a right to a healthy environment in the Human Rights Act in this term of the Legislative Assembly. This followed strong public support for introducing the right to a healthy environment expressed through a public consultation process undertaken in 2022, including through YourSay public consultation.

Throughout 2023 and 2024, the Justice and Community Safety Directorate has been engaging with key stakeholders, including primarily Government directorates and agencies to inform the development of the Bill and key implementation measures.

The Government carefully considered each submission to the Committee. Further targeted consultation was undertaken with the Chief Minister, Treasury and Economic Development Directorate, Access Canberra, Environment, Planning and Sustainable Development Directorate, ACT Corrective Services and ACT Health in relation to the Government's position on each of the Committee's recommendations.

CONSISTENCY WITH HUMAN RIGHTS

The Government amendments are not considered to limit any human rights in the *Human Rights Act 2004*.

In providing a sunset clause for the bar on litigation in relation to the right to a healthy environment, the amendments may promote the right to a fair trial protected in section 21 of the Human Rights Act.

CLAUSE NOTES

Amendment 1 Proposed new clause 7A

This clause inserts a new section 40C(8) into the Bill to provide for a sunset clause for the litigation bar provision.

The new section 40C(8) provides that subsections 40C(5A), (5B) and this subsection expire on 1 October 2028. The inclusion of a sunset clause will automatically remove the bar on litigation remedies under section 40C(5A) of the Human Rights Act in relation to the new right after 1 October 2028.

Amendment 2 Clause 8

This clause substitutes clause 8 of the Bill to replace the requirements for the statutory review. The clause inserts a new section 43 which imposes a review obligation on the Minister to conduct a review of the operation of the amendments to the Human Rights Act made by the *Human Rights (Healthy Environment) Amendment Act 2023*.

Subsection 43(1) requires the Minister to review the operation of the amendments, with subsection 43(2) specifically requiring the review to:

- consider the categorisation of the right set out in section 27C as an economic, social and cultural right;
- evaluate the prohibition under section 40C(5A); and
- consider whether the prohibition under section 40C(5A) remains appropriate, despite the sunset clause in section 40C(8).

Subsection 43(3) requires the Minister to begin the review not later than 1 October 2027 and present a report of the review to the Legislative Assembly as soon as practicable after the report is completed.

The statutory review will provide an opportunity to consider the operation of the new right. The review will assess the impact of the right and any refinement needed based on its implementation in the ACT and further development and crystallisation of the right at the international level.

Subsection 43(2)(c) provides a structural mechanism to ensure the Government considers the litigation bar based on all of the information and data available at the time of the review. This recognises that while the sunset clause will operate to end the litigation bar on 1 October 2028 unless further action is taken, an amendment could potentially be passed by the Legislative Assembly to extend the operation of the litigation bar if the review recommended that the right to a healthy environment remain non-justiciable for a further period.

Subsection 43(4) provides that this section expires on 1 October 2028.

Subsection 43(5) provides that 'public authority' in this section relies on the definition in section 40C(7).