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

HUMAN RIGHTS (HOUSING) AMENDMENT BILL 2025

EXPLANATORY STATEMENT

**Presented by
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HUMAN RIGHTS (HOUSING) AMENDMENT BILL 2025

This explanatory statement relates to the Human Rights (Housing) Amendment Bill 2025 as presented to the Legislative Assembly. 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.

The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

OVERVIEW OF THE BILL

The Human Rights (Housing) Amendment Bill 2025 (the Bill) amends the Human Rights Act 2004 (the Human Rights Act) to include the right to adequate housing in the ACT's human rights framework. The amendments insert a new section (section 27D) into Part 3A 'Economic, social and cultural rights' of the Human Rights Act providing explicit statutory recognition that everyone has the right to adequate housing.

By enshrining the right to adequate housing in the Human Rights Act 2004, the ACT will pioneer a human rights-based approach to housing in Australia. This reflects the reality that more people than ever are struggling to keep a roof over their heads. In Canberra, there are around 5000 people who can't afford a home on the public housing waiting list. Meanwhile, hundreds of essential workers are locked out of a rental market designed to prioritise profit over a place to sleep.

Fundamentally, the Bill will compel the Government to think differently about housing, reframing decisions about housing through the lens of social need rather than private profit.

By enshrining the right to adequate housing in legislation, current and future Governments must consider the right when making decisions. Incorporating the right to adequate housing will ensure that housing impacts are given proper consideration in the exercise of all public authority functions, including in the development of legislation, policy and decision-making. This will institutionalise greater understanding of human rights and housing considerations across Government, building and strengthening the ACT's human rights culture. As identified by the ACT Human Rights Commission in their 'Submission in response to the Greens Discussion Paper: Thinking Differently About Housing: Enshrining Housing as a Human Right; and Feedback on the circulation draft Human Rights (Housing) Amendment Bill 2024':

'the inclusion of the right to housing within the HR Act will be a strong tool for the purpose of ensuring the compliance of future legislation and policy with the right. Given existing frameworks and systems for ensuring human rights compatibility already exist, this is unlikely to be an onerous burden.'¹

¹ ACT Human Rights Commission, "Submission in response to the Greens Discussion Paper: Thinking Differently About Housing: Enshrining Housing as a Human Right; and Feedback on the circulation draft Human Rights (Housing) Amendment Bill 2024", [ACT Human Rights Commission](#), page 6 (ACT Human Rights submission)

Given many aspects of the right to housing are already protected under ACT law, “the right to adequate housing is not a great leap for the ACT, but it is a vital next step.”²

The impact of the Bill will be that the Government will need to consider housing as a human right in the following ways:

- The Attorney-General assesses and signs a compatibility statement to inform the Assembly that Government bills have been assessed for Human Rights Act consistency
- The Scrutiny of Bills Committee reports to the Assembly on Human Rights Act issues raised by Government and Private bills
- Considering the reasonable limits provision, which permits justifiable and proportionate limits on Human Rights Act rights
- Benchmarking the interpretation of rights, including any limits on rights, against international human rights standards
- Public authority obligations to act in a way that is compatible with human rights;
- and to consider human rights when making decisions.
- The Human Rights Commissioner has a mandate to review the impact of laws on human rights, monitor the operation of the Human Rights Act and provide human rights education
- Government annual reports and public authorities to report on the steps taken to implement the Human Rights Act.

Introducing the right is part of the ACT’s long-term commitment to protecting human rights and recognising the importance of housing in determining outcomes for human health and wellbeing. The right to housing is fundamental to the realisation of all other rights in the Human Rights Act. Without adequate housing, it would be very challenging to live a safe, healthy, fulfilling life and to reach one’s potential.

As the ACT Human Rights Commission has identified:

‘The right to housing is a fundamental prerequisite for the realisation of many of the human rights already protected by the HR Act. Without a safe, affordable and accessible home a range of other human rights are jeopardised: for people with disabilities, for people experiencing or escaping family and domestic violence, for children in situations of risk, for young people exiting foster care, for rehabilitation purposes, and in fact for the entire Canberran population – including those in crisis housing, student accommodation, renters and homeowners.’³

In this absence of this Bill, some housing rights would remain partially protected in ACT policy, strategy and legislation but there would not be an explicit protection of the right to adequate housing. For example, the *Residential Tenancies Act 1997* imposes obligations on landlords to provide premises which are fit for habitation, reasonably clean, in a reasonable state of repair and is reasonably secure and to maintain the property. By way of another example, the *Housing Assistance Act 2007* includes among its objects:

² Canberra Community Law, ‘Submission on the Draft Human Rights (Housing) Amendment Bill 2024 (ACT)’ [Home - Canberra Community Law](#), page 2

³ ACT Human Rights Commission submission, page 1.

- Maximising the opportunities for everyone in the ACT to have access to housing that is affordable, secure and appropriate to their needs and
- Facilitating the provision of housing assistance for those most in need.

While the measures outlined above provide some level of housing protection, they do not fundamentally give effect to the right to adequate housing.

Though the ACT framework protects housing rights to some extent, stakeholders who advocate for clients in housing distress consistently represent people who have slipped through its cracks. A right to adequate housing is consistent with the ACT's existing law and policy framework around housing. This Bill builds on this framework to offer more comprehensive protection.

As Canberra Community Law (CCL) identified in their 'Submission on the Draft Human Rights (Housing) Amendment Bill 2024 (ACT)':

'In the ACT, we have laws, regulations, and policies that establish housing services, and enshrine protections, entitlements, and standards that correspond with elements of the right to adequate housing. Some of these place prescriptive obligations on public authorities that are enforceable, and breaches of those obligations are sometimes compensable. For example, lessors have an obligation to provide habitable premises that are reasonably clean, in a reasonable state of repair, and reasonably secure.⁴ Tenants can seek compensation if lessors fail to comply. We also have laws, policies, and programs that address the normative aspects of the right to adequate housing...However, these protections only cover some elements of the right to adequate housing, they do not protect the right itself. The Human Rights Act 2004 offers some protections that apply to housing – for example, the right to not have one's home interfered with unlawfully or arbitrarily.⁵At CCL, we regularly use the Human Rights Act 2004 in our advocacy work. We find that human rights arguments can be powerful, but since there is no right to adequate housing, the protection is insufficient.'⁶

DOMESTIC LEGISLATION ON THE HUMAN RIGHT TO HOUSING

The right to an adequate standard of living, including rights to food, clothing and housing, is touched on indirectly in Australian law by a range of legislative measures and schemes, including food and clothing standards and safety legislation, taxation and residential tenancies laws. There is currently no Commonwealth Human Rights Act, however a Labor-led Parliamentary Joint Committee on Human Rights recently recommended the Commonwealth Government legislate a Human Rights Act.⁷ These recommendations are under consideration by the Federal Parliament. Bodies like Amnesty International are calling on the Commonwealth Government to legislate a Human Rights Act to protect all our human rights – including our right to housing.⁸ So is the Australian Human Rights Commission.⁹ The recent National Housing and Homelessness Plan Bill 2024 (Cth), which proposed recognising housing as a fundamental

⁴ See Residential Tenancies Act 1997 (ACT) sch 1 cl 54.

⁵ Section 12

⁶ [Home - Canberra Community Law](#), page 4

⁷ Inquiry into Australia's Human Rights Framework, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/Inquiry into Australia's Human Rights Framework.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000210/toc_pdf/Inquiry%20into%20Australia's%20Human%20Rights%20Framework.pdf)

⁸ Amnesty International, Human Rights Act, <https://www.amnesty.org.au/campaigns/human-rights-act/#:~:text=Australia%20is%20the%20only%20liberal%20democracy%20in%20the,basis%20of%20their%20age%2C%20sex%2C%20disability%2C%20or%20race>

⁹ Australian Human Rights Commission, A National Human Rights Act for Australia, <https://humanrights.gov.au/human-rights-act-for-australia>

human right, demonstrated the wide support across civil society and the housing industry for a human rights based response.¹⁰

Enshrining the right to adequate housing is consistent with growing international consensus and practice around the role and importance of housing protections, and understanding of adequate housing as a human right.

The right to adequate housing has been recognised by international law, and as such, Australia has an obligation under international law to protect the right to adequate housing. The right to housing is enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR), a treaty adopted by the United Nations General Assembly in 1966. As a party to this treaty since 1975, Australia has an obligation under Article 11 to take steps to realise the right to adequate housing. It sets out three components of an adequate standard of living: food, clothing and housing.

‘Adequate housing’ means more than just a right to shelter – it is a recognition that a house is a home and that a home is a fundamental prerequisite for the enjoyment of a range of other human rights. The 1991 CESCR General Comment No 46 has been central to the development and understanding of the right at international law, including the concept of adequacy: the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity.

Broadly, the right to adequate housing is viewed as a ‘right to live somewhere in security, peace and dignity.’¹¹ It has been interpreted to include several key elements:

- adequacy¹²,
- protection against forced evictions¹³,
- prohibition against discrimination¹⁴, and
- the provision of emergency housing for vulnerable groups.¹⁵

For housing to be considered adequate for the purposes of the right to adequate housing, these factors should be taken into account¹⁶:

¹⁰ Community Housing Industry Association, Homelessness Australia, and National Shelter, Submission No 54 to the Senate Economics Legislation Committee, Inquiry into the National Housing and Homelessness Plan Bill 2024 (No. 2) (9 August 2024) 4.

¹¹ Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (art 11), 6th sess, UN Doc E/1992/23 (13 December 1991), at [7] (‘General Comment No. 4’)

¹² General Comment No. 4 at [8]

¹³ Committee on Economic, Social and Cultural Rights, General Comment No. 7: The Right to Adequate Housing (art 11.1): Forced Evictions, 16th sess, UN Doc E/1988/22 (20 May 1997) at [3] (‘General Comment No. 7’)

¹⁴ General Comment No. 4 at [6]

¹⁵ The Australian National University’s Economic Social Cultural Rights Research Project Report (at ACTESCR_project_final_report.pdf) cites at page 177 for example, ‘Government of South Africa v Grootboom [2000] ZACC 19 where the government was held to have breached the right to housing because its policies had made no provision to facilitate access to emergency accommodation for people whose homes had been demolished. See also Port Elizabeth Municipality v. Various Occupiers [2004] ZACC 7, where the Court refused to order the eviction of people from undeveloped public lands because reasonable provision had not been made for alternative accommodation’

¹⁶ General Comment No 4.

- Legal security of tenure: Adequacy requires a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats;
- Availability of services and infrastructure: Adequacy requires the availability of certain essential facilities, including safe drinking water, heating and lighting, and sanitation;
- Affordability: Adequacy requires that housing costs do not threaten or compromise the satisfaction of other basic needs;
- Habitability: Adequacy requires sufficient space and protection from environmental, health and structural hazards;
- Accessibility: Adequacy requires that housing policies and laws must give priority to the ability of disadvantaged groups to access housing;
- Location: Adequacy requires that housing must be in a location which allows access to employment, healthcare, education and social facilities; and
- Cultural adequacy: Adequacy requires that housing construction, building materials and supporting policies must appropriately enable the expression of cultural identity and diversity of housing

The above factors are not intended to be an exhaustive list of examples which could assist in determining whether housing is adequate for the purposes of the Act. Rather, adequacy will need to be determined on a case-by-case basis, considering factors listed above but not limited to only those factors. The non-exhaustive factors listed above should guide the decision maker in determining whether housing is adequate for the purposes of the Human Rights Act 2004.

Given these factors are obligations sourced from the ICESCR, they must also apply to the ACT. The right to adequate housing in the Bill is aligned with the right as defined in international human rights law, and as such should be interpreted broadly and not be unnecessarily limited to ensure that it offers effective protection and creates real accountability.

For example, one stakeholder who works with people in precarious housing situations recommended adequacy include consideration of whether the housing contains essential facilities for health, security, comfort and nutrition (including safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site draining and emergency services).

The enshrining of a human right to adequate housing should be considered through the frame of this being a step forward in strengthening institutions, and the rights that are protected will expand step by step.

This broad, principled statement of a right to adequate housing will allow the right to evolve and develop consistently with international law. The interpretation of the scope and content the right will be informed by international human rights case law, commentary of the UN treaty bodies, and domestic jurisprudence.

The new right in the Bill will be included in Part 3A of the Human Rights Act. At international law, economic, social and cultural rights have aspects that are immediately realisable and aspects that are required to be progressively realised over time.

Progressively realisable aspects will require governments to take reasonable steps within available resources to achieve these rights, and not to take retrogressive steps. Progressively realisable aspects are generally those obligations that require ongoing investment to fulfil and can continue to be improved. The obligation of States to achieve progressively the full realisation of these rights by all appropriate means requires States to take deliberate, concrete

and targeted measures towards that goal, but States have some discretion in deciding which means are appropriate in light of available resources.¹⁷

Although progressive realisation requires States to take reasonable steps to the maximum of available resources, this concept recognises that States are required to determine the optimum use of their resources and to adopt policies and prioritise certain resource demands over others.¹⁸

The concept of progressive realisation recognises that governments have discretion to make difficult decisions about the allocation of finite resources across a range of priority areas, but seeks to ensure that progress towards fulfilling rights is ongoing and that backwards steps are not taken unless these can be reasonably justified. By way of example, this Bill should operate to guarantee that the ACT will not go backwards in terms of how much public and community housing dwellings there are in proportion to the population.

There is a degree of flexibility about the timeframe for fully realising economic, social and cultural rights. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights notes, however, that the obligation "to achieve progressively the full realization of the rights" requires States parties to move as expeditiously and effectively as possible towards the realisation of the rights.¹⁹

s 27D (2) lists immediately realisable aspects of the right to adequate housing. The list is non-exhaustive which means that other rights can also be considered immediately realisable. The rights that are identified as being immediately realisable include but are not limited to:

- “(a) everyone is entitled to enjoy this right without discrimination;
- (b) no-one may be unlawfully or arbitrarily evicted from their home;
- (c) no-one may have an essential utility service to their home unlawfully or arbitrarily withdrawn.”

The Bill makes it clear that the list of immediately realisable obligations are examples which will enable advocates and members of the public to use those examples in advocacy. The list does not narrow the immediately realisable features of the right.

It is the case that the right to adequate housing requires public authorities to refrain from forced evictions.²⁰ The government must also take reasonable measures to ensure that third parties, such as private landlords, do not carry out forced evictions. Forced eviction means ‘the permanent or temporary removal of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection’.²¹

¹⁷ Committee on Economic, Social and Cultural Rights, General Comment No. 3, Nature of State Parties’ Obligations, Article 2, Para 1 (14 December 1990).

¹⁸ See the Committee on Economic, Social and Cultural Rights Statement (2007) *An evaluation of the obligation to take steps to the ‘maximum available resources’ under an optional protocol to the Covenant*.

¹⁹ Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights. See also, Committee on Economic, Social and Cultural Rights, General Comment No. 3 (1990).

²⁰ General Comment No. 7 at [8]

²¹ General Comment No. 7 at [3]

The right to adequate housing must be implemented in accordance with the principles of equality and non-discrimination.²² As a minimum, housing policies and laws must refrain from directly or indirectly discriminating without reasonable justification, but positive measures may also be required to ensure equality in the effective enjoyment of housing rights.

As stated above, the immediately realisable elements of the right to adequate housing are not limited to only those set out in the Bill. For example, as well as those explicitly stated, access to emergency accommodation for vulnerable groups has also been found to be an immediately realisable aspect to the right.²³ The Government has an obligation to take steps forward to fulfill the right and not to regress. Indeed, because (a) and (b) could be considered substantially protected under ACT law, it should be easier for the Government to take the additional steps needed for fulfilment of the right.

CONSULTATION ON THE PROPOSED APPROACH

In 2024 during a consultation period before the Bill was drafted and released publicly for community feedback, the ACT Greens engaged with agencies including ACT Shelter, Better Renting, ACT Council of Social Services (ACTCOSS), ACT Human Rights Commission, and CCL. Stakeholders, including ACTCOSS, have long called on the ACT to enact a right to housing in alignment with international human rights frameworks.²⁴ Feedback was provided by ACTCOSS, the ACT Human Rights Commission, and CCL on the subsequent exposure draft.

A COST AND BENEFIT STATEMENT

The right to adequate housing does not mean that the government will be required to:

- Build housing for the entire population;
- Provide housing free of charge to all who request it;
- Fulfil all aspects of this right immediately;
- Either assume full responsibility itself or leave completely to the unregulated market to secure this right for all; or
- Implement this right in exactly the same way in all circumstances or locations.²⁵

Rather, adequate housing can be conceived of as an evolving principle of minimum standards and freedoms that that governments should progressively achieve in relation to the provision and management of housing. As with other rights in the Human Rights Act, the right to adequate housing is not absolute and can be subject to such limitations as are demonstrably justifiable in a free and democratic society.

CCL identified that inadequate housing has a great cost. They submitted:

Protecting the right to housing has economic and social benefits for the whole community, including reducing the burden on the healthcare system. The housing and homelessness crisis in the ACT comes at a bitter individual, social, and economic cost. Homelessness has been described by the UN Special Rapporteur on the right to adequate housing as ‘a profound assault

²² Committee on Economic, Social and Cultural Rights, General Comment No. 4: The Right to Adequate Housing (art 11), 6th sess, UN Doc E/1992/23 (13 December 1991), [6]

²³ See, eg, *Government of South Africa v Grootboom* [2000] ZACC 19.

²⁴ ACTCOSS, ‘Housing and Homeless 2024 Policy Brief’, <https://actcoss.org.au/publication/actcoss-and-act-shelter-housing-and-homelessness-election-platform-2024/>

²⁵ Miloon Kothari, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, UN Doc E/CN.4/2002/59(1 March 2002) [26]

on dignity, social inclusion and the right to life'.²⁶ It is a prima facie violation of the right to housing and contravenes other rights, such as the rights to life and to health.²⁷ Our clients tell us that having inadequate housing is frightening and dangerous. We consistently hear that inadequate housing exacerbates our clients' mental and physical health conditions and causes severe emotional and financial distress.²⁸

The ACT Human Rights Commission noted:

Given many of the immediately realisable aspects of the right to housing are already legislatively protected in the ACT, we do not foresee that the introduction of the right to adequate housing will significantly increase litigation or complaints to the Commission. It is our view that such action will largely overlap with what we are already seeing in this space. In addition, we foresee that the right will very likely be used for individual and systemic advocacy (rather than litigation) by the community and the broader non-profit sector.²⁹

The new right would require the Government to consider how to most effectively address the right as part of Budget deliberations. Public authorities are already required under section 40B of the Human Rights Act to give proper consideration to human rights when making decisions about resource allocation. Express consideration of the right to housing will provide a clearer framework to ground the Government's commitment to provide services in the area of housing, in the same way it is already called upon to do for health care, education and the environment. The ACT community is entitled to expect that public authorities respect their human rights, including economic, social and cultural rights, in the way in which public money is spent and resources are allocated.

Stable and secure housing is fundamentally important to health and wellbeing. The Centre for Research Excellence in Healthy Housing is investigating how housing affects health. Some of the Centre's research findings so far are set out below. The Centre has observed that:

- Each element of adequate housing has impacts on human health. This means that Australians without adequate housing risk harms to their health.³⁰
- There is evidence that people who are insecurely housed are more likely to make frequent hospital visits, often for health issues that could be more effectively managed in a primary care setting. The health risks faced by those without a safe and secure place to live are so severe that their life expectancy is, on average, 20-30 years shorter than those who are housed. While mental health episodes can lead to homelessness, the isolation and trauma of being homeless, especially when rough sleeping is involved, can also precipitate mental illness.³¹
- Conversely, safe, secure, affordable, and appropriate housing for everyone, benefits the community. There is strong evidence that reducing homelessness leads to significant health improvements and eases pressure on the healthcare system, particularly

²⁶ Guidelines for the Implementation of the Right to Adequate Housing, UN GA HRC, 43rd sess, Agenda Item 3, UN Docs A/ HRC/43/43 (26 December 2019), II.30

²⁷ Leilani Farha, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, UN GA HRC, UN Doc A/HRC/47/43Add.1 (28 April 2021), II.A.6

²⁸ Canberra Community Law, 'Submission on the Draft Human Rights (Housing) Amendment Bill 2024 (ACT)', [Home - Canberra Community Law](#), page 5

²⁹ ACT Human Rights Commission submission, page 6

³⁰ Centre of Research Excellence in Healthy Housing, Submission No 47 to Senate Standing Committees on Economics, Inquiry into the National Housing and Homelessness Plan Bill 2024 (No 2) 4

³¹ Ibid

benefiting First Nations people, women, and young people who face the highest risk of homelessness in Australia.

- Safe, secure, affordable, and appropriate housing not only improves individual health but also reduces health service costs by billions of dollars and boosts household productivity. Providing housing for people experiencing homelessness creates myriad cost benefits, mostly in reduced costs related to health and crime, and better employment and education outcomes. Housing that is affordable to low and moderate-income workers, and is well located relative to jobs, is also critical for the economy and for the functioning of key public services, including healthcare services.³²

Recent research in Wales modelled the impact of progressively realising the right to adequate housing over ten years. The findings suggest that realising the right to adequate housing in Wales would generate socio-economic benefits that significantly outweigh the costs of implementation.³³

As the ACT Wellbeing Framework identifies: “Access to secure, suitable, and affordable housing improves social inclusion, health, wealth, and welfare. It guards against future issues like climate change, economic changes, and health challenges.”³⁴

CONSISTENCY WITH HUMAN RIGHTS

Rights engaged

The Bill is consistent with Australia’s obligations under international law to protect the right to adequate housing, as enshrined in the ICESCR. The Bill is intended to build on the 1991 CESCR General Comment No 46 which has been central to the development and understanding of the right at international law, including the concept of adequacy: the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity.

The Bill promotes the rights in the Human Rights Act because adequate housing is critical to accessing the rights set out in the Human Rights Act. Without adequate housing, it is challenging to conceive of how the rights to equality, life, protection of the family and children, privacy, family and home, liberty and security of person, cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities, education and work, can be realised. Adequate housing is fundamental to contributing to and promoting human wellbeing.

The Bill specifically engages and promotes the following rights:

- Right to equality
- Right to life
- Protection of the family and children
- Right to privacy, family and home
- Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities
- Right to education
- Right to work

³² Ibid

³³ Alma Economics, The Right to Adequate Housing in Wales: Cost-Benefit Analysis (Report, September 2022).

³⁴ [Housing and home - ACT Wellbeing Framework](#)

Rights Promoted

The Bill promotes the rights in the Human Rights Act by recognising the right to adequate housing. The Bill promotes:

- The right to equality – The human rights implications of inadequate housing are felt most acutely by segments of the population that are already in vulnerable situations, including Indigenous peoples, children, older persons and persons with disabilities. The new section 27D(2)(a) states that everyone is entitled to enjoy the rights in section 27D without discrimination.
- The right to life - The human right to life is threatened without adequate housing. Homelessness has been described by the UN Special Rapporteur on the right to adequate housing as ‘a profound assault on dignity, social inclusion and the right to life’.³⁵ Homelessness is a prima facie violation of the right to housing and contravenes other rights, such as the rights to life and to health.³⁶ The right to life has been interpreted by the UN Human Rights Committee as meaning that States must take appropriate measures to address the general conditions in society that may give rise to threats to the right to life or prevent individuals from enjoying their right to life with dignity.³⁷ The right to life could also extend to incorporate a right to health which has been interpreted to include determinants of health such as access to food, safe drinking water, adequate sanitation, and a healthy environment.³⁸
- Protection of the family and children – The Human Rights Act recognises that the family is the natural and basic group unit of society and is entitled to be protected by society. Additionally, every child has the right to the protection needed by the child because of being a child, without distinction or discrimination of any kind. Children face risks from living without adequate housing, including physical and mental health harms, and are disadvantaged compared to other children who are ensconced in adequate housing.
- Right to privacy, family and home: The Human Rights Act 2004 offers some protections that apply to housing – for example, section 12 enshrines the right to not have one’s home interfered with unlawfully or arbitrarily. The Bill promotes this right by ensuring that no one may be unlawfully or arbitrarily evicted from their home, and that no-one may have an essential utility service to their home unlawfully or arbitrarily withdrawn.
- Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities – As set out above, the Committee on Economic, Social and Cultural Rights has determined that for housing to be considered adequate it must provide

³⁵ Guidelines for the Implementation of the Right to Adequate Housing, UN GA HRC, 43rd sess, Agenda Item 3, UN Docs A/ HRC/43/43 (26 December 2019), II.30

³⁶ Leilani Farha, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, UN GA HRC, UN Doc A/HRC/47/43Add.1 (28 April 2021), II.A.6.

³⁷ Human Rights Committee, General Comment No. 36, Article 6 (Right to Life) (3 September 2019).

³⁸ Committee on Economic, Social and Cultural Rights, General Comment No 14, Article 12 (Right to Highest Attainable Standard of Health) (11 August 2000).

amongst other factors, cultural adequacy. This requires that housing construction, building materials and supporting policies must appropriately enable the expression of cultural identity and diversity of housing. The Bill thus provides a right to housing that is culturally adequate. Advocates for people experiencing or at risk of homelessness observe that Aboriginal and Torres Strait Islander people, including Elders, experience race discrimination, overcrowding, and difficulty getting repairs and maintenance done in public, social and community housing properties in the ACT. First Nations people persistently face eviction from their homes and for members of the Stolen Generations and their families in particular, these experiences are profoundly traumatic, recalling Government policies of forced relocation. Advocates for First Nations Canberrans identify that other entrenched issues are housing affordability, public housing decisions being made without consideration for the role of informal carers supporting extended family members, and housing stock for larger public housing properties being located in the north of the ACT, while many support services for Aboriginal and Torres Strait Islander peoples are located in the south.

- Right to education and right to work – Being adequately housed gives an individual the opportunity to engage to the best of their capacity in education and employment.

CLAUSE NOTES

Clause 1 Name of Act

This clause provides that the name of the Act is the Human Rights (Housing) Amendment Act 2025.

Clause 2 Commencement

This clause provides that the Act will commence on 1 January 2026, or on the day after if it notified on the Legislation Register if it has not been passed and notified in time for January 2026.

Clause 3 Legislation amended

This clause provides that the Bill amends the Human Rights Act 2004.

Clause 4 New section 27D

This clause inserts a new section 27D into part 3A. Part 3A sets out economic, cultural and social rights, as distinct from Part 3 which enshrines civil and political rights. The three notes in Part 3A remain, so the reader has the following context for the new section 27D:

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.

This clause inserts a new section 27D, the right to housing, giving express recognition that everyone has the right to adequate housing. The right to adequate housing in section 27D is expressed in the same terms as in the ICESCR.

This broad, principled statement will allow the right to evolve and develop consistently with international law. It also means that the right as articulated already captures established international law principles and jurisprudence and can only expand from this point.

Section 27D (2) sets out three immediately realisable aspects of this right. Firstly, paragraph (a) states that everyone is entitled to enjoy this right without discrimination. This provides a general obligation that will require immediate action by the ACT Government on commencement of the Bill. The special relevance of this is that it is aimed at preventing the Government from purporting to progressively realise a right only by conferring its enjoyment on the “easier” groups. By way of example, the Government can not only do things that assist landowners in security of tenure and claim that as a step along progressive realisation.

It also reflects other ACT laws such as the Discrimination Act 1991 which protects discrimination on the ground of a number of attributes, including race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth, disability or other status.

Secondly, section 27D (2) (b) states that no-one may be unlawfully or arbitrarily evicted from their home. This is an immediately realisable right. Finally, section 27D(2)(c) states no-one may have an essential utility service to their home unlawfully or arbitrarily withdrawn.

Clause 5 New section 44

Clause 5 inserts a new section, section 44, which compels the Minister to review the operation of the right to housing. The Minister must present a report of the review to the Legislative Assembly as soon as practicable after the end of 5 years after the day this section commences. Such a review will provide an opportunity for the ACT Government to consider whether the section should be expanded or clarified, and should involve public consultation including with First Nations people and marginalised groups. This section expires 6 years after the day it commences.

Clause 6 ICESCR source of human rights Schedule 2, new item 3

This clause inserts a new item into Schedule 2. Schedule 2 sets out the ICESCR source of human rights. This new item is section 27D, described as the right to housing, as set out in ICESCR article 11(1). Schedule 2 refers the reader to Part 3A, which contains the economic, cultural and social rights (rights to education, work and work-related, healthy environment, and now housing).