# Report on inquiry into the Human Rights (Workers Rights) Amendment Bill 2019

Standing Committee on Justice and Community Safety

March 2020

Report 7

## 

## The Committee

### Committee Membership

Ms Elizabeth Lee MLA Chair from 22 March 2018

Member from 13 December 2016

Mrs Giulia Jones Chair from 14 December 2016 to 22 March 2018

[On 21 March 2018 the Assembly discharged Mrs Giulia Jones MLA from the Committee and appointed Ms Nicole Lawder MLA in her place (for the period 22 March 2018 to 17 September 2018)][[1]](#footnote-1)

Member from 13 December 2016

Ms Bec Cody MLA Deputy Chair from 14 December 2016

Member from 13 December 2016

Ms Nicole Lawder MLA Member from 22 March 2018 (for the period 22 March 2018 to  
17 September 2018)

Mr Chris Steel MLA Member from 13 December 2016 to 23 August 2018

Mr Michael Pettersson MLA Member from 23 August 2018 to 23 August 2019.

Mr Deepak-Raj Gupta MLA Member from 23 August 2019.

### Secretariat

Mr Andrew Snedden Secretary

Dr Frieda Scott Senior Research Officer

Ms Lydia Chung Administrative Assistance

### Contact Information

Telephone 02 6205 0199

Post GPO Box 1020, CANBERRA ACT 2601

Email [LAcommitteeJCS@parliament.act.gov.au](mailto:LAcommitteeJCS@parliament.act.gov.au)

Website [www.parliament.act.gov.au](http://www.parliament.act.gov.au)

### Resolution of Committee appointment

The Legislative Assembly for the ACT appointed the Standing Committee on Justice and Community Safety on 13 December 2016.

Specifically, the resolution of 13 December 2016 establishing the Standing Committees of the 9thAssembly, as it relates to the Justice and Community Safety Committee states:

That:

(1) The following general-purpose standing committees be established, and each committee inquire into and report on matters referred to it by the Assembly or matters that are considered by the committee to be of concern to the community:

(d) a Standing Committee on Justice and Community Safety to perform a legislative scrutiny role and examine matters related to community and individual rights, consumer rights, courts, police and emergency services, corrections including a prison, administrative law, civil liberties and human rights, censorship, company law, law and order, criminal law, consumer affairs and regulatory services;

(4) Each general-purpose committee shall consist of the following number of members, composed as follows:

(d) the Standing Committee on Justice and Community Safety:

(i) two members to be nominated by the Opposition;

(ii) two members to be nominated by the Government; and

(iii) the Chair shall be an Opposition member;

(5) Each committee shall have power to consider and make use of the evidence and records of the relevant standing committee during the previous Assembly.

(6) Each committee be provided with necessary staff, facilities and resources.

(7) The foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.[[2]](#footnote-2)

On 20 September 2018, paragraph (4) of this resolution was omitted and the following paragraph substituted:

(4) Each general-purpose committee shall consist of the following number of members, composed as follows:

(d) the Standing Committee on Justice and Community Safety:

(i) one member to be nominated by the Opposition;

(ii) two members to be nominated by the Government; and

(iii) the Chair shall be the Opposition member.[[3]](#footnote-3)

### Reference of the Bill to the Standing Committee

The Bill and accompanying Explanatory Statement are at: <https://www.legislation.act.gov.au/b/db_61325>

### Acronyms

|  |  |
| --- | --- |
| ACTCOSS | ACT Council of Social Services |
| ACT HRC | ACT Human Rights Commission |
| ALHR | Australian Lawyers for Human Rights |
| CPSU | Community and Public Service Union PSU Group |
| ESC | Economic, Social and Cultural |
| ESCR | Economic, Social and Cultural Rights |
| HRA | *Human Rights Act 2004* (ACT) |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ILO | International Labour Organisation |

Table of Contents

[The Committee i](#_Toc34924205)

[Committee Membership i](#_Toc34924206)

[Secretariat i](#_Toc34924207)

[Contact Information i](#_Toc34924208)

[Resolution of Committee appointment iii](#_Toc34924209)

[Reference of the Bill to the Standing Committee v](#_Toc34924210)

[Acronyms vii](#_Toc34924211)

[Recommendations xi](#_Toc34924212)

[1 Conduct of the Inquiry 1](#_Toc34924213)

[Referral of the Bill 1](#_Toc34924214)

[Committee inquiry – Issues for examination and report 1](#_Toc34924215)

[Submissions 1](#_Toc34924216)

[Public hearings 2](#_Toc34924217)

[Structure of the report 2](#_Toc34924218)

[Acknowledgments 2](#_Toc34924219)

[2 The Bill and its provisions 3](#_Toc34924220)

[Introduction 3](#_Toc34924221)

[Provisions of the Bill 3](#_Toc34924222)

[3 Views Put to the Committee on the Bill 7](#_Toc34924223)

[Introduction 7](#_Toc34924224)

[ACT Human Rights Commission 7](#_Toc34924225)

[The ACT Government 8](#_Toc34924226)

[Australian Lawyers for Human Rights ACT Branch 9](#_Toc34924227)

[ACT Council of Social Services (ACTCOSS) 10](#_Toc34924228)

[Community and Public Sector Union PSU Group (CPSU) 10](#_Toc34924229)

[UnionsACT 11](#_Toc34924230)

[Dr Arnold, Ms Diedricks and Dr Bonython 11](#_Toc34924231)

[Summary of views put to the Committee in evidence 12](#_Toc34924232)

[Other Jurisdictions 14](#_Toc34924233)

[4 Issues and Recommendations 17](#_Toc34924234)

[Introduction 17](#_Toc34924235)

[Committee Comment 17](#_Toc34924236)

[Recommendations 17](#_Toc34924237)

[Appendix A – Submissions received by the Committee 19](#_Toc34924238)

[Appendix B – Witnesses 20](#_Toc34924239)

[6 February 2020 20](#_Toc34924240)

[27 February 2020 20](#_Toc34924241)

[Appendix C – Terms of Reference Published by the Committee 21](#_Toc34924242)

[Appendix D – Bill and Explanatory Statement 23](#_Toc34924243)

## Recommendations

[Recommendation 1](#_Toc34982341)

[4.5 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.](#_Toc34982342)

[Recommendation 2](#_Toc34982343)

[4.6 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 a soon as possible.](#_Toc34982344)

## Conduct of the Inquiry

### Referral of the Bill

* 1. On 27 November 2019 the Assembly referred the *Human Rights (Workers Rights) Amendment Bill 2019* (the Bill) to the Standing Committee for inquiry and report. The referral motion, passed by the Assembly, reads:

Pursuant to standing order 174, moved—That the Human Rights (Workers Rights) Amendment Bill 2019 be referred to the Standing Committee on Justice and Community Safety for report by the end of February 2020.[[4]](#footnote-4)

* 1. The Bill is a Private Member’s Bill, introduced into the Assembly on 27 November 2019 by Ms Bec Cody MLA.[[5]](#footnote-5) Copies of the Bill, together with the accompanying Explanatory Statement are at Appendix D.

### Committee inquiry – Issues for examination and report

* 1. The Committee considered the Bill in detail and has identified several matters which it thinks are relevant to the Bill as a Terms of Reference. The Terms of Reference are on the Committee website and attached as Appendix C.
  2. The Committee called for submissions by advertising the inquiry in *The Canberra Times* in November 2019, by placing an invitation for submissions on the Assembly Committees website and by inviting interested stakeholders to participate in the inquiry.

### Submissions

* 1. The Committee received seven submissions. The individuals and organisations who lodged submissions are listed in Appendix A. Copies of submissions are available on the Committee’s website.[[6]](#footnote-6)

### Public hearings

* 1. Public hearings were held on 6 and 27 February 2020. Witnesses who appeared before the Committee are listed in Appendix B. The Committee’s website contains the transcripts of these hearings.
  2. The Committee met on (i) 3 March 2020 to discuss the Chair’s Draft report; and (ii) 11 March 2020 to discuss the Committee’s draft which was adopted on 12 March 2020.

### Structure of the report

* 1. The Committee has compiled a report which examines and reflects on the principal matters that were identified in submissions and arose during the course of the inquiry, based on the evidence it received and on other source material of direct relevance published during the inquiry period.
  2. The central focus of the Committee’s inquiry was directed to the current law, both ACT law and the Commonwealth relating to the protection of Workers’ Rights in the ACT. In particular, the Committee is interested to find out about the application of the proposed Bill including its impacts and how it intersects with the Commonwealth law (*the Fair Work Act 2009*). The Committee also considers matters raised by submissions on the proposal to amend the HR Act to include not only Workers’ Rights but a full suite of economic, social and cultural rights (ESC rights).
  3. The Committee’s report is in four chapters and covers the following issues:
* Chapter 1 – Introduction and Conduct of the Inquiry
* Chapter 2 – The Bill and its Provisions
* Chapter 3 – Views put to the Committee on the Bill
* Chapter 4 – Issues and Recommendations

### Acknowledgments

* 1. The Committee acknowledges and thanks all individuals, stakeholder groups and organisations who contributed to the inquiry by making submissions and appearing before the Committee to give evidence.

## The Bill and its provisions

### Introduction

* 1. In this chapter, the Committee discusses the background to the provisions in the Bill, as set out in the Explanatory Statement.

### Provisions of the Bill

* 1. The Explanatory Statement accompanying the Bill sets out the following basis for the workers’ rights provisions in the Bill:

The Bill amends the Human Rights Act 2004 (‘the Act’) to include workers’ rights in the ACT’s Human Rights framework by adding a new Section 27B ‘Right to work’ in Part 3A ‘Economic, social and cultural rights’ of the Act.

The Bill intends to recognise workers’ rights as outlined in the International Covenant on Economic, Social and Cultural Rights (‘the Covenant’). The rights are generally expressed in the same terms as the Covenant except where adjustments to language were necessary to improve the drafting or to clarify the application of a right in the context of the Territory.[[7]](#footnote-7)

* 1. And:

The Bill provides workers with various social, economic and cultural rights that form part of Human Rights more generally, including a right to work; to choose their occupation or profession freely; to enjoy just and favourable conditions of work; and to enjoy the above-mentioned rights without discrimination. The Bill also provides for a right to join a work-related organisation with the objective of promoting or protecting their economic or social interests and to protections against acts of anti-union discrimination.[[8]](#footnote-8)

* 1. The Explanatory Statement also acknowledges that:

This Bill recognises that civil and political rights have been expressed in the core human rights treaties and customary international law. These sources are relevant for the purpose of interpreting the scope and application of a Part 3 rights, including new Section 27B rights.[[9]](#footnote-9)

* 1. The relevant sections and explanatory statement of the Bill are reproduced below to allow appreciation of their provisions as follows:

**Right to work**

Clause 27B (1) states that everyone has a right to work, including the right to choose their occupation or profession freely. This reflects Article 6 of the Covenant. However, this is not, and should not be read as, a requirement for Government to provide employment opportunities to every person living in the Australian Capital Territory. It may, however, be read as an obligation on government to enforce laws banning forced labour and to ensure non-discrimination practices are enforced by employers within the scope of the Act.[[10]](#footnote-10)

**Right to just and favourable conditions**

Clause 27B (2) states that everyone has the right to the enjoyment of just and favourable conditions of work. This reflects Article 7 of the Covenant.[[11]](#footnote-11) The right to just and favourable conditions of work in article 7 of ICESCR encompasses a number of elements, including:

* remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work
* safe and healthy working conditions
* equal opportunity to be promoted in employment to an appropriate higher level, subject to no considerations other than those of seniority and competence
* rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.[[12]](#footnote-12)

**Right to enjoyment of rights without discrimination**

Clause 27B (3) states that everyone is entitled to enjoy the rights contained in section 27B without discrimination. This reflects several Articles within the Covenant and other ACT laws such as the Discrimination Act 1991 (ACT), it includes discrimination based on race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other relevant status.[[13]](#footnote-13)

**Right to form or join a work-related organisation and protection of anti-union actions**

Clause 27B (4)-(5) state that everyone has a right to join a work-related organisation with the objective of promoting or protecting their economic or social interests, and everyone has the right to protection from acts of anti-union discrimination in relation to their employment. These clauses reflect Article 8 of the Covenant.[[14]](#footnote-14)

* 1. The Bill further states that while the Covenant is the source of subsections (1) to (4), the primary source of the rights in Clause 27B (5) is article 1 of the International Labour Organisation (ILO) Right to Organise and Collective Bargaining Convention.[[15]](#footnote-15)
  2. Explanatory Statement, apart from providing a description of the specific clauses of the Bill, provides the following background explanation:

The overall conclusion of the ‘Australian Capital Territory, Social and Cultural Rights Research Project’ was that the inclusion of the economic, social and cultural rights (‘ESCR) in the ACT Human Rights Act 2004 (the Act) is “desirable and feasible”. It also stated that the Act should be amended to include most of the ESCR contained in the Covenant. This was also recommended in the ACT Bill of Rights Consultative Committee in 2003. Australia signed the Covenant on 18 December 1972 and ratified the Covenant on 10 December 1975.[[16]](#footnote-16)

## Views Put to the Committee on the Bill

### Introduction

* 1. The Committee received seven written submissions on the inquiry which canvassed views from individuals and organisations. As noted, these are at Appendix A. All seven submitters also appeared before the Committee at the inquiry’s public hearings. Details of the public hearing and witnesses, as mentioned, are listed in Appendix B.

### ACT Human Rights Commission

* 1. In its submission to the Committee, the ACT Human Rights Commission (HRC) expressed its support to the extension of the *Human Rights Act 2004* (HR Act) to protect workers’ rights as part of broader protection of economic, social and cultural rights (ESC rights). The ACT HRC thus proposed that HR Act amendment should not only include the protection of workers’ rights but ‘HR Act should be amended to provide comprehensive protection for the full suite of ESC rights, including requiring public authorities to act and make decisions consistently with such rights’[[17]](#footnote-17).
  2. In addition to workers’ rights, the ACT HRC specifically would like to include three kinds of economic, social and cultural rights namely housing, health and social security.[[18]](#footnote-18)
  3. Further, the ACT HRC recommended that, should the HR Act fail to include comprehensive coverage of ESC rights, ‘the HR Act should be amended in the first instance to at least require statements of compatibility and scrutiny reports to include consideration of the full range of ESC rights’[[19]](#footnote-19).
  4. The ACT HRC suggested that the bill should draw the relevant workers’ rights from the International Covenant on Economic, Social and Cultural Rights (ICESR) instead of directly from International Labour Organisation (ILO) Conventions.
  5. The ACT HRC also proposed that, to ensure consistency, an amendment should also be made to the right to education. The Commission stated:

In line with the bill’s proposed approach of not confining workers’ rights to their ‘immediately realisable’ aspects, similar amendments should be extended to the right of education in s 27A to ensure that there is overall consistency of approach to the protection of ESC rights in the HR Act.[[20]](#footnote-20)

* 1. In regard to jurisdictional issues, the ACT HRC argued that although the Commonwealth law (*the Fair Work Act 2009)* might seems to limit the application of workers’ rights under the HR Act in the ACT, ‘there will still be aspects that fall within the competence of the Territory to implement’.[[21]](#footnote-21)
  2. The ACT HRC also recommended the establishment of a complaint mechanism for individuals for alleged HR breaches. It told the Committee that currently the ACT HRC’s only recourse to the legal system is the Supreme Court.[[22]](#footnote-22)

### The ACT Government

* 1. The ACT Government’s submission provided a detailed discussion of the Bill. It started with an overview of economic, social and cultural rights in the Human Rights Act, followed by the scope of rights protected in the Bill. The submission then looked at the Bill in technical detail, including offering suggestions for clarifications and considered the implications for the ACT Government as well as for ACT law and practice.
  2. The Committee noted, however, that the Government has not formed its position yet in relation to the Bill.
  3. The ACT Government explained in its submission:

The Government has yet to finalise its position in relation to this Bill. Overall it is noted that the inclusion of the right to work in the Human Rights Act would represent a progressive step in continuing to extend protections for economic, social and cultural rights (ESCR) in the ACT. 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 contexts and to provide additional protection for rights such as the right to work and the right to just and favourable conditions of work. Nevertheless, in settling its position on the Bill, the ACT Government will need to fully assess questions of risks and benefits.[[23]](#footnote-23)

* 1. When the Committee inquired further about why the Government does not have a position on the Bill, the Minister for Justice, Consumer Affairs and Road Safety told the Committee that it was mostly due to the matters of timing and processing as the Minister has not presented the issue to cabinet yet.[[24]](#footnote-24) The Minister further explained that the Government does not have any objection to the Bill.[[25]](#footnote-25)

### Australian Lawyers for Human Rights ACT Branch

* 1. The Australian Lawyers for Human Rights (ALHR) submission endorsed the concerns and recommendations raised by HRC in its submission to the Committee.[[26]](#footnote-26)
  2. Similar to the ACT HRC, ALHR considered the economic, social and cultural rights as ‘equal and indivisible’ and therefore, ALHR is of the view that the HR Act should include all ESC rights.[[27]](#footnote-27)
  3. ALHR also endorsed the ACT HRC recommendation that:

If an incremental approach is to be taken to amending the Act, the Bill should be amended to include a review, for example after two years, to assess the effectiveness of the reforms and what further action is required to protect the human rights of ACT residents.[[28]](#footnote-28)

* 1. In regard to jurisdictional concerns and the extent of Commonwealth responsibility for industrial relations under the *Fair Work Act 2009*,ALHR noted that ‘there is no compelling reason not to enshrine the proposed human rights protections within the Act given the number of workplace issues which fall within the jurisdiction of the ACT’.[[29]](#footnote-29)
  2. In addition, ALHR considered that it is best to draw protected human rights from the ICESCR instead of from ILO conventions.[[30]](#footnote-30)
  3. Further, ALHR also restated its position for the inclusion of an accessible complaint mechanism in the Act. It stated:

ALHR strongly recommends the inclusion of an accessible complaints mechanism in the Act to provide individuals with a meaningful way to enforce their human rights. It is our position that the ACT Human Rights Commission would be the appropriate body to receive and conciliate complaints of human rights violations, with the capacity for matters to be referred to the ACT Civil and Administrative Tribunal for determination.[[31]](#footnote-31)

### ACT Council of Social Services (ACTCOSS)

* 1. ACTCOSS’ submission suggested that the HR Act should be amended to include all of the ESC Rights, including the right to housing, physical and mental health, work, and culture.[[32]](#footnote-32)
  2. The submission provided two recommendations as follows:
* Comprehensively include Economic, Social and Cultural Rights in the *ACT Human Rights Act (2004)*.
* Engage the community sector and the ACT Human Rights Commission to deliver education on the inclusion of ESC Rights in the Act. This could be delivered using the existing ACTCOSS and ACT Human Rights Commission interactive workshop model, which has had success reaching community sector workers and employers on compliance with the existing Act. Future work could usefully expand the workshops to wider segments of the ACT population.[[33]](#footnote-33)

### Community and Public Sector Union PSU Group (CPSU)

* 1. The CPSU expressed its support to the Human Rights (Workers Rights) Amendment Bill, with the inclusion of the right to organise.[[34]](#footnote-34)
  2. Specifically, the CPSU listed three recommendations to the Committee, namely:

Recommendation 1: That s27B (1) remain as part of the Human Rights (Workers Rights) Amendment Bill, and formally be adopted by the Australian Capital Territory as a Human Right.

Recommendation 2: That s27B (2) and s27B (3) remain as part of the Human Rights (Workers Rights) Amendment Bill, and formally be adopted by the Australian Capital Territory as a Human Right.

Recommendation 3: That s27B (4) and s27B (S} remain as part of the Human Rights (Workers Rights) Amendment Bill, with the addition of the 'right to organise' as s27B and formally be adopted by the Australian Capital Territory as a Human Right.[[35]](#footnote-35)

* 1. In discussion with the Committee, CPSU expanded on its view on ‘just and favourable terms’ of employment:

If I may, my view of “just and favourable conditions” would be, to really use the vernacular, “Does it pass the pub test? Are we doing the fair thing by our employees?” Take the example of what has occurred in the APS. The ACT government has benefited immensely from what occurred in the APS because they got some fantastic public servants that went, “We want to go and work for a great employer,” and they have done that. They have come over here and they have been here for six, seven years now.[[36]](#footnote-36)

and

What this would do is codify that the actions of the ACT government [to] actually do that. Look at what the ACT government has done with superannuation over the last while—and I might have my dates wrong—but since 2011, I believe it is. We have now gone from 9.5 per cent up to 11.5 per cent. We have seen an increase in domestic violence leave from 10 days to 20 days of leave.[[37]](#footnote-37)

### UnionsACT

* 1. In its submission to the Committee, UnionsACT stated that it ‘supports efforts to enshrine the right of workers to join, and actively participate in, their union in the ACT Human Rights Act’.[[38]](#footnote-38)
  2. Further, UnionsACT recommended that:

If the amendment bill proceeds and is enacted, UnionsACT suggests that the relevant scrutinising bodies that assess Human Rights Act compatibility for new bills, including the ACT Human Rights Commission, engage directly with a representative of the ACT union movement.[[39]](#footnote-39)

* 1. In addition, if the bill is passed, UnionsACT suggested that ‘engagement with unions be formalised by way of regulation’.[[40]](#footnote-40)

### Dr Arnold, Ms Diedricks and Dr Bonython

* 1. In their submission to the Committee, Dr Arnold, Ms Diedricks and Dr Bonython reviewed the Bill from a legal perspective. They also share the view that rights are indivisible.
  2. The submission was made by Bruce Baer Arnold and Jane Diedricks at the University of Canberra and Wendy Bonython at Bond University reflects a background in teaching of law and research regarding employment and human rights. The submission discussed specific aspects of the bill, including the bill’s derivation and importance, its interaction with national legislation, comprehensiveness, redress and definitions.[[41]](#footnote-41)
  3. Other suggestions include[[42]](#footnote-42):
* To have a holistic and bipartisan review of the Act;
* To examine the full suite of ICESR;
* An effective legislation is the one that is enforceable and not only aspirational;
* To enhance funding of dispute resolution and foster complaint-handling by HRC regarding HR concerns, similar to the mechanism set by the Queensland Human Rights Act 2019.

### Summary of views put to the Committee in evidence

* 1. The Committee discussed the views, summarised above, in detail with representatives of a number of submission makers, and highlights their views in the following summary:
* It is important to recognise that the Australian employment regime involves both commonwealth and state-territory law, including contract law and the national Fair Work Act. It is also important to recognise that employment is only one aspect of human rights; human rights are indivisible and universal.[[43]](#footnote-43)
* We consider that the Human Rights Act 2004 has been a success, and we consider that the Legislative Assembly should note that success and build on it through a review of the territory human rights regime that looks beyond employment in enshrining the range of rights articulated in various international agreements. Such progress is indeed achievable. We also suggest that the ACT government ensure adequate resourcing for ACAT and the Human Rights Commission to give effect to the objectives of the bill.[[44]](#footnote-44)
* As we said in our submission, human rights are indivisible and universal. That is why we do not accept the artificial division between economic, social and cultural rights and civil and political rights. The universal declaration gave them equal status, and that declaration is now 71 years old.[[45]](#footnote-45)
* If the committee decides, or the Assembly decides, not to have full workers rights and other economic, social and cultural rights, we would recommend at least the federal system, where the full suite of treaties is inserted into the Human Rights Act for compatibility and scrutiny purposes. It would assist the Assembly debate to have the full suite of treaties and the full economic, social and cultural rights convention. That would be consistent with wellbeing indicators, which the ACT is moving towards comprehensively at the moment.[[46]](#footnote-46)
* I would like to say that, just as we want to see the right to work accompany the right to education and be included in the ACT Human Rights Act, we also believe that the Human Rights Act should affirm all human rights—the broader economic or ESC rights. That means recognising economic, social and cultural rights, such as the right to an adequate standard of living, including food security, the highest attainable standard of mental and physical health, and safety via environmental and industrial hygiene, emergency health care, preventable disease and participation in cultural life.[[47]](#footnote-47)
* The second point that we would like to focus on, which has been the subject of much discussion this morning, is the practical implication of including these rights in the act and the ways in which we can make sure these rights are enforceable by individuals and so have a real practical impact.[[48]](#footnote-48)
* The bill before the committee today is evidence of the genuine desire to protect the human rights of Territorians, including their right to work, and we support this. For these rights to be genuinely protected, we believe there needs to be a mechanism that allows complaints to be made by individuals about breaches of the act.
* Currently the only recourse is to bring a matter to the Supreme Court or to raise human rights in other legal proceedings. Action in the Supreme Court is prohibitive, costly and unnecessary. In our view, genuine access to justice can take the form of a mechanism that allows the complaint to be made to the Human Rights Commission for conciliation or mediation and a referral to the tribunal if the matter cannot be resolved. Without an accessible enforcement mechanism, the Human Rights Act can only offer limited protections.[[49]](#footnote-49)
  1. The Committee also notes that most submissions referred to the 2010 ACT Economic, Social and Cultural Rights Research Project and its recommendations. The report of the project, which assessed whether the ACT *Human Rights Act 2004* (HRA) should be amended to include explicit guarantees of ESCR[[50]](#footnote-50), concluded that ‘the inclusion of ESCR guarantees in the HRS is desirable and feasible, and that the Act should be amended to include most of the ESCR contained in the International Covenant on Economic Social Rights (ICESCR), to which Australia is party’[[51]](#footnote-51).
  2. Further, views were also put to the Committee on elements of the right to just and favourable conditions of work by the ACT Government and CPSU.[[52]](#footnote-52)

### Other Jurisdictions

* 1. Although all states and territories have anti-discrimination and / or equal opportunities legislation, apart from the ACT, only two other states have human rights law. Victoria has a Charter of Human Rights and Responsibilities Act 2006 and Queensland has Human Rights Act 2019.
  2. Victoria’s Charter of Human Rights and Responsibilities Act is based on the International Covenant on Civil and Political Rights (ICCPR) and it protects 20 fundamental rights.[[53]](#footnote-53) The Charter, which is administered by the Victorian Equal Opportunity and Human Rights Commission, does not create a right to begin legal action for a breach of human rights. Nevertheless, it allows a person to raise human rights arguments in legal proceedings on other causes of action.[[54]](#footnote-54)
  3. In regard to complaint-handling mechanism, the Victorian Equal Opportunity and Human Rights Commission does not handle complaints related to the Charter, but it has reviewing, reporting and intervention roles under the Charter.[[55]](#footnote-55)
  4. Queensland Human Rights Act 2019 entered into force on 1 January of this year. The act outlines and protects 23 human rights. It requires the Queensland public sector – namely Queensland government departments, local councils and other entities that operate as arms of the Queensland government - to behave and make decisions that are compatible with the rights protected under the act. Private businesses, private schools and health services and the federal government are not obliged to comply with the act.[[56]](#footnote-56)
  5. The 2019 law protects two rights drawn from the International Covenant on Economic, Social and Cultural Rights (ICESCR), namely the right to education and health services. The Act also explicitly protects the cultural rights of Aboriginal and Torres Strait Islander peoples.
  6. A complainant may lodge a complaint with the Queensland government Human Rights Commission. The Commission is empowered to seek resolution through holding a complaint resolution process. The Human Rights Commission clearly states that it is not a court and it cannot make a binding judgement or determine if a breach of human rights has occurred. If a conciliation process does not lead to the resolution of a complaint the Commission may only make a report of the case – excluding personal information – and publish the findings.[[57]](#footnote-57)
  7. Having achieved an advanced level of working conditions for a large part of the Australian and Canberran economy and for workers therein, the inclusion of the term “just and favourable” may seem an unusual or imbalanced concept. However, further research suggests that the inclusion of this term in the original ICCPR document on social, cultural and political rights, is intended to ensure that there is adequate rest, and not a clawing back of hard-earned gains in workers entitlements. As explained by the Committee on Economic, Social and Cultural Rights:

Discrimination, inequalities and a lack of assured rest and leisure conditions plague many of the world’s workers. Economic, fiscal and political crises have led to austerity measures that claw back advances. An increasing complexity of work contracts, such as short-term and zero hour contracts, and non-standard forms of employment, as well as an erosion of national and international labour standards, collective bargaining and working conditions have resulted in insufficient protection of just and favourable conditions of work. Even in times of economic growth, many workers do not enjoy just and favourable conditions of work.[[58]](#footnote-58)

* 1. Therefore it is the Committee’s understanding that this inclusion is for the purposes of maintaining the favourable conditions, which make it worthwhile and sustainable for employees to work, which have been hard won in Australia and in Canberra be maintained and overall not diminished through actions taken by government, in the case of the proposed bill.

## 

## Issues and Recommendations

### Introduction

* 1. The Committee has provided – particularly in chapter 3 – a review of the evidence and observations put to it on the Bill.

### Committee Comment

* 1. The Committee identified the following themes from submissions and evidence:
* In general, all submission makers support the inclusion of workers rights into HRA as proposed by the Bill and that the Bill would be benefited from some additions.
* There is overwhelming support for the inclusion of full suite of ESC rights into the HRA.
* There is a need to establish complaint-handling mechanism.
* The preference to draw ESC rights from ICESCR over ILO Conventions.
  1. The Committee thanks the organisations which contributed to its inquiry, by making submissions, and by appearing before it to give evidence.
  2. The Committee recognises the significant commitment of time and resources required to participate in this inquiry and is grateful that it was able to draw on a range of expertise and experience in its deliberations.

### Recommendations

|  |  |
| --- | --- |
| Recommendation  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.   |  | | --- | | Recommendation  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 a soon as possible. | |

Giulia Jones MLA

Chair

13 March 2020

## Appendix A – Submissions received by the Committee

|  |  |
| --- | --- |
| **Submission Number** | **Submitter** |
| 1 | ACT Human Rights Commission |
| 2 | Dr Bruce Baer Arnold, Ms Jane Diedricks and Dr Wendy Bonython |
| 3 | Australian Lawyers for Human Rights (ALHR) |
| 4 | ACT Council of Social Services (ACTCOSS) |
| 5 | Community and Public Sector Union PSU Group (CPSU) |
| 6 | Unions ACT |
| 7 | ACT Government |

## Appendix B – Witnesses

### 6 February 2020

* Dr Bruce Baer Arnold, Assistant Professor, Canberra Law School, University of Canberra
* Ms Jane Diedricks, Lecturer, Canberra Business School, University of Canberra
* Dr Helen Watchirs, President and Human Rights Commissioner, ACT Human Rights Commission
* Ms Karen Toohey, Commissioner, Discrimination, Disability, Health and Community Services, ACT Human Rights Commission
* Ms Renuka Thilagaratnam, Director, Human Rights Law and Policy, ACT Human Rights Commission
* Dr Emma Campbell, Chief Executive Officer, ACT Council of Social Service
* Ms Eliza Moloney, Policy Officer, ACT Council of Social Service
* Ms Sophie Trevitt, Australian Lawyers for Human Rights (ACT Branch)
* Ms Naomi Gould, Australian Lawyers for Human Rights (ACT Branch)

### 27 February 2020

* Mr Shane Rattenbury, Minister for Climate Change and Sustainability, Minister for Corrections and Justice Health, Minister for Justice, Consumer Affairs and Road Safety, and Minister for Mental Health
* Ms Zoe Hutchinson, Branch Manager, Legislation, Policy and Programs, Justice and Community Safety Directorate
* Mr Brenton Higgins, Lead Organiser, Community and Public Sector Union
* Ms Maddy Northam, Regional Secretary, Community and Public Sector Union
* Mr Alex White, Secretary, UnionsACT

## Appendix C – Terms of Reference Published by the Committee

**Human Rights (Workers Rights) Amendment Bill 2019**

**Issues for Consideration by the Committee on this Inquiry**

On 27 November 2019, the Legislative Assembly referred the following Bill to the Standing Committee for inquiry and report:

*That the Human Rights (Workers Rights) Amendment Bill 2019 be referred to the Standing Committee on Justice and Community Safety for report back to the Assembly by the end of February 2020.*

***Matters for consideration by the Committee on this Bill.***

The Committee has identified the following issues related to the proposed amendment Bill by reference to the provisions of the ACT *Human Rights Act 2004.*

1. Current provisions in ACT law providing protection for Workers’ Rights (WR) in the *Human Rights Act* (HR Act)

1. The scope of the Bill to amend the HR Act so as to extend WR to include economic, social and cultural rights (ESC rights).

1. Protection of WR provided by the International Convention on Economic, Social and Cultural Rights (ICESR)under the ICESCR, including matters such as:
   1. the right to work in article 6(1),
   2. the  combination of interrelated rights, including, in particular, article 7 (right to just and favourable conditions of work); article 8 (right to form and join trade unions, including the right to strike); article 9 (right to social security); article 10(2) (right to maternity leave); and article 10(3) (prohibition against child labour).

1. The possible inclusion of workers’ rights in the HR Act, and the extent of Commonwealth responsibility for industrial relations under the *Fair Work Act 2009*’ may affect a ‘limited application’ of such rights in the ACT.

1. Possible overlap between core labour standards contained in ILO conventions and rights guaranteed under the ICESCR., including:
   1. HR Act – protection (both directly and indirectly) to many of the rights articulated in the eight fundamental ILO Conventions, including:
      1. freedom of association and assembly (s 15, HR Act),
      2. the right to equality and non-discrimination (s 8, HR Act), children’s rights (s 11(2), HR Act),
      3. freedom from forced labour (s 26, HR Act).
   2. (NB - In accordance with s 31 of the HR Act, the laws of the ILO are directly relevant to interpreting these HR Act rights in the context of workers (and right to freedom of association in s 15 of the HR Act is drawn from article 22 of the ICCPR, which specifically references ILO standards).
2. Will the Bill ensure consistency of approach for implementing ESC rights in existing provisions of the HR Act.

1. Findings and recommendations of other parliamentary inquiries (including the Commonwealth’s Parliamentary Joint Committee on Human Rights <https://www.aph.gov.au/joint_humanrights>) and other forms of inquiry and reports over the last five years on WR and ESC rights.

*The Bill and Explanatory Statement are at:*

[*https://www.legislation.act.gov.au/b/db\_61325/*](https://www.legislation.act.gov.au/b/db_61325/)

## Appendix D – Bill and Explanatory Statement

1. ACT Legislative Assembly, *Minutes of Proceedings*, No. 51, 21 March 2018, pp. 738; *Hansard*, 21 March 2018, p. 839. [↑](#footnote-ref-1)
2. ACT Legislative Assembly, *Minutes of Proceedings*, No. 2, 13 December 2016, pp. 13–16. [↑](#footnote-ref-2)
3. ACT Legislative Assembly, *Minutes of Proceedings*, No. 73, 20 September 2018, p.1028. [↑](#footnote-ref-3)
4. ACT Legislative Assembly, *Minutes of Proceedings,* No. 121, 27 November 2019, p. 1794. [↑](#footnote-ref-4)
5. ACT Legislative Assembly, *Minutes of Proceedings,* No. 121, 27 November 2019, p. 1792. [↑](#footnote-ref-5)
6. <https://www.parliament.act.gov.au/in-committees/standing-committees-current-assembly/standing-committee-on-justice-and-community-safety/Inquiry-into-Human-Rights-Workers-Rights-Amendment-Bill-2019>. [↑](#footnote-ref-6)
7. Explanatory Statement, p. 1. [↑](#footnote-ref-7)
8. Explanatory Statement, p. 1. [↑](#footnote-ref-8)
9. Explanatory Statement, p. 1. [↑](#footnote-ref-9)
10. Explanatory Statement, p. 2. [↑](#footnote-ref-10)
11. Explanatory Statement, p. 2. [↑](#footnote-ref-11)
12. <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/PublicSectorGuidanceSheets/Pages/Righttoworkandrightsatwork.aspx>. [↑](#footnote-ref-12)
13. Explanatory Statement, p. 2. [↑](#footnote-ref-13)
14. Explanatory Statement, p. 2. [↑](#footnote-ref-14)
15. Item 5 of the Bill; Note to subsection (5) of the Bill. [↑](#footnote-ref-15)
16. Explanatory Statement, p. 1. [↑](#footnote-ref-16)
17. ACT Human Rights Commission, Submission 1, p. 2. [↑](#footnote-ref-17)
18. *Transcript of Evidence,* 6 February 2020, p. [↑](#footnote-ref-18)
19. ACT Human Rights Commission, Submission 1, p. 2. [↑](#footnote-ref-19)
20. ACT Human Rights Commission, Submission 1, p. 2. [↑](#footnote-ref-20)
21. ACT Human Rights Commission, Submission 1, p. 5. [↑](#footnote-ref-21)
22. Ms Toohey, *Transcript of Evidence,* 6 February 2020, p. 17. [↑](#footnote-ref-22)
23. ACT Government, Submission 7, p. 2. [↑](#footnote-ref-23)
24. Minister Rattenbury, *Transcript of Evidence*, 27 February 2020, pp. 42-43. [↑](#footnote-ref-24)
25. Minister Rattenbury, *Transcript of Evidence*, 27 February 2020, p. 43. [↑](#footnote-ref-25)
26. ALHR ACT, Submission 3. [↑](#footnote-ref-26)
27. ALHR ACT, Submission 3, p. 2. [↑](#footnote-ref-27)
28. ALHR ACT, Submission 3, p. 2. [↑](#footnote-ref-28)
29. ALHR ACT, Submission 3, p. 2. [↑](#footnote-ref-29)
30. ALHR ACT, Submission 3, p. 2. [↑](#footnote-ref-30)
31. ALHR ACT, Submission 3, p. 3. [↑](#footnote-ref-31)
32. ACTCOSS, Submission 4, p. 3. [↑](#footnote-ref-32)
33. ACTCOSS, Submission 4, p. 5. [↑](#footnote-ref-33)
34. CPSU, Submission 5, p. 2. [↑](#footnote-ref-34)
35. CPSU, Submission 5, p. 4, p. 6. [↑](#footnote-ref-35)
36. Transcript of Evidence, 27 February 2020, p. 49. [↑](#footnote-ref-36)
37. Transcript of evidence, 27 February 2020, p. 47. [↑](#footnote-ref-37)
38. UnionsACT, Submission 6, p. 1. [↑](#footnote-ref-38)
39. UnionsACT, Submission 6, p. 2. [↑](#footnote-ref-39)
40. UnionsACT, Submission 6, p. 2. [↑](#footnote-ref-40)
41. Dr Arnold, Ms Diedricks and Dr Bonython, Submission 2. [↑](#footnote-ref-41)
42. Dr Arnold, Ms Diedricks and Dr Bonython, Submission 2. [↑](#footnote-ref-42)
43. Dr Arnold, *Transcript of Evidence,* 6 February 2020, p. 2. [↑](#footnote-ref-43)
44. Dr Arnold, *Transcript of Evidence,* 6 February 2020, p. 2. [↑](#footnote-ref-44)
45. Dr Watchirs, *Transcript of Evidence,* 6 February 2020, p. 11. [↑](#footnote-ref-45)
46. Dr Watchirs, *Transcript of Evidence,* 6 February 2020, pp. 11-12. [↑](#footnote-ref-46)
47. Dr Campbell, *Transcript of Evidence,* 6 February 2020, p. 20. [↑](#footnote-ref-47)
48. Ms Trevitt, *Transcript of Evidence,* 6 February 2020, p. 27. [↑](#footnote-ref-48)
49. Ms Trevitt, *Transcript of Evidence,* 6 February 2020, p. 28. [↑](#footnote-ref-49)
50. <http://regnet.anu.edu.au/research/research-projects/details/531/act-economic-social-and-cultural-rights-project>. [↑](#footnote-ref-50)
51. ACT ESCR Research Project Report, p. 11. [↑](#footnote-ref-51)
52. ACT Government, Submission 7, pp. 4-5, 7-8; CPSU, Submission 5, p. 4. [↑](#footnote-ref-52)
53. <http://www.humanrightscommission.vic.gov.au/index.php/the-charter>. [↑](#footnote-ref-53)
54. <https://unimelb.libguides.com/human_rights_law/national/australia>. [↑](#footnote-ref-54)
55. <https://unimelb.libguides.com/human_rights_law/national/australia>. [↑](#footnote-ref-55)
56. <https://www.qhrc.qld.gov.au/your-rights/human-rights-law>. [↑](#footnote-ref-56)
57. <https://www.qhrc.qld.gov.au/complaints/our-complaints-process>. [↑](#footnote-ref-57)
58. <https://www.escr-net.org/resources/general-comment-no-23-2016-right-just-and-favorable-conditions-work>. [↑](#footnote-ref-58)