



**CONSERVATION
COUNCIL** ACT REGION

Submission to Justice and Community Safety Directorate: Right to a Healthy Environment in the ACT

August 2022

The Conservation Council ACT Region is the peak non-government environment organisation for the Canberra region. Since 1981, we have spoken up for a healthy environment and a sustainable future for our region. We harness the collective energy, expertise and experience of our more than 40 member groups to promote sound policy and action on the environment.

We campaign for a safe climate, to protect biodiversity in our urban and natural areas, to protect and enhance our waterways, reduce waste, and promote sustainable transport and planning for our city. Working in the ACT and region to influence governments and build widespread support within the community and business, we put forward evidence-based solutions and innovative ideas for how we can live sustainably.

At a time when we need to reimagine a better future, we understand that the changes we need will only happen with the collective support of our community.

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Introduction

As the world faces a triple planetary crisis of climate change, biodiversity loss, and pollution, safeguarding the human right to a healthy environment is critical for protecting people's wellbeing. Additionally, by entitling people to a safe, clean, healthy, and sustainable environment, the right promotes conscious lifestyles and better environmental outcomes. The Conservation Council ACT Region supports the right to a healthy environment being enshrined under ACT law. In addition, we strongly advocate for the inclusion of nature based rights in this discourse. We would also like to take this opportunity to demonstrate how enshrining the right in ACT law should create stricter obligations on the ACT Government to take action against issues such as:

- Wood burners;
- Gas use and indoor air quality;
- Environmental health;
- Plastic pollution; and
- Access to information.

Expansion of the Right to a Healthy Environment

It is noted that the Discussion Paper on the Right to a Healthy Environment “excludes consideration of the rights of nature and non-human species in their own right”.¹ The Conservation Council disagrees with this determination because it ignores the history of the right to a healthy environment, and skews discourse anthropocentrically, which we consider to be overly reductionist and contrary to the intention of the right. It is recommended that a further Inquiry be held into the rights of nature in the ACT.

History of the Human Right to a Healthy Environment

The Right to a Healthy Environment, and the use of rights-based discourse to discuss environmental wellbeing has been a foundation of Indigenous cultures worldwide and advocated for by Indigenous Peoples.² The historical omission of the right to a healthy environment in many western jurisdictions is a legacy of colonialism removing discussion of ‘eco-centric’ rights ignores this context.³ An example of rights discourse being used for natural entities is the

¹ Discussion paper, page 4.

² David Boyd, ‘Catalyst for change: Evaluating Forty Years of Experience in Implementing the Right to a Healthy Environment’ in John H Knox and Ramin Pejan (eds), *The Human Right to a Healthy Environment* (Cambridge University Press, 2018) 17; Mihnea Tanasescu, ‘Rights of Nature, Legal Personality, and Indigenous Philosophies’ (2020) 9(3) *Transnational Environmental Law* 429.

³ Keila McFarland Dias Environmentalism And The Legacy Of Colonialism December 7, 2020.

Fitzroy River in Western Australia and Yarra River in Victoria which have both been recognised for their discrete personality consistent with First Peoples beliefs.⁴

The Conservation Council is unable to comment on whether a rights-of-nature based model would be consistent with the philosophies of the First Peoples of the ACT Region, however, we do not think that restricting discussion of the human right to a healthy environment is consistent with the ACT Government's commitment 'meaningful and authentic reconciliation' considering the history of the right.⁵ Instead, the Human Right to a Healthy Environment should promote discussions between Government, and traditional communities on how human rights discourse can support their beliefs, including through a rights-of-nature model if appropriate.

Anthropocentric Limits

We also disagree with the decision to restrict discussion on the Human Right to a Healthy environment as it is overly reductionist and limits discourse anthropocentrically. This is contrary to some interpretations of the right. The right to a healthy environment was first recognised in western law under the 1972 Stockholm Declaration which stated that natural and artificial environments are "essential to ... well-being and to the enjoyment of basic human rights - even the right to life itself".⁶ It is evident from this construction that the right to a healthy environment acknowledges that humans are a part of the environment and not apart from it. It can be interpreted from this that nature has its own discrete rights, as humans do, due to the interconnectedness of the world, and that humans and nature are on 'equal footing'.⁷ For example, the value of a river is greater than just what it provides for humans. It has an inherent value due to the species it supports, the history it carries, its potential to evolve, and the ecosystem that it creates. In other words, some interpretations of the human right to a healthy environment are construed such that the non-human world has just as much right to exist as the human one.

Whilst it is beyond the scope of this inquiry to discuss the merits and limitations of a rights-of-nature approach, we would like to advocate for the inclusion of nature-based rights in the ongoing discussion of the Right to a Healthy Environment. If this fails to occur, there is concern that this discussion could further entrench capitalist extractionist ideologies that the purpose of nature is to serve humans, and ignore the underlying ethos of the right, that human and environmental wellbeing is indivisible, and thus, we are all connected.

⁴ Fitzroy River Declaration (2016); Martuwarra River Of Life et al, 'Recognizing the Martuwarra's First Law Right to Life as a Living Ancestral Being' (2020) 9(3) *Transnational Environmental Law* 541; The Yarra River Protection (Wilip-gin Birrarung murrong) Act 2017 (Vic).

⁵ ACT Government, *Stretch Reconciliation Action Plan*.

⁶ *Report of the United Nations Conference on the Human Environment*, UN Doc A/CONF.48/14/Rev.1 (1973, adopted 16 June 1972) 3 [1] ('*Stockholm Declaration*').

⁷ Elena Cima, 'The Right to a Healthy Environment: Reconceptualizing Human Rights in the Face of Climate Change' (2022) 31(1) *Review of European, Comparative & International Environmental Law* 38 ('The Right to a Healthy Environment').

Implementation of the Right to a Healthy Environment

The Conservation Council ACT Region supports the enshrinement of the right to a healthy environment in ACT Law and commends the ACT Government for its progressive attitude towards environmental well being. Practically, the right should impose greater obligations on the ACT Government to take action against environmental issues such as those discussed below.

Phase out of wood burners

Pollution from woodfire heaters is a serious threat to Canberrans' health, and to the local environment. Woodsmoke emissions from residential heaters have been associated with a range of health issues including adverse respiratory and cardiovascular outcomes including asthma symptoms, hospitalisations and deaths.⁸ Concerningly, people exposed to wood heater smoke are largely unable to protect themselves from these risks.⁹

Not only are wood heaters harming public health and adding to our annual health bill but they are also harming the environment. For an equal amount of heat or electricity, wood burning releases more CO₂ than burning gas, oil and even coal, augmenting the climate crisis. The use of woodfire heaters entrench and justify native forest logging and are an additional hurdle in the race against the climate and biodiversity crises.¹⁰ Anecdotal evidence notes, there is a strong connection between regional native forest logging in NSW and wood purchases in ACT. The forests that are destroyed to support Canberra's wood burning habits are home to endangered animals and plants such as the Greater Glider, Spotted Quoll, Swift Parrot, Gang-gang Cockatoo, and many others. As such, the use of woodfire heaters contributes to biodiversity loss. Reportedly, as wood becomes more expensive, people illegally collect resources from Canberra's neighbourhood parks and reserves. This directly devastates the ACT's local environment, in addition to the indirect effects to the climate and biodiversity crises.

As outlined in the discussion paper the right to a healthy environment includes an obligation to respect, protect and fulfil the right to health incorporating the obligation to address the environmental determinants of health such as clean air and water, adequate food and shelter.¹¹ Considering this, there will be a positive obligation on the ACT Government to phase out wood burners if the Right to a Healthy Environment is formally recognised.

It is noted that the ACT Government has begun to address these issues through the 'Burn Right Tonight' campaign, the Wood Heater Replacement Program, the prohibition of wood heater installation in select suburbs and the regulation of firewood merchants. However, our community has raised concerns with the efficacy of these projects, indeed only 15 wood heaters

⁸ Naeher, Luke & Brauer, Michael & Lipsett, Michael & Zelikoff, Judith & Simpson, Christopher & Koenig, Jane & Smith, Kirk, *Woodsmoke Health Effects: A Review. Inhalation toxicology*, 2007.

⁹ Asthma Australia, *Woodfire Heaters and Health Survey*, 2021.

¹⁰ Partnership for Policy Integrity, *Air Pollution from Biomass Energy*, n.d.; Dorothy L. Robinson, *Australian wood heaters currently increase global warming and health costs*, 2010; Duncan Brack, *Woody Biomass for Power and Heat*, 2017.

¹¹ Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), UN Doc E/C.12/2000/4 (11 August 2000) [1].

were removed from Canberra homes in the 2019-20 financial year under these schemes.¹² As there is no safe level of exposure to air pollution,¹³ it is essential that the Government turn its mind to reforming the approach to wood heaters when considering the Right to a Healthy Environment.

Phase out of gas and other indoor pollutants

Indoor pollutants must be considered when addressing the Human Right to a Healthy Environment. For example, gas cooking contributes up to 12% of the burden of childhood asthma; this is the equivalent of a child being exposed to cigarette smoke daily.¹⁴ Gas cooking and heating also contributes to other respiratory problems, has impacts on the neuropsychological development of children, and increases the risk of carbon monoxide poisoning.¹⁵ Whilst the Conservation Council ACT Region welcomes the ACT Government's commitment to phase out fossil gas, and transition to an all-electric city on their pathway to zero net emissions by 2045, it is questionable whether allowing this noxious indoor pollutant to be used for the next 20 years is consistent with the human right to a healthy environment. Furthermore, a deadline of 2045 is inconsistent with the required emission reductions to limit global warming to less than 2°C.¹⁶ Should warming exceed the 2°C target, a range of economic, social, and environmental catastrophes will occur that also impact the human right to a healthy environment.¹⁷

Other indoor pollutants that must be addressed to enforce the Human Right to a Healthy Environment include:

- Asbestos
- Carbon Monoxide and wood smoke.
- Formaldehyde.
- Nitrogen Dioxide.
- Pesticides
- Indoor Particulate Matter
- Tobacco Smoke
- Volatile Organic Compounds.

Protection of natural environments

At the core of the human right to the healthy environment is the idea that the enjoyment of human rights depends on access to a healthy, and sustainable environment. In contrast to this, nature is being destroyed at unprecedented rates, tens to hundreds of times higher than the

¹² ACT Government Spokesperson, 2020, summary available at:

<https://www.canberratimes.com.au/story/6814438/neighbouring-wood-heaters-have-made-one-canberrans-home-almost-unlivable/>

¹³ Centre for Air pollution, Energy and Health Research (CAR), *There is no 'safe' level of air pollution. Implications for Australian policy*, 2021.

¹⁴ L.D. Knibbs et al., 'Damp housing, gas stoves, and the burden of childhood asthma in Australia' (2018) 208 *Medical Journal of Australia* 299 – 302.

¹⁵ Hilary Bambrick et al., *Kicking the Gas Habit: How Gas is Harming Our Health* (Research Report, Climate Council, May 2021) Chapter 3.1.

¹⁶ Conservation Council ACT Region, Submission: ACT Sustainable Energy Policy 2020-25 Discussion Paper (Submission, October 2019) 10 – 11.

¹⁷ Understanding Human Rights and Climate Change, COP21, 2021.

average over the past 10m years.¹⁸ Despite being a biodiversity hotspot,¹⁹ Australia leads the extinction crisis. We are a world leader in mammalian extinction and have one of the highest rates of species decline in the developed world. Over 100 Australian species are now listed as either extinct or extinct in the wild. Across the country, there are more non-native plants than native ones. Rivers, the lifeblood of inland landscapes like Canberra are drying up as only 2 of the 450 gigalitres of water promised under the Murray-Darling Basin plan has been delivered. The ACT is not immune to this crisis. Approximately 6.2% of Canberra's mature trees have been removed in the past 5 years;²⁰ our beloved faunal emblem, the Gang-gang Cockatoo is endangered;²¹ and our natural areas are at increasing risk of pest plants and animals.

The Human Right to a Healthy Environment must include stronger obligations on Government to protect the natural environment, including our biodiversity, and ecosystems.

Access to environmental information

As noted in the Discussion Paper, the right to a healthy environment involves both procedural and substantive obligations.²² As recognised, a key procedural obligation that is created by the right is the enhancement of public access to environmental information. Public access to environmental information is essential for people and community groups to be able to protect and defend their human right to a healthy environment.²³ Access to environmental information also promotes public participation in environmental decision-making.

Elimination of plastic pollution

While acknowledging that plastic can play an important role in our society as a uniquely malleable, cheap, adaptive and variable product, problematic plastic use contributes to pollution in our oceans, waterways and landscapes, posing threats to wildlife and human health as residual micro-plastic particles are absorbed by plants and animals and disseminated through the food chain. Airborne microplastic particles have become so widespread that humans are breathing, drinking and eating them on a daily basis. The near-invisible, dust-like pieces leach chemicals and can cause inflammation and internal scarring in animals and people, with fears they could be linked to some cancers.²⁴

¹⁸ Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services-ADVANCE UNEDITED VERSION-6 May 2019

¹⁹ Williams, K.J., Ford, A., Rosauer, D.F., Silva, N.D., Mittermeier, R., Bruce, C., Margules, C. 2011. Forests of East Australia: the 35th biodiversity hotspot. In: Keith, D.A. (ed). Biodiversity hotspots, pp 295-310. Springer, Berlin, Heidelberg.

²⁰ Action Plan to Prevent the Loss of Mature Trees (ACT Government, 2022) p14.

²¹ Department of Agriculture, Water and Environment, Conservation Advice for *Callocephalon fimbriatum* (Gang-gang Cockatoo) (2022).

²² Discussion paper, page 8.

²³ Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox.

²⁴ Carmen Rubio-Armendáriz et al, 'Microplastics as Emerging Food Contaminants: A Challenge for Food Safety' (2022) 19(3) *International Journal of Environmental Research and Public Health* 1174 ('Microplastics as Emerging Food Contaminants').

Furthermore, the manufacture of plastic requires the burning of fossil fuels and use of rapidly diminishing resources, contributing to the climate crisis and overuse of our natural resources at a rate that is unsustainable. The Human Right to a Healthy Environment must further the ACT Government's obligations to eliminate unnecessary plastic usage across the territory.

Summary and Recommendations

The Conservation Council ACT Region supports the enshrinement of the right to a healthy environment under ACT law, however, we recommend that a further inquiry be held into the rights of nature in the ACT.

We also note that enshrining the right in ACT law should create stricter obligations on the ACT Government to take action against environmental issues such as:

- Wood burners;
- Gas use and Indoor air quality;
- Environmental health;
- Plastic pollution; and
- Access to information.