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

TENTH ASSEMBLY

**STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY REPORT NO. 22 – INQUIRY
INTO THE HUMAN RIGHTS (RIGHT TO A HEALTHY ENVIRONMENT) AMENDMENT BILL 2023**

GOVERNMENT RESPONSE

**Presented by
Tara Cheyne MLA
Minister for Human Rights
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Introduction

The ACT Government welcomes the report by the Standing Committee on Justice and Community Safety (the Committee) on the inquiry into the Human Rights (Healthy Environment) Amendment Bill 2023 (the Bill).

The Bill was introduced to the Legislative Assembly on 26 October 2023 and provides express recognition of the right to a clean, healthy and sustainable environment as a standalone right in the *Human Rights Act 2004* (Human Rights Act).

The Committee decided to inquire into the Bill on 8 November 2023. The Committee received a total of 14 submissions, which were all broadly supportive of including the right to a healthy environment in the Human Rights Act. The Government thanks individuals and organisations who made submissions to the inquiry. Ongoing engagement with our human rights legislation and opportunities to strengthen it are a positive sign of the human rights culture in the ACT.

The Committee published its report on 25 January 2024, with the majority making 10 recommendations. The report included a dissenting report making two recommendations.

The ACT Government is committed to the ACT continuing to be a leading human rights jurisdiction in Australia. The ACT will be the first jurisdiction to implement the right to a healthy environment. The Government acknowledges the value of public discussion about human rights and has carefully considered each of the Committee's recommendations.

The Government response responds to each of the majority recommendations. It does not specifically respond to the dissenting recommendations, however it is noted that the response to the majority recommendations substantially addresses the Government's position in relation to the matters raised in the dissenting recommendations.

ACT Government Response to Recommendations

Recommendation 1: That the ACT Government amend the Bill so that the mandatory statutory review takes place after three years instead of five and requiring that consideration of the justiciability issues must be undertaken as part of this review.

Government Response: Noted

The Bill already requires that the statutory review consider the operation of section 40C(5A) which restricts the ability to bring legal proceedings in relation to a breach of the right. However the Government acknowledges the concerns of stakeholders about the timing of the statutory review and is carefully considering the approach to these issues.

In relation to the timing of the review, the Government notes that the ACT is the first Australian jurisdiction to introduce a right to a healthy environment into its human rights legislation. This right has been recognised by the United Nations General Council but is not fully articulated in an international treaty which gives rise to some uncertainty regarding the scope and extent of obligations.

While it will not initially be possible to commence litigation in relation to a breach of this right, people who consider that they are affected by a breach of this right will be able to make a complaint to the ACT Human Rights Commission for free and confidential conciliation. Where matters cannot be resolved through conciliation the Commission will be able to make recommendations regarding actions that should be taken to ensure compliance with the right. The extent and nature of complaints made to the Commission about the right to a healthy environment will be an important source of data about the likely impact of removing the bar on litigation.

Recommendation 2: That the ACT Government insert a sunset clause into proposed section 40C (5A) and (5B), which limits the right for individuals to take complaints to the Supreme Court, so that the section will automatically expire after a period of four years.

Government Response: Noted

The Government acknowledges the strong opposition from a number of stakeholders to the limitation on justiciability of the new right to a healthy environment expressed in submissions made to the Committee as part of its inquiry. Some suggestions were made that a ‘sunsetting’ clause would improve the justiciability of the right to a healthy environment by provide comfort and certainty as to the specific date the right would be justiciable.

The Government is carefully considering this issue and the risks and benefits of a sunset clause.

Recommendation 3: That the ACT Government consider the need for additional resources for the Human Rights Commission, given the new complaints mechanism is the only recourse in relation to the new right to a healthy environment.

Government Response: Agreed

The ACT Government has committed to carefully monitoring the impacts on the Human Rights Commission of the new complaints pathway, consistent with advice provided during introduction and passage of the Human Rights (Complaints) Legislation Amendment Bill 2023.

The Government remains in ongoing dialogue with the Commissioner regarding the Commission’s resourcing needs, and will consider this issue in future budget processes as required.

Recommendation 4: That the ACT Government provide additional dedicated resourcing to the ACT Human Rights Commission to conduct a human rights audit in relation to the right to a healthy environment, pursuant to s 41 of the *Human Rights Act*.

Government Response: Noted

While the ACT Government notes that there would be benefits in the Human Rights Commission undertaking a baseline audit under section 41 of the Human Rights Act to consider how the right to a healthy environment and related rights are currently implemented under ACT legislation and operational practice, implementation of this recommendation would have financial implications.

The Committee highlighted in its report need to build the capacity of public authorities to understand and fully comply with the right during this implementation period. Training and providing time for public authorities to consider the right will be a key priority for Government.

The ACT Government will give further consideration to these issues though future budget processes.

Recommendation 5: That the ACT Government undertake further consultation with Aboriginal and Torres Strait Islander peoples, both prior to the Assembly debating the proposed Bill, and on an ongoing basis in relation to the realisation of this right.

Government Response: Agreed in part

Ongoing engagement with the community on the right is critical to continuing to strengthen our culture of human rights.

The ACT Government acknowledges and respects the material spiritual, cultural connections and economic relationships Aboriginal and Torres Strait Islander people have with the land, waters and other laws. As noted by the Conservation Council (ACT Region) in its submission to the inquiry, the approach of Aboriginal and Torres Strait Islander people to environmental management can support realisation of the right to a healthy environment.

The Justice and Community Safety Directorate will establish an implementation working group once the Bill has been passed to provide a forum to discuss implementation, realisation and the impacts of the right. Representation will be sought from external stakeholders interested and impacted by the Bill, including Aboriginal and Torres Strait Islander community organisations and individuals. The input of Aboriginal and Torres Strait Islander people will be invaluable to implementation and realisation of the right.

Recommendation 6: That the ACT Government implement a process for directorates to consider the impact of implementing this new right for vulnerable people.

Government Response: Existing government policy

All directorates as public authorities are required to have processes in place to ensure that they give appropriate consideration to human rights in decision-making. This includes any differential impact of policies and decisions on vulnerable people in our community. Additional processes are in place to ensure that human rights impacts of policy initiatives and legislation are carefully considered through Cabinet processes.

Acknowledging that the right to a healthy environment will be new and is complex in its scope and nature, training will be a key priority for the Justice and Community Safety Directorate to build capacity of public authorities to understand and give effect to the right.

Fact sheets and other resources will also be developed by the Justice and Community Safety Directorate, in consultation with the Human Rights Commission, following passage of the legislation to assist in the implementation of the right.

Recommendation 7: That the ACT Government provide additional funding for the development of educational resources, for both public authorities and individuals, about the proposed right. The Government should ensure these resources are accessible by considering translated materials and using a range of mediums.

Government Response: Agreed in principle

Training will be a key priority for the Justice and Community Safety Directorate to build capacity across government for public authorities to understand and give effect to the right.

Fact sheets and resources will be developed by the Justice and Community Safety Directorate, in consultation with the Human Rights Commission, following passage of the legislation, to assist in the implementation of the right.

Consistent with existing policy, the Government will ensure that educational resources for individuals are accessible and will consider translated materials where possible. The Government will monitor the need for further funding for educational materials and will seek further budget funding if required.

Recommendation 8: That the ACT Government consider the necessity of s 27(C)(2) – ‘everyone is entitled to enjoy this right without discrimination’. A review of Part 3A – Economic, social and cultural rights – of the Act should be considered as well, because this phrase is also included for each right listed in this section.

Government Response: Noted

Three organisations expressed concerns about the inclusion of the proposed new section 27C(2) in the Bill in submissions to the Committee on the basis it may result in the right being interpreted in a more limited way than other rights and it is duplicative of section 8(2) of the Human Rights Act.

Expressly including the non-discrimination obligation in the new section 27C(2) is not intended to have an interpretative impact on other rights, nor to limit the interpretation of obligations under this right more broadly.

Inclusion of the non-discrimination obligation reflects the Special Rapporteur’s Framework Principles and is intended to ensure that there is appropriate focus given to the particular impact that environmental issues can have on vulnerable individuals and communities. It will also be relevant to ensure that measures taken to address environmental harms are equitable and do not impose additional burdens on vulnerable groups.

The scope of the mandatory statutory review power is broad. There is an obligation for the review to consider the new section 27C, which will include subsection (2), which will be an appropriate time to consider whether the inclusion of the non-discrimination clause is operating as intended and whether amendments are required.

Recommendation 9: That the ACT Government review and reconsider the categorisation of the right to a healthy environment as part of the mandatory statutory review outlined in proposed section 43.

Government Response: Agreed

The Government will amend the Bill to specifically require that this issue be considered as part of the statutory review.

The ACT Government notes that the right to a clean, healthy, and sustainable environment has not yet been established as a matter of customary international law, and is an emerging right which will continue to develop in its scope and nature at the international level.

Noting the current structure of the Human Rights Act with distinction between civil and political rights and economic, social and cultural rights, a decision was made to situate the new right in Part 3A 'economic, social and cultural rights'. While it is acknowledged that the new right has been said to fit within a third generation of 'solidarity' rights, alongside rights to peace and development, the Human Rights Act does not currently provide a separate Part for this category of rights. As the right continues to evolve at international law, consideration will be given as part of the review whether it continues to be appropriate for the right to be situated in Part 3A or if a new Part should be inserted.

Recommendation 10: That the Assembly pass the Bill following consideration of the ACT Government's responses to the recommendations made in this report.

Government Response: Agreed

The ACT Government welcomes the Committee's recommendation that after considering the ACT Government's responses to the recommendations that the Legislative Assembly pass the Bill.