

2019

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

HUMAN RIGHTS (WORKERS RIGHTS) AMENDMENT BILL 2019

EXPLANATORY STATEMENT

Presented by

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This explanatory statement relates to the *Human Rights (Workers Rights) Amendment Bill 2019* ('the Bill') as presented to the ACT Legislative Assembly.

It has been prepared to assist the reader of the Bill. It does not form part of the Bill and has not been endorsed by the Assembly.

The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a complete description of the Bill. This statement provides information about the intent of the provisions in the Bill.

Overview of 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.

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.

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.

Background

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.

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.

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.

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.

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.