

27 January 2020

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ACT Legislative Assembly
196 London Circuit
CANBERRA ACT 2601

By email: LACommitteeJCS@parliament.act.gov.au

Dear Guila Jones MLA,

RE: Human Rights (Workers Rights) Amendment Bill 2019

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to provide this submission to the Standing Committee on Justice and Community Safety's public inquiry into the Human Rights (Workers Rights) Amendment Bill 2019 (the Bill)

We commend the provision of explanatory material accompanying the exposure draft Bill that has been released for public consultation, and provide the short submission below.

ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Introduction

The Bill before the Committee seeks to include a new section 27B into 'Right to work' in Part 3A 'Economic, social and cultural rights' of the Human Rights Act (the Act). The Explanatory Memorandum identifies the Bill's objective to recognise workers' rights as enshrined in the International Covenant On Economic, Social and Cultural Rights ('ICESCR').

ALHR has long supported the inclusion of economic, social and cultural rights (ESC Rights) in the Act. We commend the Bill for expressly recognising workers' rights, and we support the inclusion of section 27B. However, we endorse the concerns raised by the ACT Human Rights Commission in their submission of 26 November 2019¹ regarding the prioritisation of workers' rights over other economic, social and cultural rights.

¹ Human Rights Commission submission to the Workers Rights Amendment Bill 2019, available at: <https://hrc.act.gov.au/wp-content/uploads/2019/11/HRC-comments-Human-Rights-Workers-Rights-Amendment-Bill-2019-PMB.pdf>

Economic, social and cultural rights

The 'Australian Capital Territory, Social and Cultural Rights Research Project' (**the Research Project**), referenced in the Bill's Explanatory Memorandum, concluded that the inclusion of ESC Rights in the Act is "desirable and feasible".²

ALHR shares this view, and we reiterate our position that these rights should be treated as equal and indivisible. The real-world protections offered by the proposed section 27B are limited if not accompanied with protections for associated rights which enable people to work - for example, a right to adequate housing.

We endorse the recommendations of the Research Project which call for amendments to the Act to enshrine ESC Rights. Specifically, Recommendation 2 states:

The ESCR [ESC Rights] to be included in the HRA should be based on those rights protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR). These include the following rights:

- the right to housing
- the right to health, including food, water, social security and a healthy environment;
- the right to education;
- the right to work, including the right to enjoy just and favourable work conditions and the right to form and join work-related organisations; and
- the right to take part in cultural life.

While it is our position that all ESC Rights should be included in the Act; we endorse the recommendation of the ACT Human Rights Commission that, if an incremental approach is to be taken to amending the Act, the Bill should be amended to include a review, for example. after two years, to assess the effectiveness of the reforms and what further action is required to protect the human rights of ACT residents..

Other matters

We note that in the 'Matters for Consideration by the Committee' specific reference is made to jurisdictional concerns and the extent of Commonwealth responsibility for industrial relations under the *Fair Work Act 2009* and possible overlap between core labour standards contained in ILO conventions and rights guaranteed under the ICESCR.

It is our position that there is no compelling reason not to enshrine the proposed human rights protections within the Act given the number of workplace issues which fall within the jurisdiction of the ACT. We further note that the issue of overlapping jurisdictions arises in a number of areas of law, for example in anti-discrimination legislation.

Further, as a matter of consistency, in ALHR's view the best expression of protected human rights is derived from the ICESCR, not ILO conventions

² ACT ESCR Research Report, available at: http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Final_Report_of_the_ACT_ESCR_Research_Project.pdf

Complaints Mechanism

As the Committee has sought comment on amendments to the Act, we take this opportunity to reiterate our position for the inclusion of an accessible complaints mechanism in the Act.

ALHR strongly recommends the inclusion of an accessible complaints mechanism in the Act to provide individuals with a meaningful way to enforce their human rights. It is our position that the ACT Human Rights Commission would be the appropriate body to receive and conciliate complaints of human rights violations, with the capacity for matters to be referred to the ACT Civil and Administrative Tribunal for determination.

We thank the Committee for the opportunity to provide comment on the Bill. If you would like to discuss any aspect of this submission, please email me at: president@alhr.org.au

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Kerry Weste', is placed over a light blue rectangular background.

Kerry Weste

President, Australian Lawyers for Human Rights

Contributors

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