



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: 03

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TO - Committees@parliament.act.gov.au>

New inquiry into the Human Rights Act
Justice and Community Safety Committee is inquiring into [Petition 32-21](#), which was tabled in the Assembly on 23 November 2021 with 518 signatories.

The petition calls on the Assembly to amend the [Human Rights Act 2004](#) to:

- enable a complaint about any breach of the Human Rights Act 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 for resolution.'

Such a proposal would supplement the [Human Rights Commission](#)'s existing complaints powers.

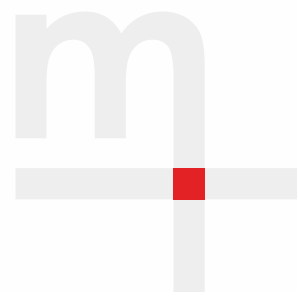
About Meridian

Meridian was formed as the AIDS Action Council in 1983 and incorporated in 1986 as part of the community response to the impact of HIV/AIDS in Australia. Today we are Canberra's leading community-based organisation for people living with HIV/AIDS, and sex and gender diverse people¹. We provide a range of services to our communities, including counselling, psychology and social work services, support, information, emergency accommodation and advocacy. Meridian's work is always responsive to cultural and social change, and the continuing transmission of HIV in Australia informs our current and future directions. Human rights are at the heart of the work of Meridian.

Meridian has extensive experience working with people and communities that are vulnerable to having their human rights abused and/or interfered with. Meridian is pleased to make this submission to the committee and affirms our support of both requests of the petitioners to:

- enable a complaint about any breach of the Human Rights Act 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 for resolution.

As a general principle, Meridian believes complaint mechanisms should be low or no cost at the point of the first complaint, accessible, enforceable and based on principles of equity, justice and fairness to all parties. Complaint handling should also provide comprehensive evidence of patterns of behaviour and systemic issues and should have both the means and the opportunity to address these.



Why does Meridian support enabling a complaint about any breach of the Human Rights Act to the Human Rights Commission?

The current Human Rights Commission Act 2005 enables a complaint about matters specified in Division 4.1 of the Act. While comprehensive, the list in this Division does not cover every possible breach of the Human rights Act. Over time Meridian has seen the development of systems and patterns of behaviour which are not easy to reduce to one of the permitted areas of complaint. This may be because the behaviours or patterns of discrimination were not known at the time of drafting, it may be because new areas of discriminatory behaviour have emerged, or it may be that the legislation has not kept pace with societal change. Whatever the reason, a complaint and conciliation power that refers to alleged breaches of primary legislation (in this case the Human Rights Act) is preferred.

Our legal system is adversarial in nature. Conversely, enduring Human Rights outcomes and systemic change are more likely to be gained through conciliation where the conciliator is able to assist the parties to identify clearly the issues in dispute, develop options, canvass alternative solutions and reach an agreed outcome.

While the making and recording of complaint outcomes is important, the need for a free or low-cost conciliation mechanism so that complaints can be addressed and, where necessary, system change, apology or appropriate compensation can be agreed upon is an important component of a robust Human Rights regime. Without such a mechanism it is not possible to drive grassroots changes to practices, policies and procedures. There is little incentive for change if those who breach a person's human rights know that there is little to no chance of being held to account for their behaviour. For vulnerable people, a trusted, impartial, expert and independent complaints mechanism that is easily accessible and allows for conciliated outcomes increases trust in the Human Rights Framework, reduces the risk of increased conflict and allows for public education on matters of concern.

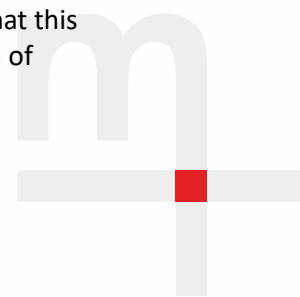
A low cost or no cost complaints mechanism also protects those against whom a complaint is made. It limits the costs incurred in defending the actions complained about, it provides an opportunity for both parties to explain the context of the actions complained about and is far more likely to lead to both increased understanding and better practices.

Why does Meridian support escalation to ACAT where conciliation is unsuccessful?

In Meridian's experience, no matter how informed and educated ACT residents are there are times when conciliation on contentious issues is not possible. This can be because the person or body responsible for the actions complained of sees no breach of the Human Rights Act and therefore no need for resolution of the complaint. Alternatively, the person or body complained about may see the requested remedy as excessive or inappropriate and be unable or unwilling to agree to the outcome the complainant seeks.

Alternatively, the complainant may be unwilling or unable to agree to a conciliated outcome because it does not address issues of concern to them, or they believe the offered remedy is inadequate or inappropriate.

In these cases, there needs to be a timely decision-making mechanism that can hear the positions of each party, weigh any evidence available and make an authoritative ruling. It is important that this mechanism have as few barriers to entry as possible. Using this test, the current mechanism of



action in the Supreme Court of the ACT, is inappropriate. It is costly to initiate an action, there can be significant time delays in getting a court date, and you must be able to afford not just the costs of initiating the action but of the extensive (and expensive) legal representation required. Even if referral to the Supreme Court was only possible after conciliation the means to pursue or defend an action is beyond most complainants and respondents.

Although there are some costs associated with an application and pursuing a case through ACAT, the costs are substantially less for both the complainant and respondent. Like the Supreme Court, decisions can be published providing both an educative and deterrence function. In addition, ACAT can make findings of fact, issue binding and enforceable determinations and an appeal mechanism both exists and is well tested. These factors, combined with the existing expertise that ACAT holds, mean that ACAT is suitable and efficient mechanism for review of complaints.

For cases where a binding and/or enforceable determination is appropriate or required it is Meridian's view that ACAT is a better and more suitable mechanism than a Supreme Court application for both the complainant and respondent.

Meridian would be pleased to provide further information if required.



Philippa Moss
Chief Executive Officer
11 March 2022

