



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into Petition 32-21 (No Rights Without Remedy)

Submission Number: 11

Date Authorised for Publication: 13 April 2022



ACT Council of Social Service Inc.
1/6 Gritten Street, Weston ACT 2611
ph. 02 6202 7200
e. actcoss@actcoss.org.au
w. actcoss.org.au
abn. 81 818 839 988

7 April 2022

ACT Legislative Assembly Justice and Community Safety Committee
Via email: LACommitteeJCS@parliament.act.gov.au

Dear Justice and Community Safety Committee

No Rights Without Remedy

The ACT Council of Social Service Inc (ACTCOSS) welcomes this opportunity to provide a submission in support of the 'No Rights Without Remedy' petition. We urge the ACT Government to provide Canberrans who have had their human rights breached with an accessible complaint mechanism.

ACTCOSS advocates for social justice in the ACT and represents not-for-profit community organisations. Our core work involves advocacy for vulnerable community members, particularly those whose human rights are systemically undermined.

As per the 'No Rights Without Remedy' petition, this submission calls upon the ACT Government to:

- Enable a complaint about any breach of the Human Rights Act to be made to the ACT Human Rights Commission (ACTHRC) 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 for resolution.
- Increase the resourcing of the ACT Human Rights Commission and the ACT Civil and Administrative Tribunal to respond to requests.

Currently, complaints about human rights breaches must be taken to the Supreme Court, which is a long and costly process that is inaccessible for many people, especially those experiencing disadvantage.

In developing this submission, we consulted with the Human Rights Law Centre, Canberra Community Law, Civil Liberties Australia and Australian Lawyers for Human Rights. We recognise and support the submissions provided by all of these organisations as independent experts advocating for the human rights of Canberrans.

The consistent outcome of consultation was that giving the ACTHRC the necessary power to initiate inquiries, creating a clear and consistent approach to human rights remedies and, ensuring fast, fair and effective conciliation processes – are all fundamental to protecting human rights.

A ‘human rights jurisdiction’ in more than name alone

We are strong supporters of the Human Rights Act in the ACT and are proud of the role that the ACT plays in leading the country on human rights compliance. However, we are concerned that there are key deficiencies in the Act that means the ACT is a human rights jurisdiction in name alone.

The inclusion of human rights under ‘governance and institutions’ as an indicator in the ACT Wellbeing Framework points to the ACT Government’s commitment to in protecting human rights which necessitates producing fair and just remedies.

Currently it is possible for an individual to lodge a complaint if they believe their human rights have been breached but it is expensive and difficult to do. An individual is able to make a complaint by bringing a legal action to the Supreme Court. There are significant cost barriers associated with this type of legal action and for most people bringing a legal complaint to the Supreme Court can be an extremely intimidating, complex and inaccessible process. Further, there is currently no way for an individual to seek compensation for harm done.

Vulnerable community members, particularly people with disabilities and people from low-income backgrounds, face increased barriers to accessing expensive, arduous, time-consuming and often distressing lengthy complaint pathways. Without easier, cheaper and accessible pathways, community members will continue to distrust a system that promises them human rights but fails to remedy breaches of their human rights.

A complaints system that is contingent upon complainants having access to funding, plentiful time and complex legal support is a system that neglects and disempowers those without access to these resources.

It would not be difficult to overcome these barriers by creating a simple, low-cost pathway for individuals to make complaints. We have the institutions and infrastructure in place to do this, they just need to be enabled in legislation and adequately resourced.

The human stories behind the petition

Too often we talk about ‘human rights’ in the abstract, but these are the inherent dignities that are essential to all of us living a good life. Gross breaches of human rights *do* occur in the ACT, in our prison, youth detention and public housing systems. More minor breaches occur more frequently and may not make news headlines, but nonetheless erode the dignity and quality of life of Canberrans.

For many community members, human rights breaches on the basis of discrimination are not met with appropriate and effective response systems. Without available recourse, vulnerable and disadvantaged people do not have the same human rights as others, undermining the entire Human Rights Act.

Those in our community who are most vulnerable to breaches of their human rights, are simultaneously those who are least able and least likely to access the current remedies (including Aboriginal and Torres Strait Islander peoples, culturally and linguistically diverse people, people with disabilities, people with mental ill-health, those with low incomes and those who are intersectionally oppressed by multiple factors).

What a complaints mechanism should look like

We support the petition’s call for the establishment and resourcing of a two-tiered complaints mechanism. This proposed model uses the existing infrastructure of the Human Rights Commission and the ACT Civil and Administrative Tribunal to provide a no-cost, simple pathway for individuals to make complaints.

We already know that these pathways work for the community, as they are currently in utilization for other complaints, and the involved organisations are experienced in assisting our community members in navigating these processes. Given the high costs of legal proceedings and recourse processes, financial inequity and insecurity is one of the greatest deterrents for pursuing a complaint.

Where a single, inexpensive and clear pathway is established for resolving and remedying human rights complaints, greater justice outcomes can be achieved. Independence, clarity of process and simple decision-making hierarchy would inform a more accessible remediation process for those who have had their rights breached.

In order to effectively respond to the additional workload that creating a new complaints mechanism would produce, there must be adequate increased resourcing. Without appropriate funding and resourcing for conciliation and remediation, community members will continue to be underserved.

It is our sincere hope that the above changes would transform the Human Rights Act from being a largely theoretical document, to one which members of our community can use to ensure their human rights are protected.

ACTCOSS has also long called for an independent police complaints mechanism. We need to ensure that human rights are prioritised particularly where people experience disadvantage or powerlessness. This means that government service provision, especially from the police, must be available for thorough and independent scrutiny. Complaints processes must be affordable and accessible.

Conclusions

ACTCOSS encourages the immediate consideration and implementation of the requests of the No Rights Without Remedy petition and proposal as a means to redress injustice and lacking human rights accountability in the ACT.

The development of better complaints processes for human rights breaches is an important step in bridging the gaps in accessible services for vulnerable and disadvantaged Canberrans. The establishment of ACTHRC conciliation processes and ACAT resolution processes will increase accountability and provide for greater trust in and precedent for human rights oversight in the ACT.

We strongly urge the Committee to recommend to the ACT Government that the demands of the petition be implemented in full.

Yours sincerely

Dr Emma Campbell
Chief Executive Officer