

2024

**Legislative Assembly for the
Australian Capital Territory**

Amendments to the Human Rights (Healthy Environment) Amendment Bill 2023

Supplementary Explanatory Statement

Presented by

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Amendments to the Government Procurement Amendment Bill 2023

This supplementary explanatory statement relates to amendments to the Human Rights (Healthy Environment) Amendment Bill 2023 (the Bill) presented to the Legislative Assembly for the Australian Capital Territory (ACT). It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

OVERVIEW OF THE AMENDMENTS

Purpose

The purpose of these amendments is to amend the Bill to improve access to justice and promote the role of the judiciary in administering the right to a healthy environment.

It aims to address issues regarding the restriction on individuals affected by a breach of the right to a healthy environment to litigate their grievance and the timeframes currently proposed for the review of the right.

Background

The Human Rights (Healthy Environment) Amendment Bill 2023 amends the *Human Rights Act 2004* (the Act) to include the right to a healthy environment in the ACT's human rights legislative framework. The Bill inserts a new section (section 27C) providing explicit statutory recognition that everyone has the right to a clean, healthy and sustainable environment.

By passing this Bill, the ACT will be the first Australian jurisdiction to enshrine the right to a healthy environment. However, the right to a healthy environment has been an emerging human right at an international level for some time, including recognition by resolution by the United Nations Human Rights Council on 8 October 2021 and United Nations General Assembly on 22 July 2022.

The right to a healthy environment has been defined by the Special Rapporteur on Human Rights and the Environment, which has been adopted by the Justice and Community Safety Directorate, as:

- Clean air
- A safe climate
- Access to safe water and adequate sanitation
- Healthy and sustainably produced food
- Non-toxic environments in which to live, work, study and play, and
- Healthy biodiversity and eco-systems

Unlike other human rights included in the Act, the Bill provides that acting incompatibly with this new right or failing to take it into account cannot be the basis of legal proceedings in the Supreme Court, a review pathway available to all other rights. The Bill also provides that the Minister must report on a review of the operation of the new right and exclusion from legal proceedings as soon as practicable after 5 years.

Consultation

Consultation was undertaken with the ACT Human Rights Commission and various non-government legal and human rights stakeholder groups. None of those consulted raised objections.

These amendments also drew from the extensive consultation undertaken as part of the Standing Committee on Justice and Community Safety's Inquiry into the Human Rights (Healthy Environment) Amendment Bill 2023.

CONSISTENCY WITH HUMAN RIGHTS

The proposed amendments to this Bill are anticipated to have an impact on human rights as they exist in legislation, and it is my view that they are consistent with the *Human Rights Act 2004*.

The amendments promote the rights in the Act, and the right to a healthy environment as proposed by the Bill, by removing from the Bill the exclusion of allegations of breaches of the right, following unsuccessful conciliation, to the Supreme Court. These amendments specifically engage and complement section 8(2) of the Act – 'Everyone has the right to enjoy their human rights without distinction or discrimination of any kind.' The non-justiciability creates a distinction whereby this right does not have legal avenues available to other rights in the Act, which diminishes its standing and limits the capacity for everyone to enjoy the right to a healthy environment without distinction, regardless of the clarification set out in the new section 40C(5B).

CLAUSE NOTES

Clause 1 – Omit clause 7

This clause opposes the existing clause 7 and omits proposed subsections 7(5A) and (5B) to remove the restriction to raise a breach of an obligation to provide a right to a healthy environment by a public authority to take action in the Supreme Court.

Clause 2 – New section 43

This clause substitutes a new section 43 which reduces the timeframe for the statutory review of the right to healthy environment.

The new section requires the Minister to review the operation of section 27C as soon as practicable after the end of its 3rd year of operation rather than the original 5 years after commencement.

The new section also institutes a 3 year timeframe on the Minister's presentation of the report of the review and reduces the expiration of this section from 6 years after the day it commences to 4 years.