2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Human Rights)

Human Rights (Healthy Environment) Amendment Bill 2023

A Bill for

An Act to amend the [Human Rights Act 2004](http://www.legislation.act.gov.au/a/2004-5%22%20%5Co%20%22A2004-5)

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Human Rights (Healthy Environment) Amendment Act 2023*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 79).

3 Legislation amended

This Act amends the [Human Rights Act 2004](http://www.legislation.act.gov.au/a/2004-5).

4 Economic, social and cultural rights
Part 3A heading, note

substitute

Note 1 The primary sources of these rights are the International Covenant on Economic, Social and Cultural Rights and the United Nations General Assembly, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022).

Note 2 Some aspects of economic, social and cultural rights are considered at international law to be subject to an obligation of progressive realisation.

Note 3 An international law relevant to interpreting progressively realisable rights is Article 8 (4) of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. That article provides for consideration of the reasonableness of steps taken to progressively realise rights and notes that a range of possible policy measures for the implementation of rights may be adopted.

5 Right to work and other work-related rights
Section 27B, notes 2 and 3

omit

6 New section 27C

in part 3A, insert

27C Right to a healthy environment

 (1) Everyone has the right to a clean, healthy and sustainable environment.

 (2) Everyone is entitled to enjoy this right without discrimination.

Note 1 Section 28 sets out what must be considered in deciding whether a limit on rights is reasonable.

Note 2 Aboriginal and Torres Strait Islander peoples hold distinct cultural rights in relation to the land and waters and other resources (see s 27 (2) (b)).

7 Legal proceedings in relation to public authority actions
New section 40C (5A) and (5B)

insert

 (5A) This section does not apply to a claim that a public authority has acted in contravention of section 40B if the contravention claimed is—

 (a) that the public authority acted in a way that is incompatible with the human right set out in section 27C (Right to a healthy environment); or

 (b) in making a decision, the public authority failed to give proper consideration to the human right set out in section 27C.

 (5B) To remove any doubt, subsection (5A) does not prevent a person making a claim in relation to another human right, even if the subject matter of the claim or part of the claim is the same, similar or related to the subject matter of a claim to which subsection (5A) applies.

Example

A person may claim a public authority acted in a way that is incompatible with the human right set out in s 9 (Right to life) and the subject matter of the claim may include an exposure of the person to an environmental risk to their health that is life threatening.

8 New section 43

insert

43 Review of right to healthy environment

 (1) The Minister must review the operation of the following provisions:

 (a) section 27C (Right to a healthy environment);

 (b) section 40C (5A) and (5B).

 (2) The Minister must present a report of the review to the Legislative Assembly as soon as practicable 5 years after this section commences.

 (3) This section expires 6 years after the day it commences.

9 ICESCR source of human rights
Schedule 2, new note

insert

Note 2 The primary source of the right in s 27C is the United Nations General Assembly, The human right to a clean, healthy and sustainable environment, A/RES/76/300 (28 July 2022).

Endnotes

1 Presentation speech

 Presentation speech made in the Legislative Assembly on 26 October 2023.

2 Notification

 Notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) on 2023.

3 Republications of amended laws

 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au/).

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