

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*

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

- 1 **1 Name of Act**
- 2 This Act is the *Human Rights (Healthy Environment) Amendment Act*
- 3 2023.
- 4 **2 Commencement**
- 5 This Act commences on a day fixed by the Minister by written notice.
- 6 *Note 1* The naming and commencement provisions automatically commence on
- 7 the notification day (see [Legislation Act](#), s 75 (1)).
- 8 *Note 2* A single day or time may be fixed, or different days or times may be
- 9 fixed, for the commencement of different provisions (see [Legislation Act](#),
- 10 s 77 (1)).
- 11 *Note 3* If a provision has not commenced within 6 months beginning on the
- 12 notification day, it automatically commences on the first day after that
- 13 period (see [Legislation Act](#), s 79).
- 14 **3 Legislation amended**
- 15 This Act amends the *Human Rights Act 2004*.
- 16 **4 Economic, social and cultural rights**
- 17 **Part 3A heading, note**
- 18 *substitute*
- 19 *Note 1* The primary sources of these rights are the International Covenant on
- 20 Economic, Social and Cultural Rights and the United Nations General
- 21 Assembly, *The human right to a clean, healthy and sustainable*
- 22 *environment*, A/RES/76/300 (28 July 2022).
- 23 *Note 2* Some aspects of economic, social and cultural rights are considered at
- 24 international law to be subject to an obligation of progressive realisation.
- 25 *Note 3* An international law relevant to interpreting progressively realisable
- 26 rights is Article 8 (4) of the Optional Protocol to the International
- 27 Covenant on Economic, Social and Cultural Rights. That article provides
- 28 for consideration of the reasonableness of steps taken to progressively
- 29 realise rights and notes that a range of possible policy measures for the
- 30 implementation of rights may be adopted.

1 **5 Right to work and other work-related rights**
2 **Section 27B, notes 2 and 3**

3 *omit*

4 **6 New section 27C**

5 *in part 3A, insert*

6 **27C Right to a healthy environment**

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

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

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

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

14 **7 Legal proceedings in relation to public authority actions**
15 **New section 40C (5A) and (5B)**

16 *insert*

17 (5A) This section does not apply to a claim that a public authority has acted
18 in contravention of section 40B if the contravention claimed is—

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

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

1 (5B) To remove any doubt, subsection (5A) does not prevent a person
2 making a claim in relation to another human right, even if the subject
3 matter of the claim or part of the claim is the same, similar or related
4 to the subject matter of a claim to which subsection (5A) applies.

5 **Example**

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

10 **8 New section 43**

11 *insert*

12 **43 Review of right to healthy environment**

- 13 (1) The Minister must review the operation of the following provisions:
14 (a) section 27C (Right to a healthy environment);
15 (b) section 40C (5A) and (5B).
16 (2) The Minister must present a report of the review to the Legislative
17 Assembly as soon as practicable 5 years after this section commences.
18 (3) This section expires 6 years after the day it commences.

19 **9 ICESCR source of human rights**
20 **Schedule 2, new note**

21 *insert*

22 *Note 2* The primary source of the right in s 27C is the United Nations General
23 Assembly, *The human right to a clean, healthy and sustainable*
24 *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](#) on 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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