

2012

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

GOVERNMENT AMENDMENT: HUMAN RIGHTS AMENDMENT BILL 2012

SUPPLEMENTARY EXPLANATORY STATEMENT

Presented by the
Attorney-General
Mr Simon Corbell MLA

Human Rights Amendment Bill 2012

Overview of Government Amendment

The Human Rights Amendment Bill 2012 amends the *Human Rights Act 2004*.

The amendments in the original Bill gave effect to the government's responses to the report on *The Human Rights Act 2004 (ACT): the first five years of operation*, and the *ACT Economic, Social and Cultural Rights Research Project Report*.

The Government amendment clarifies the scope of that immediately realisable aspect of the right as set out in section 27A(3)(b). The amendment is consistent with article 13 of the International Covenant on Economic, Social and Cultural Rights.

Notes

Amendment 1 Section 27A(3)(b)

The Standing Committee on Justice and Community Safety (in its capacity as a scrutiny of bills committee) submitted Scrutiny Report 51 on 26 April 2012. In the report the Committee noted that the current wording of the section could be read in such a way as to impose an excessive obligation on the government. The Committee is of the view that the clause implied that the government has a commitment to provide free primary government education that conforms to the religious and moral convictions of a child's parent or guardian.

The Committee noted that the section was worded differently to the corresponding article 13 in the International Covenant on Economic, Social and Cultural Rights. In response to this, the government has amended the section to more closely resemble article 13, qualifying the obligation on public authorities regarding the provision of government education.

The intention of the section is to reflect the right of a parent or guardian to choose schooling, other than public schooling, for their child in line with their religious and moral convictions, provided this education meets the same standards as the rest of the educational system.

The right extends to the right of parents and guardians to set up their own educational institutions, which comply with minimum standards, or to choose private schooling that provides education in line with their moral or religious convictions. This aspect of the right to education, as set out in this section, does not mean that government schools must provide education for a child that meets the religious and moral beliefs of their parents.

Additional information

The Standing Committee on Justice and Community Safety (in its capacity as a scrutiny of bills committee) also suggested that it would be useful to clarify the duty of immediate realisation and obligations subject to progressive realisation.

The right to education as set out in the bill reflects article 13 in the International Covenant of Economic, Social and Cultural Rights (ICESCR) with respect to immediately realisable aspects only. Progressive realisation aspects of the right are excluded.

The concept of immediate realisation refers to those aspects of an economic, social and cultural right that are capable of immediate implementation. In terms of the right to education obligations with immediate effect require government to ensure that, as a minimum, essential levels of the right to education are enjoyed without discrimination, and to start to take steps towards ensuring the full enjoyment of that right.

Obligations that may be progressively realised with the use of available resources are subject to greater governmental discretion, although action must still be taken as expeditiously and effectively as possible.¹ Progressive realisation can be explained as a ‘necessary flexibility device, reflecting the realities of the real world’.²

All obligations are subject to the government’s available resources and a test of reasonableness. Available resources include both financial and human resources, in addition to considerations such as general financial trends.

¹Committee on Economic, Social and Cultural Rights, ‘Implementation of the International Covenant on Economic, Social and Cultural Rights (General Comment No. 13) Twenty-first session (15 November-3 December 1999), para 44.

² Ibid, para 9.