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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

**REVISED - REPORT NO. 7 OF THE STANDING COMMITTEE ON JUSTICE AND COMMUNITY
SAFETY - REPORT INTO THE INQUIRY INTO PETITION 32-21 (NO RIGHTS WITHOUT REMEDY)
- GOVERNMENT RESPONSE**

**Presented by
Tara Cheyne MLA
Minister for Human Rights
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ACT
Government

Report No. 7 of the Standing
Committee on Justice and Community
Safety - Report into the Inquiry into
Petition 32-21 (No Rights Without
Remedy) - Government Response

October 2022

Introduction

Human rights in the ACT

The ACT is a leading human rights jurisdiction in Australia and was the first state or territory to introduce a legislative bill of rights, the *Human Rights Act 2004* (the Human Rights Act).

The Human Rights Act enshrines a range of fundamental human rights drawn from the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights. The rights are enforced through a range of mechanisms, including a requirement that the Attorney-General certify whether new laws are compatible with human rights, a requirement on all decision makers to interpret laws consistently with human rights as far as possible and a power for the Supreme Court to issue declarations of incompatibility.

The ACT Government is committed to continuing to strengthen our culture of human rights across government and the broader community. As part of that commitment, in 2008 a new section 40B was introduced into the Human Rights Act to create a specific obligation for public authorities to act consistently with human rights. As a result, it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right. This obligation is currently enforced through a stand-alone cause of action in the Supreme Court set out in section 40C.

Since that time the Government has continued to undertake reforms to strengthen the Human Rights Act, including the introduction of the right to education, cultural rights of Aboriginal and Torres Strait Islander peoples, and the right to work. The Government is currently progressing consideration of the potential inclusion of the right to a healthy environment in the Human Rights Act.

Human rights complaints in the ACT

The Human Rights Act was the first, and remains the only, human rights statute in Australia to include a stand-alone cause of action for a breach of human rights obligations by a public authority, under section 40C. If a person claims that a public authority has acted in contravention of section 40B, that person may start a proceeding in the Supreme Court against the public authority.

In addition to the stand alone right in the Supreme-Court, human rights issues may also be raised in the following ways:

- A person may rely on their rights in relation to a claim against a public authority in other legal proceedings, for example in proceedings in the ACT Civil and Administrative Tribunal.
- The Human Rights Commissioner and the Attorney-General may also intervene in a proceeding before a court that involves the application of the Human Rights Act under sections 36 and 35 respectively.
- Courts and the Tribunal must seek to interpret ACT laws to be consistent with human rights as far as possible, consistent with the purpose of the legislation.
- Where this is not possible, the Supreme Court may declare that the law is not consistent with that right, and the registrar must present the Attorney-General with a copy of a declaration of

incompatibility which must be tabled in the Assembly. This does not invalidate the law but allows the Government and Assembly to consider options for reform.

- Human rights issues may be raised indirectly via the ACT Human Rights Commission's complaints handling function in relation to discrimination, health services, disability and community services, services for older people, services for children and young people, treatment of vulnerable people, victims rights, occupancy disputes, retirement villages, and prohibited conversion practices.

Justice and Community Safety Committee report into the Inquiry into Petition 32-21 (No Rights Without Remedy)

The ACT Government welcomes the report by the Standing Committee on Justice and Community Safety into the Inquiry into Petition 32-21 (No Rights Without Remedy).

The Petition calls on the ACT Legislative Assembly to make amendments to human rights legislation to:

- enable a complaint about a breach of the *Human Rights Act 2004* to be made to the Human Rights Commission for confidential conciliation, and
- if conciliation is unsuccessful, enable a complaint about a breach of the Human Rights Act to be made to the ACT Civil and Administrative Tribunal (ACAT) for resolution.

The Government thanks individuals and organisations who made submissions to the inquiry to support consideration of this proposal. Ongoing engagement with our human rights legislation and opportunities to strengthen it are a positive sign of the human rights culture in the ACT.

Government response

Recommendation 1

The Committee recommends that the ACT Government support and enact the terms of the petition to create a system that mirrors the current approach with response to discrimination complaints.

Agreed in principle

The ACT Government is committed to a human rights culture and acknowledges the merit of expanding access to the enforcement of rights under the Human Rights Act. The recommendation from the Standing Committee on Justice and Community Safety encompasses several different elements, explored in more detail below.

The Government:

- **Agrees** to the proposal to enable a complaint about a breach of the Human Rights Act to be made to the Human Rights Commission for confidential conciliation.
- **Agrees in principle** to the proposal to enable a complaint about a breach of the Human Rights Act to be made to the ACT Civil and Administrative Tribunal (ACAT) for resolution if conciliation is unsuccessful.

Proposal to expand avenues for human rights complaints

Complaints to the Human Rights Commission

The Government **agrees** to the proposal to enable complaints about a breach of the Human Rights Act to be made to the ACT Human Rights Commission.

In considering the application of this process to human rights complaints, the experience in other states should be noted. The ACT, Queensland and Victoria are the only Australian jurisdictions with a legislated bill of rights. The Victorian Ombudsman and Queensland Human Rights Commission can consider human rights complaints. This is not currently directly possible in the ACT, but human rights issues may be raised indirectly via the ACT Human Rights Commission's complaints handling jurisdiction, which is established under the *Human Rights Commission Act 2005* and covers a wide range of services.

The Human Rights Commission plays an important role in promoting and upholding human rights in the ACT through community education, advice to government, and their complaints-handling jurisdiction. In recent years, new areas have been added to the Commission's complaints jurisdiction which has strengthened the capacity of the Commission to resolve concerns, improve services and support vulnerable people in our community.

The ACT Government notes that expanding the complaints jurisdiction of the Human Rights Commission to consider complaints about a breach of the Human Rights Act by a public authority and facilitate confidential

conciliation has considerable community support, is an identified need, and would provide benefit to the ACT community.

The Government will immediately commence work towards the development of a Bill which is intended to see consultation occurring in the first half of 2023. This reform is subject to, and will be delivered in the context of, the Government's other human rights priorities. Resourcing will be a matter for future budget processes once this complaints jurisdiction has been established, consistent with previous approaches taken when the Commission's jurisdiction has been expanded.

Proposal for complaints to the ACAT

The Government **agrees in principle** to the proposal that if conciliation is unsuccessful, a complaint about a breach of the Human Rights Act could be made to the ACT Civil and Administrative Tribunal (ACAT) for resolution.

In considering this second element of the proposed pathway, the ACT Government has again considered the experiences in Victoria and Queensland, and in the context of the current operation of the Human Act in the ACT.

While there is a direct cause of action in the Supreme Court for breaches of human rights in the ACT, in both Victoria and Queensland a person needs to 'piggy-back' a human rights complaint onto another legal claim.

No human rights jurisdiction in Australia has a stand-alone cause of action for a breach of human rights to be heard by a tribunal. In the ACT, ACAT does not have stand-alone jurisdiction to conduct any human rights review of the conduct of a public authority but may consider issues arising under the Human Rights Act in the context of other proceedings.

The ACT Government acknowledges that while there are likely to be further benefits to introducing a pathway to the ACAT for breaches of human rights, there are also a number of complexities, together with resourcing implications which would need to be resolved before an ACAT pathway is established. This includes, but is not limited to, consideration of the interaction of this pathway with existing administrative law review functions of ACAT and the Supreme Court jurisdiction for human rights matters, the potential number and complexity of matters likely to be commenced in ACAT, the resourcing implications for the ACAT in managing this new case load and developing new human rights jurisprudence, the scope of remedies that would be available to litigants, and implementation planning.

The ACT Government considers that it would be optimal to undertake this work to address the complexities and quantify the required resourcing once the Commission's human rights complaints jurisdiction has been operational for a period of time.

Conclusion

The Government welcomes the Standing Committee on Justice and Community Safety's report and the community support for the proposal.

Ongoing engagement with the community of proposals to strengthen the framework in the ACT is critical to continuing to strengthen our culture of human rights. Petition 32-21 and the subsequent inquiry have provided an important avenue to consider opportunities for enhancing the Human Rights Act including reviewing developments in other jurisdictions relating to complaints.

The Government will progress the development of legislation to enable a complaint about a breach of the Human Rights Act to be made to the Human Rights Commission.

Once this complaints jurisdiction is operational for a period of time, the Government will work with the ACT Human Rights Commission, ACAT and community stakeholders to further consider the establishment of a pathway to the ACAT for breaches of human rights.