



# Environmental Defenders Office

## Right to a Healthy Environment in the ACT

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*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.*

*This factsheet was last updated on 9 October 2025.*

### Overview

On 28 August 2024, the Australian Capital Territory enshrined the right to a healthy environment in the *Human Rights Act 2004* (ACT) (**HR Act**).

This factsheet provides information about:

1. [What is the right to a healthy environment?](#)
2. [Recognition of the right to a healthy environment in the ACT.](#)
3. [Legislating human rights in the ACT.](#)
4. [Enforcing the right to a healthy environment.](#)

### Key Takeaways

- Legislating the right to a healthy environment recognises that access to a clean, healthy and sustainable environment is a human right.
- The United Nations General Assembly, of which Australia is a Member State, formally recognised the human right to a healthy environment in July 2022.
- Australia voted in favour of this resolution; however, ACT is the first Australian jurisdiction to legislate the right to a healthy environment.
- Complaints about contraventions of human rights, including the right to a healthy environment can be lodged with the ACT Human Rights Commission.
- Legal proceedings cannot be commenced for a contravention of the right to a healthy environment by a public authority until after **1 October 2028**, unless another human right already enshrined under the *Human Rights Act 2004* (ACT) is also infringed by the conduct.
- The ACT Minister for Human Rights is required to review the operation of the new right to a healthy environment by **1 October 2027**, and present a report on this review to the Legislative Assembly.

## What is the right to a healthy environment?

The right to a healthy environment, as enshrined by the *Human Rights Act 2004* (ACT) (**HR Act**) recognises that a clean, healthy and sustainable environment is necessary for the full enjoyment of a vast range of fundamental human rights, including the rights to life, health, food, and water.<sup>1</sup>

Society is beginning to acknowledge the impact that the environmental triple threat of climate change, pollution and loss of biodiversity is having on humanity. The 2021 State of the Environment Report stated that environmental degradation is ‘...a threat to humanity, which could bring about societal collapses with long-lasting and severe consequences.’<sup>2</sup>

The right to a healthy environment recognises that the state of the environment can infringe upon other human rights.

The United Nations Special Rapporteur on the human right to a healthy environment identified six substantive elements of this right, comprising:

1. clean air;
2. a safe climate;
3. access to safe water and adequate sanitation;
4. healthy and sustainably produced food;
5. non-toxic environment in which to live, work, study and play; and
6. healthy biodiversity and ecosystems.<sup>3</sup>

Read: Information published by the United Nations Special Rapporteur on the human right to a healthy environment is available [here](#). A ‘User’s Guide’ on the right is available [here](#).

The UN [Framework Principles](#) on human rights and the environment (**Framework Principles**) set out the obligations relating to this human right.

The Framework Principles set out the Member States’ obligations in relation to each of the elements of the right to a healthy environment. The Framework Principles incorporate procedural elements for Member States, including:

- protecting the right to hold peaceful protests in relation to environmental matters;
- providing public education and improving awareness of environmental matters;
- providing public access to information relating to environmental matters;
- undertaking proper assessment of environmental impacts and providing for public involvement in decision-making processes relating to environmental matters;
- ensuring effective enforcement action and providing access to remedies for breaches of human rights or environmental laws;
- improving international relations to tackle global environmental matters.

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<sup>1</sup> Explanatory Statement, *Human Rights (Healthy Environment) Amendment Bill 2023* (ACT) 2.

<sup>2</sup> Australia State of the Environment 2021 Report, available [here](#).

<sup>3</sup> David R. Boyd, Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, *The Right to a Healthy Environment: A User’s Guide* (Report, 2024), 7 (available [here](#)).

## Recognition of the right to a healthy environment in the ACT

### Recognition by the United Nations

The right to a healthy environment was first recognised internationally at the first global environmental conference in Stockholm, held by the United Nations (**UN**) in 1972.

The 1972 Stockholm Declaration on the Human Environment first acknowledged that human rights incorporate a healthy, liveable environment, stating:<sup>4</sup>

*The fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing.*

Since 1972, this principle has been incorporated by various countries in differing capacities. Eventually, in 2022, the UN General Assembly passed a resolution reaffirming that the right to a healthy environment is a human right.<sup>5</sup> Australia voted in favour of this resolution, however, ACT is the only jurisdiction to legislate this right.

### ACT legislates the Right to a Healthy Environment

On 28 August 2024, the ACT Legislative Assembly passed the *Human Rights (Healthy Environment) Amendment Bill 2024* (**Bill**). Once passed, the Bill became the *Human Rights (Healthy Environment) Amendment Act 2024* (ACT) (**Amendment Act**), which commenced on 17 March 2025.

The Amendment Act amended the HR Act to incorporate the right to a healthy environment, as follows:

#### 27C Right to a healthy environment

- (1) Everyone has the right to a clean, healthy and sustainable environment.
- (2) Everyone is entitled to enjoy this right without discrimination.

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

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

The amendments to the HR Act also include provisions relating to the operation of this right, including:

- Section 43, which requires the Minister for Human Rights to commence a review of the operation of the legislative amendments made under the Amendment Act prior to 1 October 2027 and present a report on this review to the Legislative Assembly.
- Section 40C(8), which provides that legal proceedings cannot be commenced in relation to a claim that a public authority has contravened the right to a healthy environment. Section 40C(9) clarifies that this, however, does not limit someone from commencing proceedings in relation to contraventions of other human rights

<sup>4</sup> Information about the Stockholm Declaration is available [here](#).

<sup>5</sup> The resolution passed by the UN is available [here](#). More information about the resolution is available [here](#).

that may also affect their right to a healthy environment. This restriction on legal proceedings expires on 1 October 2028.<sup>6</sup> This is further discussed [below](#).

- Adding further notes in Part 3A which relate to economic, social and cultural rights.

Read: The Presentation Speech and Explanatory Statements for the Amendment Bill are available [here](#) and explain the purpose of legislating the right to a healthy environment.

## Legislated human rights in the ACT

The HR Act enshrines civil, political, economic, social and cultural rights to establish and protect human rights in the ACT. There are several rights that complement and correspond with the right to a healthy environment, including:

- recognition and equality before the law;<sup>7</sup>
- right to life;<sup>8</sup>
- protection of the family and children;<sup>9</sup>
- privacy and reputation;<sup>10</sup>
- peaceful assembly and freedom of association;<sup>11</sup> and
- cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities.<sup>12</sup>

For example, a decision by a public official in relation to the pollution of water resources containing drinking water reserves may constitute a breach of the right to life, while also incorporating the right to a healthy environment, which includes access to safe water.

### Limitations on Human Rights

Section 28 of the HR Act provides for the ‘reasonable’ limitation of human rights by laws that can be ‘*demonstrably justified in a free and democratic society*.’ When determining what a reasonable limitation on human rights may be, consideration must be given to:<sup>13</sup>

- the nature of the right that will be limited;
- the reason for and extent of the proposed limitation;
- whether other less restrictive means can be used to achieve the purpose that the proposed limitation is designed to achieve.

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<sup>6</sup> HR Act s40C(10).

<sup>7</sup> HR Act s 8.

<sup>8</sup> HR Act s 9.

<sup>9</sup> HR Act s 11.

<sup>10</sup> HR Act s 12.

<sup>11</sup> HR Act s 15.

<sup>12</sup> HR Act s 27.

<sup>13</sup> HR Act s 28(2).

## Compatibility of Territory Laws with Human Rights

The ACT Attorney-General must review government Bills presented to the ACT Legislative Assembly and prepare a compatibility statement outlining whether, in their opinion, the proposed Bill is compatible with human rights.<sup>14</sup>

Territory laws should be interpreted in a way that is compatible with human rights.<sup>15</sup> In proceedings where an issue arises about whether a Territory law is compatible with a human right, and if the Supreme Court is satisfied that a Territory law is not compatible with an enshrined human right, the Court can issue a 'declaration of incompatibility'.<sup>16</sup> The Attorney-General must then provide the declaration to the Legislative Assembly and prepare a written response to the declaration, which is also to be provided to the Legislative Assembly.<sup>17</sup>

These compatibility statements are an important accountability mechanism to ensure that the Government acts in response to the Court's declaration of invalidity. For instance, in 2022, the ACT Supreme Court issued a declaration that limitations imposed on a prisoner's access to open air and exercise were incompatible with the prisoner's human rights.<sup>18</sup> This resulted in an update to the prison's operating procedure to allow for access to open air and exercise.<sup>19</sup>

Read: The ACT Human Rights Commission provides more information about human rights in the ACT [here](#).

## **Enforcing the right to a healthy environment**

Public officials in the ACT, such as Ministers, public employees, policy officers and Territory authorities are legally obligated to:<sup>20</sup>

- act compatibly with human rights; and
- give due consideration to a relevant human right when making a decision.

The HR Act creates legal obligations for ACT public officials to act compatibly with human rights. Other private individuals or businesses will not be liable for alleged breaches of human rights under the HR Act.<sup>21</sup>

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<sup>14</sup> HR Act s 37.

<sup>15</sup> HR Act s 30.

<sup>16</sup> HR Act s 32.

<sup>17</sup> HR Act s 33.

<sup>18</sup> *Davidson v Director-General, Justice and Community Safety Directorate* [2022] ACTSC 83. See also the Human Rights Law Centre summary of the decision [here](#).

<sup>19</sup> Shane Rattenbury, Declaration of Incompatibility - *Davidson v Director-General, Justice and Community Safety Directorate* (Tabling Statement, December 2022), available [here](#).

<sup>20</sup> HR Act s 40B.

<sup>21</sup> HR Act s 40B.

## Complaints to the ACT Human Rights Commission

If you believe that a public authority has acted incompatibly, or failed to give proper consideration to your human rights when making a decision, you can [lodge a complaint with the ACT Human Rights Commission](#) (ACT HRC).

The ACT HRC can investigate the complaint and may conduct a conciliation where you and the public authority discuss the issue. This is a confidential process designed to attempt to resolve the complaint and reach agreement. You may be represented by a lawyer or advocate during the conciliation process.

Where a complaint cannot be resolved during the conciliation process, the ACT HRC will handle the complaint. Where the complaint relates to discrimination, the complainant can decide if they want the ACT HRC to refer the complaint to the ACT Civil and Administrative Tribunal to make a determination as to whether discrimination has occurred.

Read: Information about making a complaint to the ACT Human Rights Commission is available [here](#) and resources are available [here](#).

## Legal Enforcement in the ACT Supreme Court

Under the HR Act, a person can commence proceedings in the Supreme Court if they believe their human rights have been contravened by a public authority.<sup>22</sup>

Importantly though, legal proceedings cannot be commenced regarding a claim that a public authority has contravened the right to a healthy environment.<sup>23</sup> This limitation on the legal enforcement of the right to a healthy environment will no longer apply after **1 October 2028**.

While the limitation is in force, it does not limit commencing proceedings for breach of another human right that also affects the right to a healthy environment.

N.B. A public authority acting incompatibly with the right to a healthy environment, or failing to take it into account, cannot be the basis of legal proceedings in the ACT Supreme Court unless the conduct infringes another human right, until after **1 October 2028**.<sup>24</sup>

For example, a person may commence proceedings in relation to a breach of the right to life that also incorporates a breach of the right to a healthy environment, such as exposure to life-threatening pollution.

Visit: If you have questions about the right to a healthy environment, please make an application for assistance: <https://www.edo.org.au/free-legal-advice/>

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<sup>22</sup> HR Act s 40C.

<sup>23</sup> HR Act 40C(8).

<sup>24</sup> Supplementary Explanatory Statement, *Human Rights (Healthy Environment) Amendment Bill 2023* (ACT). See inserted ss 40C(5A), (5B) and (8).

When the restriction on proceedings is removed, a Supreme Court claim could be heard in respect of a contravention of the right to a healthy environment.

## Glossary and further reading

### Glossary

**Framework Principles** are a series of principles established by the Special Rapporteur for human rights to set out Member States' obligations for human rights.

**Human rights** are a collection of individual rights that have been recognised under the HR Act arising from a range of domestic or international conventions that Australia is a signatory to, such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

**Legislative Assembly** means the Legislative Assembly for the Australian Capital Territory. This is the one house of Parliament for the ACT and is responsible for (among other things) passing, amending and repealing ACT (Territory) laws.

**Member State** (also referred to as 'State') is a member of the United Nations General Assembly. There are 193 Member States, including Australia, and each has one vote.

**Public authority** is an administrative unit, territory authority, territory instrumentality, Minister, police officer (when exercising a function under a Territory law), public employee or entity whose functions are or include functions of a public nature when the entity is exercising those functions for the Territory or a public authority. However, the Legislative Assembly and the Court are not public authorities in their administrative capacity.<sup>25</sup>

**Right to a Healthy Environment** (RTHE) is the right to a healthy, clean, safe and sustainable environment that is legislated in the ACT.

**United Nations Special Rapporteur** is an independent human rights expert who is called upon to examine, provide advice on, report on, or monitor human rights matters under a mandate.

### Further reading

EDO has published various resources relating to the right to a healthy environment, available on our website: [www.edo.org.au](http://www.edo.org.au)

- [Legal Analysis](#): The right to a healthy environment in Australia (2020)
- [Publication](#): "Bold action" required following recognition of the human right to a healthy environment (2021)
- [Publication](#): Australia must support UN General Assembly resolution recognising the right to a healthy environment (2022)
- [Report](#): A healthy environment is a human right (2022)
- [Submission](#): EDO letter and submission to the Special Rapporteur on human rights and the environment (2023)
- [Publication](#): Passage of landmark healthy environment bill sets standard for Australia and abroad (2024)

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<sup>25</sup> HR Act s 40.

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