



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: 26

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Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
Canberra ACT 2601

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

Dear Committee,

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

Thank you for the opportunity to contribute to the inquiry into Petition 32-21 (No Rights Without Remedy).

Legal Aid ACT provides services to the ACT community's most vulnerable and disadvantaged individuals as they navigate the justice system. These services range from legal support through our various practices, to non-legal support offered by our Community Liaison Unit.

Legal Aid has extensive experience with assisting clients who have filed complaints for breaches of human rights. Some of those clients are referred to us by the ACT Human Rights Commission to assess their claim or assist them with their complaints.

Presently, people who have experienced breaches of human rights are required to bring proceedings before the ACT Supreme Court. The ACT Supreme Court is expensive and not easily accessible for vulnerable individuals seeking to enforce their rights. High legal fees associated with lodging and maintaining proceedings, as well as formal procedural requirements are significant barriers which reduce accessibility for disadvantaged and marginalised members of the community wanting to complain about human rights breaches.

Therefore, Legal Aid supports the intent of the proposed recommendations in supplementing the ACT Human Rights Commission's existing complaints powers and expanding the role of the ACT Civil and Administrative Tribunal (**the ACAT**).

Recommendation 1: Enabling complaints of Human Rights Act breaches to be made to the Human Rights Commission for confidential conciliation

The proposed amendment would allow an individual to bring a complaint directly to the ACT Human Rights Commission on any breach of the Human Rights set out in the *Human Rights Act 2004* (**the HR Act**). Legal Aid strongly supports such an amendment because it expands the protection of human rights, providing an avenue for complaints of actions, or inaction, which may be a breach under the HR Act but currently fall short of the requirements of section 42 of the *Human Rights Commission Act 2005* (ACT).

Allowing a mechanism for complaints to be made to the ACT Human Rights Commission would provide confidential conciliation, an existing practice undertaken by the ACT Human Rights Commission, to extend to any breach of the HR Act. The ACT Human Rights Commission's website expressly states that complaints may be dealt with through conciliation and includes detailed information about the conciliation process and possible outcomes.¹

Confidential conciliation conducted by the ACT Human Rights Commission provides an opportunity for the parties to thoroughly discuss the issues at stake and swiftly resolve the dispute on their own terms, without initiating formal proceedings.

Conciliation is a versatile and party-driven process, which allows the parties to reach agreements that better suit their needs. As highlighted by the ACT Human Rights Commission, complaints may be resolved through the issue of an apology, improving communication pathways, agreements to introduce changes to practices or policies, re-instatement to a job or an offer of employment, or financial compensation for monetary loss or injury to feelings.²

Complainants should be able to readily action a breach of their human rights, and we believe that introducing additional inexpensive avenues to address breaches will further the protection of human rights.

Recommendation 2: If confidential conciliation is unsuccessful, enabling a complaint of a breach of the Human Rights Act to be made to the ACT Civil and Administrative Tribunal for resolution

Legal Aid supports the proposed amendment. Many complaints are resolved by conciliation after being made to the ACT Human Rights Commission but where this does not occur, a referral to the ACAT provides easy access for the complainant to litigate the matter.

We believe that giving jurisdiction to the ACAT to resolve human rights complaints, alongside their jurisdiction to resolve discrimination complaints, would be beneficial for several reasons.

Self-representation

Complainants can represent themselves if they wish or can have a family member, friend or a person other than a lawyer representing them. While the Supreme Court allows litigants to represent themselves, its formalities and processes make it difficult for a lay person to adequately do so.

Inexpensive, informal, expeditious

The ACAT follows procedures that are 'as simple, quick, inexpensive and informal as is consistent with achieving justice' and that are implemented with a view of facilitating issues resolution so that costs are

¹ ACT Human Rights Commission, 'Information for people making complaints', *Complaints* (Web page) <<https://hrc.act.gov.au/complaints/information-for-people-making-complaints/>>.

² ACT Human Rights Commission, 'About conciliation', *Complaints* (Web page) <<https://hrc.act.gov.au/complaints/conciliation/#:~:text=There%20is%20also%20a%20legal%20obligation%20on%20both,the%20conference%20starts%20and%20also%20during%20the%20process.?msclkid=339daa80bb9611ec8e88435ca13d976c>>.

proportionate to the importance and complexity of the case.³ The ACAT may also decide its own procedure if none are prescribed.⁴

The ACAT's flexibility and informality, are better suited to self-represented litigants and proceedings in the ACAT are less expensive than proceedings in the Supreme Court. Initiating and maintaining proceedings in the Supreme Court can incur significant costs, and there are often delays in getting a court date, thus causing greater financial pressure and frustration for the parties.

Unlike the Supreme Court, the ACAT is not bound by the rules of evidence and may inform itself as it considers appropriate.⁵ This freedom does not reduce the minimum requirements of natural justice and procedural fairness, which the ACAT must always observe, thus maintaining fundamental guarantees for litigants.⁶

Appropriate publicity

The ACAT's hearings are open to the public and decisions are published. This publicity can help expose human rights breaches when they occur and raise awareness to prevent future breaches. Where required, parties can apply for a private hearing and non-publication order.⁷ This would give human rights decisions publicity if desired by the parties involved.

Avenue to the Supreme Court

The ACAT's decisions are binding and may be appealed to the ACT Supreme Court.⁸ The ACAT additionally has the power to make interim orders,⁹ which can be exercised when required for urgent cases. Should one of the parties, for instance the complainant, want their case to be heard by the Supreme Court, they can make an application to the ACAT to remove the matter to the Supreme Court.¹⁰

Suitably equipped

We note that ACAT already has jurisdiction to hear complaints related to certain human rights breaches,¹¹ provided that the complaints have been referred by the ACT Human Rights Commission. The ACAT is, therefore, perfectly able and equipped to deal with such matters. Allowing the ACT Human Rights Commission to refer any type of breach of the HR Act that was unsuccessfully conciliated would provide further avenues for victims of human rights breaches to issue complaints and access justice.

³ *ACT Civil and Administrative Tribunal Act 2008* (ACT) s 7 .

⁴ *Ibid* s 23.

⁵ *Ibid* ss 8, 26.

⁶ *Ibid* s 7.

⁷ ACAT, 'Public hearings and confidentiality', *Hearings* (Web page) <<https://www.acat.act.gov.au/hearings/public-hearings-and-confidentiality>>.

⁸ *ACT Civil and Administrative Tribunal Act 2008* (ACT) s 86.

⁹ *Ibid* s 53.

¹⁰ *ACT Civil and Administrative Tribunal Act 2008* (ACT) s 83.

¹¹ ACAT, 'Discrimination cases' <<https://www.acat.act.gov.au/case-types/discrimination-cases>>; ACAT, 'Conversion practice complaints' <<https://www.acat.act.gov.au/case-types/conversion-practice-complaints>>.

In conclusion, Legal Aid is supportive of the amendments proposed by the Committee and supports their adoption.

Further recommendations

To support these changes, further funding and resourcing to the ACT Human Rights Commission and the ACAT is required; some offset could occur through savings where matters are not litigated in the Supreme Court. Based on the history of anti-discrimination cases brought in the ACT, a vast majority are swiftly resolved at the ACT Human Rights Commission stage or in the early stages at ACAT. A full hearing for anti-discrimination cases is rare. Some additional funding of the ACT Human Rights Commission and the ACAT should equip these bodies with the resources to expand their scope to address human rights breaches efficiently and economically.

In adopting these amendments, we suggest that no ACAT application fee should be imposed. This is consistent with the ACAT's existing framework, considering that there are currently no fees associated with discrimination complaints and conversion practice complaints referred by the ACT Human Rights Commission. No application fee means that more vulnerable persons will have access to justice for human rights breaches.

Legal Aid would welcome the opportunity to discuss this submission further.

Yours Sincerely,



Dr John Boersig PSM
Chief Executive Officer
Legal Aid ACT