



Submission:

**Inquiry into Human Rights (Workers Rights)
Bill 2019**

January 2020

About ACTCOSS

ACTCOSS acknowledges Canberra has been built on the land of the Ngunnawal people. We pay respects to their Elders and recognise the strength and resilience of Aboriginal and Torres Strait Islander peoples. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) advocates for social justice in the ACT and represents not-for-profit community organisations.

ACTCOSS is a member of the nationwide COSS Network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS's vision is for Canberra to be a just, safe and sustainable community in which everyone has the opportunity for self-determination and a fair share of resources and services.

The membership of the Council includes the majority of community-based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

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Introduction

The ACT Council of Social Service (ACTCOSS) is proud of the ACT's commitment to be a human rights jurisdiction. In 2004, the ACT was the first Australian jurisdiction to develop a Human Rights Act, and ACTCOSS strongly supported this work.

This inquiry asks us to respond to Ms Bec Cody MLA's proposed Bill, Human Rights (Workers Rights) Amendment Bill 2019 (the Bill) to amend the *ACT Human Rights Act (2004)* (the Act) to include the 'right to work'. The Bill recognises that workers' rights are currently not included in the Act, despite being explicitly outlined in the International Covenant on Economic, Social and Cultural Rights. Workers' rights include a right to work, just and favourable work conditions and the entitlement to enjoy these rights without discrimination. The right to work would be included in the current 'Economic, Social and Cultural rights' (ESC Rights) section of the Act.

ACTCOSS believes that the Act should be amended to explicitly include all ESC Rights, including the right to housing, physical and mental health, work, and culture. We agree with the proposal to include workers' rights in the Human Rights Act, however, we would like to see a more comprehensive approach to secure ESC rights in the ACT jurisdiction. We note that the inclusion of workers' rights would add onto the previous inclusion of the right to education. This demonstrates a clear appetite for ESC Rights in the Act, and ACTCOSS believes the ACT Government should commit to the explicit and full inclusion of all ESC Rights.

According to the Universal Declaration of Human Rights (UDHR), 'all human rights are universal, indivisible, interdependent and interrelated'. Just as workers' rights are not divisible from civil and political rights, there are a range of conditions that are necessary to living a full life with dignity and freedom. Workers' rights should not be implemented separately because ESC Rights themselves are interconnected; for example, how does one safeguard an individual's right to physical and mental health if they are homeless with an inadequate standard of living? Safeguarding all ESC Rights in the ACT will establish a robust human rights framework that recognises the interrelated nature of Economic, Social, Cultural, civil and political rights.

Economic, Social and Cultural rights in the ACT

ACTCOSS's work has consistently highlighted that there are a variety of ESC Rights in the ACT that need to be explicitly safeguarded. Our advocacy on hidden disadvantage has noted that policy in the ACT must consider the Canberrans whose disadvantage is masked by high averages and a picture of Canberra as an affluent city. ACTCOSS contends that by including ESC Rights in the Human Rights Act, those experiencing disadvantage in the ACT will be better protected against inequitable policy and unjust actions.

The International Covenant on Economic, Social and Cultural Rights recognises the right to:

- Work, including technical and vocational guidance and training programmes, policies and techniques to achieve steady Economic, Social and Cultural development and full and productive employment
- Just and favourable work conditions, including fair wages and safe working conditions
- Union membership
- The family, and non-coercive marriage
- An adequate standard of living, including food security
- The highest attainable standard of physical and mental health, and safety via environmental and industrial hygiene, emergency healthcare, and preventable disease
- Education that is available, accessible and free
- Participation in cultural life.

In 2011, ACTCOSS published the report *Whose Rights? Strengthening Human Rights for Aboriginal and Torres Strait Islander Peoples in the ACT*¹. A key recommendation was to include ESC Rights in the Act, as a means of orienting the legal system to respond to current gaps in human rights protection. We noted:

In June 2009, the UN Committee on Economic, Social and Cultural Rights issued its concluding observations on Australia's compliance with ICESCR. The committee expressed concerns at the high unemployment rate among Aboriginal and/or Torres Strait Islander peoples in Australia and recommended special programs and measures be designed to address the barriers to the right to work. The Committee also expressed concern at the high incidence of homelessness, the continuing levels of ill-health among Aboriginal and/or Torres Strait Islander peoples and insufficient support for Aboriginal and/or Torres Strait Islander peoples experiencing mental health problems. Inclusion of economic, social and cultural rights provides a coherent normative system to support the needs of the whole human being².

ACTCOSS has often used a human rights framework to highlight the need for action on disadvantage, poverty, and social exclusion. But without the inclusion of ESC Rights, civil and political rights may not be fully realised. The United Nations Office of the High Commissioner for Human Rights notes that 'the

1 ACT Council of Social Service, *Whose Rights? Strengthening Human Rights for Aboriginal and Torres Strait Islander Peoples in the ACT*, ACTCOSS, 2011, accessed 27 January 2020, available at <<https://www.actcoss.org.au/sites/default/files/public/publications/2011-report-whose-rights-strengthening-human-rights-for-aboriginal-torres-strait-islander-peoples-in-act.pdf>>.

2 *ibid.*

enjoyment of all human rights is interlinked³. This was also expressed in the ACT Human Rights Commission report, *Look Who's Talking*, which stated that a combined approach to human rights, rather than one that isolates ESC Rights, is the superior approach⁴.

As a proud human rights jurisdiction, ACTCOSS therefore asks the Standing Committee to recommend that the *ACT Human Rights Act (2004)* be amended to include the full suite of ESC Rights.

Recommendations

- Comprehensively include Economic, Social and Cultural Rights in the *ACT Human Rights Act (2004)*.
- Engage the community sector and the ACT Human Rights Commission to deliver education on the inclusion of ESC Rights in the Act. This could be delivered using the existing ACTCOSS and ACT Human Rights Commission interactive workshop model, which has had success reaching community sector workers and employers on compliance with the existing Act. Future work could usefully expand the workshops to wider segments of the ACT population.

3 Office of the High Commissioner for Human Rights, *Key concepts on ESCRs*, OHCHR, 2020, accessed 22 January 2020, available at <<https://www.ohchr.org/EN/Issues/ESCR/Pages/AreESCRfundamentallydifferentfromcivilandpoliticalrights.aspx>>.

4 ACT Human Rights Commission, *Look Who's Talking*, ACT Human Rights Commission, Canberra, 2014, p. 27, available at <<https://hrc.act.gov.au/wp-content/uploads/2015/03/HRA-10-yr-snapshot-HRDC-webversion.pdf>>.