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

HUMAN RIGHTS (WORKERS RIGHTS) AMENDMENT BILL 2020

SUPPLEMENTARY EXPLANATORY STATEMENT

**Presented by Minister for Justice, Shane Rattenbury
MLA**

HUMAN RIGHTS (WORKERS RIGHTS) AMENDMENT BILL 2020

OUTLINE OF GOVERNMENT AMENDMENT

On 27 November 2019 the Human Rights (Workers Rights) Amendment Bill 2019 (the Bill) was introduced as a Private Members Bill to the Legislative Assembly. The Bill seeks to amend the *Human Rights Act 2004* (the HRA) by introducing a new section 27B to protect the right to work and work-related rights under Part 3A of the Act.

The explanatory statement accompanying the Bill provides a detailed account of the provisions contained in the Bill and can be accessed at:

https://www.legislation.act.gov.au/b/db_61325/

The Government amendments to the Bill (the Government Amendment) seek to better align it with the current structure and approach of the HRA and to clarify the expression of workers' rights and the nature of any obligations of progressive realisation that may apply under the new section 27B.

CONSISTENCY WITH HUMAN RIGHTS

The Bill engages and promotes a number of rights under the *Human Rights Act 2004* (the HRA), including the right to equality and non-discrimination by further clarifying the scope of this right. The Government Amendment does not further engage the HRA except in so far as it provides further clarity as to the scope of the rights.

CLAUSE NOTES

Clause 4 The amendments to clause 4:

- omit the heading, and substitute ‘Right to work and other work-related rights’ in order to better reflect that the rights set out in proposed section 27B cover both the right to work and work-related rights (such as the right to just and favourable conditions);
- move proposed section 27B(3) to section 27B(5) in order to clarify that the right to non-discrimination set out in applies to all rights in proposed section 27B;
- amend proposed section 27B(4) (now 27B(3)) to refer to ‘trade union’ explicitly (e.g. ‘Everyone has the right to form or join a work-related organisation, including trade union, with the objective of promoting or protecting their economic or social interests’), in order to more closely reflect the language of the ICESCR, which refers to ‘trade union’; and
- insert three new notes to clarify the application and nature of the obligation of progressive realisation.

- (1) The first note clarifies that some aspects of the rights protected under section 27B contain obligations of progressive realisation. This note acknowledges that, while all of the rights protected under proposed section 27B contain obligations of immediate effect, subsections 27B(1) and (2) also contain obligations of progressive realisation.

The concept of ‘progressive realisation’ is drawn from article 2(1) of the ICESCR under which each State Party undertakes:

‘to take steps individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights [contained in the ICESCR] by all appropriate means, including particularly the adoption of legislative measures.’

- (2) The second note clarifies that section 28 applies to the assessment of any limitation on the rights set out in section 27B.

In international law, the obligation of progressive realisation is subject to a corresponding duty not to take unjustifiable retrogressive measures or backwards steps in respect of the level of attainment of economic, social and cultural rights. This note also clarifies that this form of limitation on economic social and cultural rights may be assessed under the reasonable and justifiable limitations criteria set out under section 28 of the HRA.

- (3) The third note clarifies that Article 8(4) of the Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) will also be relevant to any consideration of these rights under section 31.

Article 8(4) of the Optional Protocol to the ICESCR provides:

When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

By referring to Article 8(4) of the Optional Protocol to the ICESCR, this third note points to the expectation at international law that a degree of policy deference will apply to any consideration of the compatibility of Government steps to progressively realise economic, social and cultural rights.

Clause 5 The amendment to clause 5 omits proposed new schedule 2, item 2, and substitutes it with references to articles 2(2), 6(1), 7 and 8 of the *International Covenant on Economic Social and Cultural Rights* (ICESCR) as the source of the rights in section 27B. This is to ensure greater consistency with the HRA and that the basis for the rights contained in section 27B under the ICESCR is reflected.