



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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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: 24**

**Date Authorised for Publication: 13 April 2022**

Our ref: A37416

12 April 2022

Mr Peter Cain MLA  
Chair  
Standing Committee on Justice and Community Safety  
Legislative Assembly of the ACT  
By email: [LACommitteeJCS@parliament.act.gov.au](mailto:LACommitteeJCS@parliament.act.gov.au)

Dear Chair

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

Please accept this letter as my submission to the Standing Committee on Justice and Community Safety's (the Committee) inquiry into 'Petition 32-21 (No Rights Without Remedy)'.

While decisions about the proposed changes outlined in the petition are a matter for the ACT Legislative Assembly, it may be useful to consider the role and function of the ACT Ombudsman in this context. In doing so, I do not assume that the changes proposed in the petition seek to amend the ACT Ombudsman's jurisdiction. The following summary provides information on the ACT Ombudsman's complaint handling role and the existing Relationship Protocol between the ACT Ombudsman and the Human Rights Commission (the Commission).

If amendments are contemplated to the *Human Rights Act 2004* (the Human Rights Act) in relation to complaints, I would appreciate my Office being consulted.

#### Role of the ACT Ombudsman in complaint handling

A core feature of Australian democracy is that people have a right to complain about government agencies to an independent organisation without hindrance or reprisal, and have their complaint considered on its merits. This helps ensure government agencies are accountable and assists agencies to improve their administration.

The ACT Ombudsman is established by the *Ombudsman Act 1989* (the Act). Under the Act, the ACT Ombudsman has statutory roles to investigate complaints from individuals, groups or organisations about the administrative actions of ACT Government agencies, and to undertake investigations in relation to administrative action on an 'own motion' basis.

In undertaking this function, the ACT Ombudsman is impartial and independent and is not an advocate for complainants or for agencies. An investigation under the Act must be conducted in private, and as the ACT Ombudsman sees fit.

Under the Act, the ACT Ombudsman has broad discretion not to investigate a complaint. If an investigation is undertaken, the Act provides a high degree of flexibility in deciding how the investigation will be conducted. This enables the most relevant, practicable and efficient approach to be selected. An investigation can be as simple as an email exchange to confirm facts, or as complex as requiring review of many agency files and documents, formal interviews, and obtaining independent specialist advice.

Investigations will generally consider compliance with policy and legislation, disputes about facts or agency decision making, fairness and issues of service and communication.

The emphasis of ACT Ombudsman work is on considering complaints and achieving remedies, where appropriate, with a broader focus on improving public administration for the ACT community. The ACT Ombudsman has no power to direct an agency to change a decision or provide a service – we rely on influence and agency cooperation to resolve problems. If an investigation establishes an error occurred, the ACT Ombudsman will consider whether the relevant agency should take action to remedy the problem. This could involve proposing a remedy for the complainant. If the problem is more systemic, other remedial action may be recommended, for example, a change to agency policy or procedures.

An ACT Ombudsman investigation may result in a recommendation being made. Recommendations are one of the main ways my Office influences systemic improvement in public administration. As per the Act, we can make recommendations to address actions or inaction that is:

- contrary to law
- unjust, oppressive or improperly discriminatory
- unreasonable (including unreasonable delay, procedural deficiencies, flawed processes)
- based wholly or partly on a mistake of law or fact, or
- otherwise, in all the circumstances, wrong<sup>1</sup>.

Where a recommendation is made by the ACT Ombudsman, and agreed by the relevant agency, the ACT Ombudsman will subsequently seek evidence of, and may report on, the implementation of those recommendations.

The ACT Ombudsman has powers to report to a Minister, the Speaker and to make a report publicly available.

#### ACT Ombudsman jurisdiction and Relationship Protocol with the Commission

My Office has a Relationship Protocol with the Commission (**Attachment A**) which sets out how we work together. It identifies our respective roles and responsibilities and principles for working together with collaboration and respect. It contains information sharing arrangements and recognises the importance of ensuring effective use of limited resources and a collaborative approach to oversight.

Under the Act, my Office is unable to investigate complaints about services for people with a disability, children and young people, older people, and health services<sup>2</sup>. If my Office receives a complaint of this nature we are required in some cases, and have discretion in other cases, to refer these cases to the Commission<sup>3</sup>.

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<sup>1</sup> s 18 of the Act

<sup>2</sup> s 5(2)(o) of the Act

<sup>3</sup> s 6A and 6B of the Act

Some complaints about ACT Government agencies may involve issues relevant to both the ACT Ombudsman and the Commission. In cases where such crossover occurs, the jurisdiction of these complaints would be primarily determined based on the service being provided or complained about, for example, a service related to health or to children.

Currently, establishing jurisdiction for complaints that raise discrimination matters may be less clear than where a complaint relates to a service specifically identified under the Act. Some of the issues raised in complaints received by my Office may overlap with the jurisdiction of the Commission. For example, if a person complains to my Office about a primary issue regarding alleged maladministration by a government agency and does not identify that a discrimination complaint could also be made. A person with disability, for example, may complain to my Office about public housing matters, such as alleged delays in getting handrails installed at their property. Based on the Relationship Protocol, in such a case my Office would consider the maintenance component of the complaint and would refer the discrimination component of the complaint to the Commission. The Commission would take a similar approach and refer matters to my Office for consideration where appropriate.

#### ACT Ombudsman consideration of the Human Rights Act

Under the Human Rights Act, the ACT Ombudsman, as a public authority, is required to act in a way that is compatible with human rights and consider relevant human rights when making a decision. My Office has procedures in place to guide complaint handlers in assessing complaints, to ensure officers consider whether agency actions are unfair, unreasonable or inconsistent with law. My Office is currently conducting a review of these procedures to ensure they remain accurate and contemporary.

I would be happy to provide further information about the role of my Office and its interaction with the Commission if this would assist the Committee's considerations.

Yours sincerely



Penny McKay  
Acting ACT Ombudsman