



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: 25

Date Authorised for Publication: 13 April 2022

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

12 April 2022

Dear Justice and Community Safety Committee,

Re: Submission for Inquiry into Petition 32-21 “No Rights without Remedy”

Thank you for the opportunity to provide this submission in support of the ‘No Rights Without Remedy’ petition. We are writing to **strongly support** the petitioners’ request for the ACT Government to provide **an accessible complaints mechanism for Canberrans who believe their human rights have been breached.**

About ADACAS

ADACAS is a human rights focussed advocacy service providing individual advocacy to and working with people with disability, people with mental ill health, older people and (informal family/friend) carers.

We advocate to support people to have their voices heard, person-centred care/approaches and their rights upheld across a range of topic areas, structures and systems including housing, health, quality of services, justice, community services, aged care services, child protection, NDIS access and Appeals and Redress Scheme support. We also offer the Aged Care Navigator program (to assist older people to understand their entitlements and to access community and residential aged care services).

ADACAS is a member of both the Disability Advocacy Network of Australia and the Older Persons Advocacy Network, both of which represent organisations working with people with disability (of all ages) across all areas of Australia. We have been operating in the ACT for 30 years and over recent years have also commenced working with people living with disability in specific parts of NSW. ADACAS acknowledges the Ngunnawal, the Dharawal, the Yuin and the Wiradjuri peoples as the traditional custodians of the lands on which we work, and pay our respects to their Elders, and to all Aboriginal and Torres Strait Islanders in our communities.

Support for petition:

Alongside the many petitioners for the ‘No Rights Without Remedy’ petition we thus ask the ACT Government 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.

Embedding and extending principles of a ‘human rights jurisdiction’

ADACAS staff will frequently cite the ACT Human Rights Act, in both our individual and systemic advocacy, and it has proved a powerful and persuasive tool to enable action. At present, however, it does not have an adequate complaints mechanism attached.

As the Committee is aware, whilst it is currently possible for an individual to bring a complaint if they believe their human rights have been breached; it can be expensive and difficult to do. In many instances there is also not a way for individual to easily seek compensation for harm done. The available avenue for breaches of the human rights act is to bring a legal action to the Supreme Court. For most people - bringing a legal complaint to the Supreme Court - can be an extremely intimidating, complex and inaccessible process. There are also significant cost barriers associated with this type of legal action.

ADACAS works with people with a diverse array of life circumstances and identities. ADACAS especially is frequently working with people who are “falling through the cracks” in and between current service systems. We hear all too often about human rights being breached. We frequently see situations where the rights of people facing intersectional barriers are not being upheld.

At the present time – the Human Rights Commission and the ACT Civil and Administrative Tribunal (ACAT) already have processes by which to respond to discrimination complaints: but not all human rights breaches are also discrimination based (so this pathway at present is not always available). Adding a simple, low-cost pathway for individuals to make complaints about their human rights being breached is imperative and a vital missing link. The institutions and infrastructure are available and in place - they just need to be both enabled in legislation and for the Human Rights Commission and also the ACT Civil and Administrative Tribunal (ACAT) (and any needed support services) to be adequately resourced to take on extra work.

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. While gross breaches of human rights *do* occur in the ACT - in particular in justice, housing and sometimes health settings - other breaches which occur more frequently can still erode the dignity and quality of life of Canberrans.

Some examples of the types of human rights breaches that our clients experience* (listed by some of the topics in the human rights act) are as follows:

<u>Recognition and equality before the law</u>
Alex* has been charged with assault. For many years he has been having difficulties understanding others, and in communicating, however whilst long-standing, the reason for these difficulties are currently unknown. He has a right to information in ways that he can understand about any options, processes and supports available to him. He also has a right to expect services have systems that would enable them to easily disclose challenges, and receive any needed reasonable adjustments or support. Unfortunately adequate account was not taken of his needs, and the outcome of the legal process was very negatively affected accordingly.
<u>Protection of the family and children:</u>
Hanna* and Ali*, a couple who have lived together for many decades move into residential aged care, with the advice that a shared bedroom will be made available. After arrival they are advised that they must instead stay in separate wings.

<u>Protection of the family and children:</u>
Diya*, a parent unable to parent temporarily due to health reasons, requests that kinship care arrangements be made, however alternate arrangements are instead put in place without explanation, and her request for this to be changed is not being listened to.
<u>Protection of the family and children:</u>
Jess*, a parent with complex mental ill health has advised she is going to have her child removed at birth, without an opportunity to demonstrate her ability to parent, despite considerable evidence of extensive and successful treatment for her mental health, preparation for parenting, and multiple ongoing supports (formal and informal) in place in case any future episodes of ill health. She wants to intervene before this occurs.
<u>Right to participate in public life:</u>
Linh*, who for health reasons is unable to leave her home, doesn't have internet access, and is unable to use the postal vote system, and needs support for alternative arrangements to vote.
<u>Privacy and reputation:</u>
Jack*, who has a large number of personal belongings, receives an eviction notice in relation to his public housing property, citing hoarding and failure to maintain the property. Jack has not received sufficient warning, nor adjustments to process to take account of their circumstances, nor been offered support services.
<u>Privacy and reputation:</u>
In a supported accommodation setting where multiple people with disability are living together, supported by support workers: support workers speak negatively about Leo*, one of the residents, around other residents, and continue to open correspondence for Leo, against his wishes, despite advice that this is illegal and requests to cease.
<u>Rights in criminal proceedings</u>
<i>(In relation to clause b): right to have adequate time and facilities to prepare his or her defence and to communicate with lawyers or advisors chosen by him or her: Tom* is currently detained, on remand. Extra time and help is requested because it becomes apparent he is struggling to understand what is happening, and the reason for difficulties understanding are unknown. Tom does not receive sufficient access to his lawyer (or help to understand) before court occurs, and this strongly impacts on the outcome of the case.</i>
<u>Rights in criminal proceedings</u>
<i>(In relation clause h): to have the free assistance of an interpreter: Liu* is subpoenaed to attend court as a witness to a crime. Liu does not speak English and does not have access to interpreting services made adequately available to enable an informed decision about participation.</i>
<u>Right to education</u>
Cooper* a child is being denied access to school education (or is required to attend only for short periods) due to inclusion and support needs that are not being adequately supported or addressed, and a lack of reasonable adjustments in the approach that the school is taking to curriculum and support.

Right to work:

Tahnee*, an employee is experiencing unjust and unfavourable conditions at work, when compared with those being experienced by other workers. The reason for the difference in approach is unclear (thus lodging a complaint based on proving discrimination could be difficult).

* Please note that the above examples are of the type of human rights breaches that ADACAS sees, but are not exact scenarios. All names have been randomly generated.

What a complaints mechanism should look like

ADACAS supports 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.

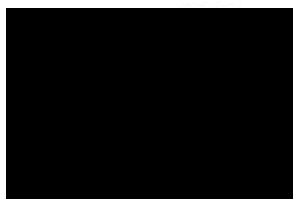
We already know these pathways work for the community, as they are currently in utilization for other complaints, and ADACAS is experienced in assisting our clients / community members in navigating these processes. ADACAS supports clients who are lodging complaints with the Human Rights Commission. We also support individuals who interact with Housing ACT at ACAT, or who are participating in Psychiatric Treatment order or Guardianship related hearings.

We take this opportunity to stress that while these mechanisms already exist, for the HRC and ACAT to be in a position to respond to the additional workload that creating a new complaints mechanism would produce, **they must be adequately resourced**. We defer to the Human Rights Commission and ACAT in relation to providing guidance to Government as to what would be required. We additionally note the need for community legal services, and also individual advocacy services to be funded adequately to support people to access complaint processes.

It is our sincere hope that the above changes would strengthen the Human Rights Act and also provide avenues by which members of our community can ensure that their human rights are protected.

We strongly urge the Committee to recommend to Government the implementation of the petition demands in full, with adequate resourcing.

Sincerely



Wendy Prowse
CEO
ADACAS

