



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY

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Submission Cover Sheet

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

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Committee Secretary
Standing Committee on Justice and Community Safety
ACT Legislative Assembly
Via LACommitteeJCS@parliament.act.gov.au

7 April 2022

Dear Committee Secretary

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

1. The ACT Human Rights Commission is pleased to provide the following submission to the Committee's Inquiry into Petition 32-21 (No Rights Without Remedy). The Commission would be pleased to support the Committee by providing a supplementary submission to respond to any concerns raised by other submitters about the benefits or practicality of establishing this vital means of human rights protection. The Commission would also welcome the opportunity to meet with the Committee to discuss this submission and issues raised through community consultation.

Intention of the Petition

2. The Commission welcomes the inquiry into Petition 32-21 (No Rights Without Remedy). The petition demonstrates the strong community support for the *Human Rights Act 2004* (HR Act) and regard for the complaints handling process of the Commission under the *Human Rights Commission Act 2005* (HRC Act). The Commission strongly supports the core requests of the petition being that the Legislative Assembly:
 - '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.'
3. The Commission supports a complaints pathway for breaches of human rights to the Commission in order to make the protections of the HR Act more accessible and more amenable to use by the average Canberran. The Commission supports the position of the Minister for Human Rights that the HR Act is not just words, but that it 'actively influences and is embedded in everything we do'.¹
4. The Commission also supports the ACT Civil and Administrative Tribunal (ACAT) being given jurisdiction to consider complaints about human rights breaches which are not successfully conciliated by the Commission. The Commission has repeatedly called for a human rights complaints function to help strengthen Canberra's human rights culture and to help keep public authorities accountable to their obligations of acting and making decisions consistently with the human rights of Canberrans under s 40B

¹ Tara Cheyne, Minister for Human Rights. Speech – International Human Rights Day Forum, 10 December 2021, available at [Debating the need for an accessible human rights complaints remedy - ACT Human Rights Commission](#).

of the HR Act.² The COVID-19 pandemic has required all of us to reflect more deeply on issues facing people experiencing vulnerability and it is timely to consider scaling up the protection afforded by the HR Act.

Benefits of a human rights complaints pathway

5. The Commission believes that a complaints conciliation pathway will enhance rights protections by complementing at a less formal level, the direct right of action in the Supreme Court, and the indirect right to raise human rights arguments in other legal proceedings.
6. The Commission notes that Queensland has introduced a human rights complaints conciliation pathway in its *Human Rights Act 2019* (Qld),³ and in Victoria the Ombudsman can investigate and inquire into whether an action of a public authority is incompatible with human rights or failed to give proper consideration to a relevant human right.⁴ This means that the ACT is now out of step with other Australian human rights jurisdictions in having no statutory human rights complaints system.
7. Claims that the ACT leads Australia as a progressive jurisdiction in its promotion of equality, inclusion and rights protection are undermined by the lack of a human rights complaints system to enable Canberrans to enforce their human rights in a way that is accessible and removes the cost, complexity and formality barriers that are an intrinsic part of taking action in the courts. Notably, from July 2022 the University of Queensland is conducting Australian Research Council Linkage funded research into the effectiveness of human rights complaints systems across Australia.
8. We acknowledge that the courts have their place in settling uncertainty about the application of Territory laws and fully determining rights and obligations at law but consider that these options would be valuably supplemented by a simple, efficient, and flexible pathway for conciliating and resolving human rights issues. Moreover, a complaints mechanism would allow scope to refine and triage those questions of law that merit consideration by a court.
9. The real benefit of a human rights complaints pathway is bringing individuals together with the public authorities that serve them to hear the impact of government actions or decisions on individuals and to come up with restorative responses to those concerns. As Deborah Glass the Victorian Ombudsman has noted in her human rights complaints case book – ‘the act of considering human rights is no more or less than putting people at the heart of decision-making. Your rights, my rights, families’, neighbours’ or strangers’ rights, they all matter, though the scales may still tilt’.⁵
10. In Queensland human rights complaints resolved successfully by the Queensland Human Rights Commission included issues relating to:
 - the right to equality in relation to two children aged 15 and 11 who were placed alone in hotel quarantine and were unable to leave their room. The Queensland Human Rights Commission dealt with the complaint urgently under the Human Rights Act. Queensland Health was informed about

² See e.g. ACT Human Rights Commission, *Look Who's Talking: 10 Years of the Human Rights Act* (2014) available at [Look who's talking](#), p 20; ACT Human Rights Commission, *Submission to the 5 year Review of the Human Rights Act 2004* (September 2009) p 38.

³ *Human Rights Act 2019* (Qld), Division 2.

⁴ *Ombudsman Act 1973* (Vic), s 13(2).

⁵ Victorian Ombudsman, *The Ombudsman for Human Rights: A Casebook* (August 2021) available at [The Ombudsman for Human Rights: A Casebook, Aug 2021](#), p 5.

the complaint the same day it was lodged, and they immediately arranged for the children to be returned to their mother's home that day where they were allowed to quarantine for 14 days.⁶

- Aboriginal cultural rights in relation to traditional owners who were protesting on a pastoral lease against a mine and who were told to move on by Queensland Police in a way that was incompatible with their cultural rights and responsibilities. Following conciliation, the Queensland Police Service provided a public statement of regret and took action to better consider cultural rights in future responses.⁷
- the right to education in relation to a school which suspended a child with a disability manifesting as anxiety, sensory and behavioural problems. Communication with the family had broken down but was re-established through the complaint conciliation process that led to the school developing an Individual Behaviour Support Plan and agreeing to use a communication book and meet with the family at beginning of each term.⁸
- the right to equality before the law in relation a woman with mobility issues who complained that a public bus driver had refused to engage an accessibility ramp onto the bus. The Queensland Transport Service agreed to conduct an internal review of its policies and procedures about the use of ramps and all employees were required to attend training on human rights and anti-discrimination laws.⁹

11. The Victorian Ombudsman has examined human rights issues including:

- the right to protection from degrading treatment, [where a woman was detained in an airport while quarantine arrangements were organised during which time she was not permitted to use a bathroom](#) and was forced to relieve herself in a bottle. The woman received a written response from the department.
- the right to non-discrimination in [relation to a woman in a wheelchair who was queuing in a drive through testing clinic which did not have wheelchair accessible toilets](#), where she asked to be permitted to leave the queue to find an accessible toilet but was told she would have to return to the start of the line. Subsequently the Department of Health contacted all testing clinics to remind them of their non-discrimination obligations.
- rights to protection of the home, [where an elderly couple in community housing were left without hot water and heating for five days](#) after electrical work caused appliances to stop working. The couple received an apology and a rental rebate.
- the [right to protection of families and children in relation to a decision to place one Aboriginal child but not their sibling into kinship care](#). On reviewing the case files during consideration of the complaint, the Ombudsman found that Child Protection had relied on inaccurate and conflicting information, which meant their decision to place the child in foster care was unfounded. The

⁶ Queensland Human Rights Commission, *Balancing life and liberty, 2020-2021 Annual report on the operation of the Human Rights Act 2019* (2021) available at [Human-Rights-Annual-Report-2020-21.pdf \(qhrc.qld.gov.au\)](#) p 159.

⁷ Ibid, p 162.

⁸ Ibid, p 156.

⁹ Ibid, p 158.

records were corrected, staff were counselled and trained, an apology was issued, and the child was placed in the care of his grandmother with his sibling.

12. Such examples highlight the importance of having an accessible forum for raising human rights where individuals are impacted by government decisions or actions. Expecting people in these circumstances to start court proceedings to raise their human rights would be unrealistic. The benefit of a complaints pathway is that it gives ordinary members of the public a clear voice to power.
13. The inclusion of a human rights complaints pathway would allow for a more inclusive and engaging discussion about the balancing required in acting and making decisions compatibly with human rights. It would support a number of wellbeing domains including **governance and institutions, access and connectivity, social connection, safety** and **identity and belonging**. It will give Canberrans a clearer forum in which to raise their human rights, allowing them a direct voice to power and fostering greater levels of trust and engagement in public administration, increasing feelings of inclusion, fairness and respect.¹⁰
14. However, the Commission acknowledges that the operation of the human rights complaints conciliation pathway raises several policy issues that would require careful consideration in order to ensure that any complaints pathway introduced is workable, effective and efficient. These issues are considered in the discussion below.

Background to the issue

Origins of the HR Act

15. The issue of a complaints pathway for breaches of human rights has been debated since the introduction of the HR Act in 2004 which followed a community consultation in 2002/03 conducted by an independent Bill of Rights Consultative Committee.
16. Face-to-face consultations with a wide range of Canberrans were conducted and 145 submissions were received with 88% in favour of adopting a bill of rights, which the Committee did.
17. The Committee did not specifically recommend a complaints pathway, as recommended by some submitters,¹¹ but did recommend that any individual be able to seek effective remedies for a breach of their rights by a public authority.¹² The Committee noted that “there are particular rules and principles that are designed to enhance human rights, but [the Committee] believes that protection is not comprehensive, sufficient or transparent” particularly given the small, unicameral, Hare-Clarke system in the ACT. The decision to introduce a human rights statute was seen as a way of helping build a language and culture of rights that would assist members of the public to engage with public authorities and hold government to account.

Consideration of a human right complaints pathway

18. The HR Act has been amended following reviews on sporadic basis since its commencement, including to introduce public authority obligations and a direct right of action in the Supreme Court for breach of human rights in 2009. Throughout that time, and particularly since the introduction of the direct right

¹⁰ ACT Government, *ACT Wellbeing Framework* (2020) available at [ACT Government Wellbeing Framework](#)

¹¹ ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act* (May 2003) available at [Reports - Trove \(nla.gov.au\)](#) at [2.103] p 40.

¹² *Ibid*, (Recommendation 9), p 6.

of action, the issue of human rights remedies has been a recurring theme in community consultation and practitioner commentary.

19. At the time of the Five-Year Review in 2009, the Commission called for a complaints model based on its discrimination jurisdiction, provided that adequate resources were allocated and criminal *sub judice* matters were excluded from conciliation. The ANU review team agreed in its 2009 Report, stating:

Given the relative inaccessibility of Supreme Court proceedings for most people, we recommend that consideration should be given to providing a complaints-handling function to the HR Commissioner, provided that the HRC is adequately resourced to undertake such a function.¹³

20. This recognised that there is a gap in the ways in which human rights can be enforced in the ACT. The HR Act is based on and refers to the International Covenant on Civil and Political Rights (ICCPR).¹⁴ Article 2(1) of the ICCPR requires state parties to 'respect and ... ensure' the rights granted in the ICCPR to individuals within its territory, including by ensuring that individuals can enjoy and access their rights.¹⁵ This includes the right to an effective remedy for breaches of human rights.

21. The ACT Government did not support the recommendation of the expert led review to vest a human rights complaints handling function in its 2012 Response, saying:

there would be increased resourcing demands associated with extended functions & the risk of duplicating existing complaints handling roles across ACT agencies. ... Any new complaints mechanism would further complicate interactions with existing mechanisms. Dual human rights mandates may encourage opportunities for forum shopping & duplication of efforts by complaint handling & oversight agencies.¹⁶

22. These concerns about resourcing, duplication, complexity and forum shopping arguments are much less compelling with the merger of all Commission complaints jurisdictions under a single Commissioner within the Commission in 2016, and more recently, the extension of the Commission's complaint jurisdiction to victims' rights, vulnerable people, occupancy disputes, retirement village disputes and conversion practice complaints.

23. There are consistent and clear processes for managing complaints and a single team of complaint handlers that have specific training in best practice conciliation and dispute resolution techniques. The complaints team within the Commission can already handle complaints alleging multiple factual circumstances such as discrimination complaints based on more than one protected attribute. These

¹³ ANU Research Project Report, *The Human Rights Act 2004 (ACT): The First Five Years of Operation* (2009), p 10, archived copy available at:

https://web.archive.org/web/20110422115809/http://www.justice.act.gov.au/resources/attachments/report_HumanRightsAct_5YearReview_ANU_2009.pdf

¹⁴ *Human Rights Act 2004*, Schedule 1.

¹⁵ Bell-James, Justine; Collins, Briana, "Queensland's Human Rights Act: A New Frontier for Australian Climate Change Litigation?" [2020] UNSWLAWJl 2; (2020) 43(1) *UNSW Law Journal* 3 accessed at [Bell-James, Justine; Collins, Briana --- "Queensland's Human Rights Act: A New Frontier for Australian Climate Change Litigation?" \[2020\] UNSWLAWJl 2; \(2020\) 43\(1\) UNSW Law Journal 3 \(austlii.edu.au\)](#)

¹⁶ ACT Government response to the ANU Research Project Report, *The Human Rights Act 2004 (ACT): First Five Years of Operation*, p 25, archived copy available at: https://web.archive.org/web/20180507105518/http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/Government_Response_first_5_yrs_PDF.pdf

complaints are handled in a holistic way without ‘siloed’ complaint areas. The Commission has systems for referrals and information sharing with appropriate agencies that can handle complaints if the facts of the complaint fall within the jurisdiction of the ACT Ombudsman or the Privacy Commissioner, for example. The Commission is able to collaborate internally to draw on the expertise and issue awareness across all its oversight jurisdictions as well as strong networks throughout the ACT Government to help negotiate satisfactory outcomes for complaints.

24. Allowing the Commission to handle human rights complaints does not risk unnecessary duplication but instead provides a more flexible and integrated system for aligning complaints about particular service provision with relevant human rights that underpin those service delivery principles and standards. It would not limit or add additional steps to existing complaints pathways. Adding a human rights complaints jurisdiction will effectively support and fill gaps between existing complaints jurisdictions, improving the service experienced by the community, and allowing the Commission to become a more comprehensive, integrated ‘one-stop’ shop for helping to conciliate complaints about public authority actions or decisions that may be incompatible with human rights. An additional benefit would be that the Commission would be better placed to understand the impact of the practices and policies being implemented by government on the ground. This may allow for more focused investigation, law reform and advocacy work to support transparency & accountability of executive action.
25. While the Commission can refer to human rights in working through these complaints, and in some cases there is other legislation that applies human rights by reference or as part of general standards applicable to some public authorities, a complaints pathway would provide a clear and consistent framework for applying the public authority obligations, which would spur cultural change across government.

Restorative practice for cultural change

26. In 2018, the ACT Law Reform Advisory Commission released its report into Restorative Practices, which recommended that failures ‘to comply with human rights obligations be addressed through access to restorative processes, where appropriate. In particular, the *Human Rights Act 2004* and the *Human Rights Commission Act 2005* be amended to provide access to conciliation as the first level of redress for Human Rights Act complaints’.¹⁷
27. In 2019, the ACT Auditor-General’s office conducted an audit of the recognition and implementation of obligations under the HR Act, examining the governance and operations of the Justice and Community Services Directorate and the Community Services Directorate as examples. The report found that because of inconsistent consideration of human rights embedded in operational practice, policies, procedures and reporting, it was difficult to assess “what progress, if any, is being achieved by ACT Government agencies in meeting their human rights obligations and in the development of a human rights culture in ACT Government agencies”.¹⁸
28. While we acknowledge that there has been some cultural change across government towards awareness and understanding of human rights obligations in public administration fostered by the HR Act generally, and in particular the pre-legislative scrutiny obligations, there are still aspects where options for rights

¹⁷ Recommendation 3, ACT Law Reform Advisory Council, *Canberra – becoming a restorative city, Final report, Reference 5* (October 2018) available at [Law Reform Advisory Council Final Report - Canberra becoming a restorative city.pdf \(act.gov.au\)](https://www.act.gov.au/law-reform-reports/act-law-reform-advisory-council-final-report-canberra-becoming-a-restorative-city.pdf), pp 26-27.

¹⁸ ACT Auditor-General’s Office, *Recognition and implementation of obligations under the Human Rights Act 2004*, Report 2/2019, available at [Recognition and implementation of obligations under the Human Rights Act 2004](https://www.act.gov.au/law-reform-reports/act-law-reform-advisory-council-final-report-canberra-becoming-a-restorative-city.pdf), p 1.

enforcement and remedies remain unclear and inaccessible to the average Canberran, and where frontline public service staff are unaware of their human rights obligations and how to meet them.

29. A human rights complaints pathway would provide an efficient, informal and accessible forum for people to seek resolution of their human rights complaints. It would also significantly enhance the restorative potential of the HR Act and support several wellbeing indicators across several domains. A human rights complaints pathway would provide the opportunity for parties to meet in a relatively informal setting outside of court where power imbalances would be less pronounced; where parties could more directly communicate with and listen to each other; and, where they could be better supported to resolve the complaint and prevent the issues reoccurring in the future.
30. Remedies negotiated outside the court process have more potential to be innovative and tailored to the situation, further enhancing the restorative potential of the process. The Commission has both the expertise in human rights law and alternative dispute resolution to conduct conciliation for human rights disputes between public authorities and individuals affected by their actions and decisions.

Direct right of action

31. The public authority obligations in s 40B of the HR Act require all public authorities to act and make decisions consistently with human rights, and s 40C empowers individuals who believe that a public authority has breached their duties to:
 - a. commence proceedings in the Supreme Court to seek a remedy (other than damages); or
 - b. rely on human rights in other existing legal proceedings.
32. The direct right of action and remedy provisions in s 40C of the HR Act are the only provisions that support individuals to directly seek to enforce their individual rights. The practical effectiveness of those provisions may be limited in practice because of the complexity and cost of court proceedings. Canberrans would benefit from having a complaints pathway that would allow consideration of their human rights in a less formal setting that is accessible, affordable, efficient, less adversarial and more restorative.

Inaccessibility of the direct right of action and costs of enforcing rights

33. As we noted in our *Look who's talking* report on ten years' operation of the HR Act, "[t]he direct right of action in the HR Act also remains under-utilised and it may be a remedy that is out of reach for the vast majority of people in the community".¹⁹
34. In particular, for disadvantaged clients who are subjected to human rights breaches, Supreme Court litigation is financially inaccessible when filing fees to begin proceedings may be upwards of \$1800, (albeit with a potential for waiver where the applicant faces serious financial hardship), and lawyers charging out rates of \$300-600 per hour or more.²⁰ Lengthy and formal technical procedures include complex pleadings and affidavits of witnesses that must be filed to establish a successful case, which necessitates legal representation over multiple appearances.

¹⁹ ACT Human Rights Commission, *Look Who's Talking: 10 Years of the Human Rights Act* (2014) available at [Look who's talking](#), p 6.

²⁰ Law Council of Australia, *Justice Project - Final Report 2018*, and Australian Government Productivity Commission, *Inquiry Report: Access to Justice Arrangements*, No 72 (2014).

35. In 2021 the Commission received only seven notices pursuant to s 34 HR Act, with three applications finalised. By comparison, in the financial year there were 228 discrimination complaints received by the Commission.
36. In 2020, since coming into force the HR ACT had been mentioned in only 6.5% of Supreme Court decisions, 7% of ACAT decisions and 8% of Court of Appeal decisions.²¹ Of those mentions, public authority obligations arose in approximately 26 cases.
37. The under-utilisation of the direct right of action in the HR Act is largely because it is out of reach for the vast majority of ordinary people in the community - the Supreme Court's jurisdiction is an expensive & lengthy process for potentially vulnerable plaintiffs to navigate.
38. There is also significant risk of a person instigating human rights proceedings incurring large costs, and potentially bearing the costs of the defending parties, especially for public interest test cases where proceedings may be determined on highly complex, and finely balanced points of law. This has a significant chilling effect on people bringing claims and may limit consideration of issues of public interest.
39. Additionally, there is only a small subset of lawyers and counsel routinely engaging with and arguing human rights matters at the Supreme Court level that could effectively support the human rights of community plaintiffs who are willing to take action in the superior courts.

Restricted remedies

40. The relative lack of engagement of the ACT legal profession with human rights may be due to the restriction on damages being awarded for any breach that is proved. The lack of any real possibility of monetary compensation for the breach (notwithstanding existing common-law sources of compensation which are unaffected) means there is little financial incentive for plaintiffs and their legal representatives to commence proceedings in the Supreme Court to challenge actions or decisions of public authorities on the basis of the HR Act framework, even if other remedies such as declarations, stays or injunctions are available.
41. In some respects, the minimal number of lawyers engaging with human rights arguments in turn limits the quality and quantity of case law that might assist in developing a fuller understanding and application of human rights in legal proceedings. This hinders the development of an effective ACT human rights jurisprudence and a legal profession with a fully developed capacity to advance it. Having damages would assist genuine claimants who may otherwise be deterred by the cost/time/stress involved in pursuing test case litigation. The ACT remains one of the few human rights jurisdictions in the world to not offer damages to victims of human rights breaches – with damages available to a greater or lesser extent in comparable jurisdictions like the UK and NZ.²²
42. In the absence of a greater range of remedies (including monetary damages) in the Supreme and lower courts and ACAT, a more accessible complaints pathway would stimulate increased engagement with human rights in the general community and would spur further cultural change within the public sector,

²¹ Watchis, H; Costello, S & Thilagaratnam, R, 'Chapter 6 - Human Rights Scrutiny under the Human Rights Act 2004 (ACT)' in Debeljak, J & Grenfel L (eds) *Law Making and Human Rights* (2020, Lawbook Co) p 191.

²² The NZ Bill of Rights Act does not contain an explicit power to award damages, but the courts have implied one in *Baigent's case*, *Simpson v Attorney-General* [1994] 3 NZLR 667 (CA).

as agencies would have greater impetus to address the concerns raised by Canberrans in complaints about their services.

Efficiencies

43. Supreme Court proceedings are also time consuming. Some cases may run for years, with multiple interim hearings to confine or constrain issues before the substance of human rights arguments are considered. There may be little impetus for commencing proceedings that may take years, where there are limited remedies, and those that are available may be rendered ineffective by passage of time and intervening events.
44. Similarly, because the Supreme Court is the main forum by which human rights arguments can be raised, it has to deal with alleged breaches resulting from routine administrative decisions arising that could potentially be better addressed by bringing the parties together in a conciliated complaints resolution process that would be simpler, more efficient and less time consuming. A human rights complaints pathway could reduce pressure on the Supreme Court by diverting some human rights issues which may under the current system only be brought as a direct right of action, to the more appropriate and adapted human rights complaint.

EXAMPLE 1

A young Aboriginal person detained at Bimberi Youth Justice Centre brought a human rights action in the Supreme Court alleging that her human rights had been breached as a result of being segregated and having her art materials and Koori Mail newspaper confiscated. The Human Rights Commissioner was granted leave to intervene in the matter, however, the matter was settled by the parties without proceeding to hearing. The ACT Government apologised to the young woman for her experience in custody, and for Bimberi staff removing her Indigenous artwork and copies of the Koori Mail from her room. A human rights complaints pathway to the Commission could have provided a more expeditious way for resolving this matter.

EXAMPLE 2

A mother sought to complain to the Commission about her son who has been on an involuntary psychiatric treatment order for an extended period of time. She says there has been limited effort to assist him to transition back to community although he is not a forensic patient. She initially sought to arrange accommodation for him in the ACT but given delays in getting approval for an appropriate accommodation setting she arranged accommodation in another state. The mother was told that accommodation was not suitable. The mother says she is unclear on what criteria her son is able to be transitioned to community and is concerned there is no plan in place to assist him back to community. The mother is concerned her son is being arbitrarily detained in a mental health facility because of concerns about possible future behaviour and a lack of effort to assist him to transition or to arrange appropriate accommodation in the ACT. The mother cannot afford an application to the Supreme Court and is concerned legal action will delay her son's transition to community.

Cultural change

45. There is comparatively less impetus for systems change where public authorities are not held accountable over the short term. Staff and ministerial turnover, changes to policies and legislation can

diffuse the impact of human rights arguments during the time it takes for a matter to be heard and decided in the Supreme Court.

46. The Queensland Human Rights Commission has noted that the COVID-19 pandemic, emerging only months after the commencement of the Queensland *Human Rights Act 2019* has proved a great test, but also spurred on cultural change, with the community and Queensland public service having to consider the appropriate balance between individual rights and the broader public interest.²³ The Queensland Human Rights Commissioner stated:

Public entities have largely shown themselves willing to engage in human rights dialogue when issues were raised and consider less restrictive alternatives to rights limitations. Advocates have also reported positive outcomes by raising human rights arguments in their dealings with public entities.²⁴

47. The Queensland experience shows that Queensland public authorities are changing operational practice as a direct result of issues raised by human rights complaints. For example, one Health and Hospital Service has 'implemented a process to analyse trends and themes that are forming from human rights complaints. This information will be used to inform improvements for the provision of health services for patients and their families'.²⁵
48. As another example, 'the Health Directions Exemption Service in Queensland worked in partnership with the Queensland Legal Services and Crown Law to develop a human rights assessment template and guide to assess and record human rights considerations specifically for exemption requests. A training program was developed for Health Directions Exemption Service staff and has been delivered since early 2021'.²⁶
49. These cultural change benefits may not be realised through the direct right of action, where because of the formality of the forums, the focus may shift to public authorities doubling down to defend alleged breaches rather than acknowledging where practice could be improved, or materials developed to support better consideration of human rights in their day-to-day operations.
50. The Supreme Court process is inevitably adversarial and may not provide the opportunity for hearing and resolving the underlying non-legal issues that a person regards as a breach of their rights. In this way, as there is only a highly formal and procedural forum for hearing allegations of breaches of human rights, people who are aggrieved at government administration may be constrained into a forum which is complex, costly and time consuming and utilises court resources when it could be resolved more efficiently and restoratively in other less formal ways if there were a human rights complaints pathway.
51. For these reasons, the direct right of action in the Supreme Court is not the appropriate means for the majority of Canberrans to seek a remedy for a breach of their human rights by ACT public authorities. A complaints pathway is needed to ensure that individuals have accessible options for raising grievances about the consideration (or lack of consideration) given to their human rights and to build a human

²³ Queensland Human Rights Commission, 2020-2021 Annual report on the operation of the Human Rights Act 2019 (2021) available at https://www.qhrc.qld.gov.au/_data/assets/pdf_file/0020/36506/Human-Rights-Annual-Report-2020-21.pdf, p 5.

²⁴ Ibid.

²⁵ Ibid, p 97.

²⁶ Ibid, p 81.

rights culture that is focused on systemic change to improve policies and practices to better respect, protect and promote human rights.

52. As the following examples demonstrate, the ability of the Commission to fully engage with human rights issues and to identify areas for improvement in public authority decision-making is limited without an express statutory basis under the HRC Act to consider human rights complaints.

EXAMPLE 1

A man contacted the Commission about being transferred from detention in the ACT to NSW. The man is Aboriginal and his extended family is in the ACT. The man raised concerns that his connection to culture and family had not been taken into account in making the decision to transfer him to NSW. The man noted his mother did not drive and would have significant issues visiting him in the country jail he was eventually placed in disconnecting him from family and culture.

EXAMPLE 2

A young man contacted the Commission for assistance with accommodation arrangements. The young man was 15 and had been on a short-term care and protection order while his mother was in hospital. During that time, he had moved into his brother's public housing property as his relationship with his mother had broken down. The relevant authorities were aware that the young man was living in the property while his brother had been detained on remand, but steps were then taken to evict him because he was not the tenant although the brother had retained the tenancy. The young man was removed from the property with the assistance of police with no alternative accommodation arrangements in place other than a referral to crisis housing which he was not comfortable accessing due to his age.

EXAMPLE 3

The Commission was contacted by a detainee in the AMC. The man was required to undertake programs in order to be eligible for parole. He noted that the program was only made available for him to attend a month after his earliest parole date and the program is 6 months in duration. The man says due the delay he is now 16 months past his earlier parole date but cannot secure parole as he had to relinquish his tenancy and because of the nature of his offences he has been unable to secure another accommodation option, although he has support services funded through an NDIS plan. He says although he can apply for parole, he will not be able to access parole because of the above factors and will likely have to serve his full sentence.

Human rights in other legal proceedings

53. Section 40C(2)(b) of the HR Act provides that a person who is a victim of an alleged breach of their human rights may also rely on those rights in other legal proceedings. This provision is intended to allow a person to rely on their rights where they are incidental to claims for remedies made under other Territory laws, for example in relation to residential tenancy or guardianship proceedings in ACAT.²⁷

²⁷ *LM v Childrens Court of The Australian Capital Territory and The Director of Public Prosecutions for the ACT* [2014] ACTSC 26 (24 February 2014) at [22]; *Commissioner for Social Housing v Lysle (Residential Tenancies)* [2016] ACAT 26 (12 April 2016) at [16-18].

54. However, while the intent was clear, there is continued uncertainty about the scope of the ability of lower courts to consider human rights, and about the remedies that are available for such claims.

Limited ACAT jurisdiction

55. As we noted in our *'Look who's talking'* report in 2014,²⁸ the Supreme Court has determined that express power to grant relief under the HR Act is given only to the Supreme Court via s 40C(4).²⁹ However decisions have suggested that inferior courts and tribunals (and the Supreme Court) retain their inherent, statutory or common law jurisdictions to grant remedies otherwise available to them other than under the HR Act.³⁰
56. A person may rely on their rights under the HR Act in lower courts and ACAT, but lower courts and ACAT cannot grant a remedy under the HR Act for that breach, unless it is within the scope of the statutory powers which are otherwise available to the Court.³¹
57. ACAT has found that it is not appropriate, and the legislature did not intend, for ACAT to embark on a 'collateral' review of whether certain acts or decisions of a public authority, taken pre-litigation, are 'unlawful' pursuant to section 40B of the HR Act.³²
58. In Victoria, superior courts have held that the unlawfulness or illegality of the act or decision of a public authority may be a relevant consideration where that fact is central to the proceedings before the Victorian Civil and Administrative Tribunal (VCAT) or where it is an element of the cause of action in such proceeding. In this way human rights have to 'piggy-back' on existing avenues to the VCAT under other legislation. The Charter did not operate to confer jurisdiction on the VCAT to grant relief on a ground of unlawfulness arising because of the Charter.³³ The situation is the same in ACAT.
59. ACAT does not "consider that the effect of section 40C(2)(b) is to place an onus on a public authority ... to demonstrate reasonableness and proportionality in the orders it seeks under the RT Act".³⁴

Unclear remedies in ACAT

60. There are also unsettled questions about whether a breach amounts to an unlawfulness that gives rise to a jurisdictional error that could lead to the act or decision being null and void.³⁵
61. These positions muddy the status of human rights in the lower courts and ACAT, as there is no clear explicit legislative basis for dealing with and providing remedies for actions or decisions that are

²⁸ ACT Human Rights Commission, *Look Who's Talking: 10 Years of the Human Rights Act* (2014) available at [Look who's talking](#), p 6

²⁹ *LM v Childrens Court* [2014] at [20-22].

³⁰ *Ibid.*

³¹ *LM v Childrens Court* [2014] at [21].

³² *Commissioner for Social Housing in the ACT v Massey* (Residential Tenancies) [2013] ACAT 41.

³³ See discussion in Calnan, Scott, "Codification and Innovation in the Queensland Human Rights Act: Have Human Rights Been Furthered?" [2020] JCULawRw 10; (2020) 26 *James Cook University Law Review* 141 available at [austlii.edu.au](#); Judicial College of Victoria, *Charter of Human Rights Bench Book*, 3.3. Proceedings for breach of the Charter (s 39), available at [Charter of Human Rights Bench Book \(judicialcollege.vic.edu.au\)](#).

³⁴ *Commissioner for Social Housing in the ACT v "A"* (Residential Tenancies) [2015] ACAT 13.

³⁵ *Bare v Independent Broad-based Anti-Corruption Commission* [2015] VSCA 197; (2015) 48 VR 129 ('Bare').

unlawful. Where there are grounds for such a finding, they have to be read down to support existing remedies, which may not fully reflect the significance of the breach of human rights.

62. As noted by Scott Calnan in his review of the new Queensland Human Rights Act, the promise of using lower courts to help disadvantaged individuals to enforce their rights has not come to fruition:

The main drawbacks of the [case law] positions in Victoria and the ACT have been that disadvantaged people have found it difficult to find sufficient resources to approach the courts to complain of violations of their statutory rights or to find funds to pay any costs orders made against them. In those circumstances, the ability of these tribunals to find that those rights have been violated would have made those rights accessible for a group which arguably suffers the most human rights violations in the community.³⁶

63. Decisions that restrict the scope of remedies available for an unlawful breach of public authority obligations to act and make decisions consistently with rights in the lower courts are problematic because:

Inferior courts and tribunals offer applicants a more cost-effective path to remedying wrongs. Tribunals and lower courts offer significant benefits with specific jurisdictional expertise, such as tenancy matters in ACAT, and the Children's Court. They are familiar with the subject matter and particular legal framework, thus able to weigh up the impact of a public authority's breach of the individual's rights in light of all relevant factors in the proceeding. They are well-placed to issue an effective remedy under the HR Act.³⁷

64. In the absence of a consistent and coherent pathway to raise and remedy human rights breaches in the lower courts and ACAT, the availability of a human rights complaints pathway that involves both conciliation, but also enforcement through ACAT, becomes essential to the enjoyment and exercise of the human rights of Canberrans.

Commission complaints consideration

65. The Commission's functions includes complaints handling in relation to discrimination, health services, services for older people, children and young people, vulnerable adults and victims of crime. These complaints are handled in an integrated complaints process that involves Commission conciliation with affected parties in order to try to resolve the dispute informally and efficiently, with a fallback process allowing the Commission to refer some types of complaints to ACAT if it is unable to be resolved through conciliation.³⁸

The complaints process

66. Core features of the Commission's complaints system are that:

- support people, appointed agents and people with sufficient interest are permitted to make complaints on behalf of a person (depending on the particular complaint type)³⁹ and complaints

³⁶ Calnan, Scott, "Codification and Innovation in the Queensland Human Rights Act: Have Human Rights Been Furthered?" [2020] JCU Law Rev 10; (2020) 26 *James Cook University Law Review* 141 available at austlii.edu.au.

³⁷ ACT Human Rights Commission, *Look Who's Talking: 10 Years of the Human Rights Act* (2014) available at [Look who's talking](http://lookwhos.talking.org.au), p 7.

³⁸ *Human Rights Commission Act 2005*, Part 4.

³⁹ *Ibid*, s 43.

can be dealt with as representative complaints on behalf of a member of a class of people or where similar facts or issues of law arise;⁴⁰

- the Commission can help identify the proper respondent to the complaint;⁴¹
- the Commission has an obligation to be prompt and efficient;⁴²
- complaints can be closed if they are frivolous or vexatious or lack substance;⁴³
- the Commission can initiate its own complaint consideration (such as where an act or service raises issues of public interest or public safety);⁴⁴
- complaints can be referred for conciliation;⁴⁵
- complaints can be referred to an appropriate statutory office-holder, ⁴⁶ with additional protections for clients that are vulnerable;⁴⁷
- the Commission may conduct a single consideration of more than one complaint where that complaint arises out of the same or similar issues;⁴⁸
- the Commission has the power to request information and access to documents, and to request a person attend an interview to answer questions, and it is an offence to fail to provide that information and to meet that request;⁴⁹
- the Commission closes complaints by giving parties a final report, which may include recommendations that can specify actions that should be taken in a specified time;⁵⁰
- it may be an offence if the party does not report actions taken in relation to the recommendations,⁵¹ while non-complying entities may be publicly named ⁵² with reports given to the Minister who may table them in the Legislative Assembly;
- for some types of complaints, a referral statement must be given to ACAT (if requested by the complainant) to activate its jurisdiction to hear applications to resolve issues of law.⁵³

⁴⁰ Ibid, s 71.

⁴¹ Ibid, s 71A.

⁴² Ibid, s 45.

⁴³ Ibid, s 78.

⁴⁴ Ibid, s 48.

⁴⁵ Ibid, s 51.

⁴⁶ Ibid, s 52A.

⁴⁷ Ibid, s 52B.

⁴⁸ Ibid, s 70.

⁴⁹ Ibid, s 73.

⁵⁰ Ibid, s 81.

⁵¹ Ibid, s 85.

⁵² Ibid, s 86.

⁵³ See, for example, *Human Rights Commission Act 2005*, s 88.

67. The complaints process can be relatively informal and is more flexible than a regular civil proceeding in the Courts or ACAT but is supported by formal powers that enable the Commission to properly consider all the matters relevant to the complaint and to require co-operation with the complaints consideration process.

Conciliation

68. As noted above, a key feature of the Commission's complaints consideration process is conciliation.

69. Conciliation has the following features:

- Conciliation is between the parties to the complaint and anyone else the Commission considers would assist;⁵⁴
- Conciliation is conducted in the way the Commission decides;⁵⁵
- If the parties agree on a resolution to the conciliation the Commission may help parties draft a written conciliation agreement, which is kept confidential and may not be produced in evidence.⁵⁶ The agreement is signed and given to each party, and in some cases lodged with ACAT.⁵⁷

70. Conciliation allows parties to come together to discuss the issues informally. Rather than relying on written submissions and legal representation in a forum that is bound by the rules of evidence and civil proceedings, bringing people together with the guidance and facilitation of trained conciliators places focus on the core issues (which may not always be legal) to work out tailored ways of resolving them quickly, efficiently and with greater participation and engagement from the parties. The conciliation process is inherently more restorative than court or tribunal proceedings as it allows for greater direct communication between the parties in a way that allows wants and needs to be articulated simply and potential solutions to be identified more rapidly.

71. The Commission complaints conciliation system "provides the ACT community with a comprehensive, free, accessible means of resolving their concerns. It also means the Commission can identify systemic issues and try and address those both through the individual complaint pathway and by working collaboratively with our colleagues within the Commission, in government and the community".⁵⁸

72. Throughout this process the Commission takes human rights issues into account in the way complaints are handled. This is required as the Commission is itself a public authority required to take human rights into account when making decisions about how to handle a complaint, but also because many issues raised in specific discrimination, health service, or older people service complaints, for example, will touch on human rights, such as the right to privacy or protection of children or rights to freedom of movement. However, as noted above, the ability of the Commission to fully engage with human rights issues and public authority obligations is limited without an express statutory basis under the HRC Act.

⁵⁴ Ibid, s 57.

⁵⁵ Ibid, s 60.

⁵⁶ Ibid, s 66.

⁵⁷ Ibid, s 62.

⁵⁸ Karen Toohey, Human Rights Commission, *2020-21 Annual Report* (2021) available at [ACT Human Rights Commission Annual Report 2020-21](#), p 12.

73. Amending the HR Act and HRC Act to establish a clear pathway for the Commission to deal with human rights complaints, and to consider human rights in complaints under its existing jurisdictions ('piggy-back complaints') would simplify and leave agencies with more certainty about what findings and recommendations the Commission can make and exactly how the agency would be required to respond to those findings or recommendations.
74. Generally, though, the Commission complaints process is well understood and utilised, as can be seen in recent legislative amendments by the government to provide new powers for the Commission to receive complaints in relation to retirement villages, occupancy agreements and conversion therapies. An overview of the Commission's complaints jurisdictions is at **Attachment A** to this submission.
75. In the 2020-21 financial year the Commission handled 922 complaints, and 66 per cent of people who used the Commission's complaints process said it was fair, accessible and understandable.⁵⁹ 80 per cent of complaints were handled in line the Commission's own standards, noting the unavoidable impacts of the COVID-19 pandemic on timeliness of complaint investigations.⁶⁰

Resolving complaints in ACAT

76. If complaints are unable to be successfully resolved through the conciliation process, certain complaints can be referred to ACAT. The discrimination jurisdiction provides the most closely aligned complaints process and would serve as the most appropriate starting point for the design of a human rights complaints pathway.
77. Where parties make a discrimination complaint conciliation agreement the Commission will provide a copy of that agreement to ACAT. ACAT maintains a register of such agreements, and on application of a party to the conciliation agreement, can make orders to enforce the agreement.
78. There are no fees for a referral and there are no subpoena or hearing fees for matters dealt with in ACAT. The only costs involved are whatever costs the parties incur – the general rule in ACAT being that each party bears their own costs.⁶¹
79. People can be represented by a lawyer, but normally that is not the case, and in some circumstances, another authorised support person can attend hearings. At directions hearings, ACAT will normally request that parties attend mediation or a conference to see if matters can be resolved by agreement. If no agreement is reached, the matter proceeds to a hearing, at which time all documents and arguments are put to ACAT.
80. ACAT can make a range of orders (some of which depend on the type of matter), including that a person do or not do something, perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful act, or pay to a person a stated amount by way of compensation for any loss or damage suffered by the applicant because of the unlawful act.⁶²

⁵⁹ Human Rights Commission, *2020-21 Annual Report* (2021) available at [ACT Human Rights Commission Annual Report 2020-21](#), p 27.

⁶⁰ Ibid.

⁶¹ See, for example, ACT Civil and Administrative Tribunal, Website information accessed at 23 February 2022, [Discrimination cases - ACAT \(act.gov.au\)](#)

⁶² *Human Rights Commission Act 2005*, s 53E.

81. ACAT has a jurisdictional cap up to \$25,000 in civil proceedings,⁶³ and so a person who is successful at the hearing may be able to seek compensation or damages up to that amount.
82. The average time for a civil proceeding application to be finalised in ACAT was 197 days in 2020–21, an increase through COVID-19 from 162 days in 2019–20. For discrimination complaints, approximately two thirds of matters are resolved in less than 12 months.⁶⁴

Legislating a complaints pathway for breaches of public authority human rights obligations

83. As discussed above there is a clear and well-established and understood complaints pathway for a number of types of complaints that may be dealt with by the Commission. Importantly, it should be noted that many of those complaint types, such as discrimination or health services complaints, are related to the practical enjoyment of rights that are recognised and protected under the HR Act.
84. In practice this means that some rights under the HR Act are given an enhanced status, as there are more accessible ways to enforce those rights and a wider range of remedies available, including compensation for loss or damage.
85. The Commission considers that it would be preferable and is indeed in keeping with the Government's stated intention of progressive realisation of rights, to provide consistent pathways for the protection and promotion of all human rights recognised in the HR Act.
86. To extend the complaints process for discrimination matters to complaints about any breach of the HR Act and enable their confidential conciliation would provide a simpler pathway for the public to raise concerns about government action and decisions that impact their rights.

Approaches in other jurisdictions

Queensland

87. The Queensland *Human Rights Act 2019* introduced a human rights complaints pathway. Under this system a person (or their agent or an authorised person) can make a complaint about an alleged contravention of public authority obligations to act and make decisions consistently with rights to the Queensland Human Rights Commission after first complaining to the relevant public authority.⁶⁵
88. The Commissioner has standard powers to receive, refer and deal with complaints,⁶⁶ including taking appropriate reasonable action, which can include conducting preliminary investigations, requesting submissions from public entities, and conducting early negotiations and conciliation conferences.⁶⁷

⁶³ *ACT Civil and Administrative Tribunal Act 2008*, s 18.

⁶⁴ ACT Civil and Administrative Tribunal, *Annual Review 2020-21*, available at [ACAT Annual Review 2020–21 \(act.gov.au\)](https://www.act.gov.au/act-annual-review-2020-21), p 37.

⁶⁵ *Human Rights Act 2019* (Qld), Part 4, Subdivision 2 (Making and referring human rights complaints).

⁶⁶ *Ibid*, Part 4. Subdivision 3 (Dealing with human rights complaints).

⁶⁷ Queensland Human Rights Commission, *Annual Report 2020-21*, available at [Queensland-Human-Rights-Commission-Annual-Report-2020-21.pdf \(qhrc.qld.gov.au\)](https://www.qhrc.qld.gov.au/annual-report-2020-21), p 32.

89. There is no referral power to the Queensland Civil and Administrative Tribunal - where a complaint against a public entity be unconciliable, the Commissioner may also report on actions the entity should take to ensure its acts and decisions are compatible with human rights.⁶⁸
90. The Queensland Commission accepted, having assessed facts complained about as being within jurisdiction, 178 human rights complaints in 2020-21.⁶⁹ Of those accepted complaints there were 390 breaches of specific rights identified, with just over 30 per cent of those breaches relating to equal recognition before the law and non-discrimination.⁷⁰ Discrimination can be complained about under both the Queensland human rights and anti-discrimination legislation. 29 per cent of human rights complaints finalised in 2020-21 were resolved through conciliation.⁷¹

Victoria

91. The Victorian Charter allows Victorians to raise human rights issues with the Victorian Ombudsman and the Independent Broad-based Anti-corruption Commission (IBAC) where those bodies have jurisdiction. In some respects, the Ombudsman's model has limitations as its remit only extends to making findings about the quality of public administration and how that might be improved.
92. Whether the Government should enhance human rights protections through more powers for the Victorian Human Rights and Equal Opportunity Commission including a complaints handling and resolution process was a term of reference for the 2015 review into the operation of the Charter.⁷² The independent reviewer Michael-Brett Young SC did make such a recommendation, stating that –
- the Charter is missing key elements of an effective regulatory system. To address this issue, the Charter should be enhanced to enable the Victorian Equal Opportunity and Human Rights Commission to offer dispute resolution under the Charter (as it does under the Equal Opportunity Act and the Racial and Religious Tolerance Act). This enhancement would support the Commission's facilitative role in the compliance pyramid and provide a clear path for people to raise concerns with government if they feel their human rights are not being respected. Flexible alternative dispute resolution can be particularly effective in delivering access to justice when disputes arise between government and the community it serves.⁷³
93. The review noted that there were avenues of review of government actions, such as the Ombudsman, but acknowledged that the focus of these pathways was on public administration, rather than on the individual complaint. A complaints model would provide an alternative dispute resolution system aimed at the individual and their relationship to the state, that would encourage, early, efficient and non-legal resolutions of disputes.
94. For these reasons, the review recommended a complaints handling function be given to the Victorian commission. That recommendation was listed for further consideration by the Victorian government in

⁶⁸ Ibid, p 32.

⁶⁹ Ibid, p 35.

⁷⁰ Ibid, p 42.

⁷¹ Ibid, p 43.

⁷² Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, (Melbourne September 2015) available at [report_final_charter_review_2015.pdf \(justice.vic.gov.au\)](https://www.justice.vic.gov.au/report-final-charter-review-2015.pdf), p 4.

⁷³ Ibid, p 11.

its response to the review but no changes have been implemented as yet.⁷⁴ These arguments apply equally to the ACT situation.

Federal

95. The Australian Human Rights Commission (AHRC) has a complaint handling function in relation to complaints about sex, disability, age or race discrimination, as well as human rights complaints about alleged breaches of human rights recognised under international treaties, including the ICCPR.⁷⁵ The process is similar to that of the ACT Human Rights Commission in its discrimination jurisdiction, with complaints going through investigation and conciliation, but with no power for the AHRC to determine conclusively that discrimination has or has not occurred. Instead, where the AHRC considers that that an act or practice may have been inconsistent with human rights, they can report that opinion to the Minister.⁷⁶

Proposal for an ACT human rights complaints pathway

96. The Commission recommends that:

- i. Section 40C of the HR Act be amended to provide that a person who alleges that they are or will be the victim of a contravention of s 40B by a public authority can make a complaint to the ACT Human Rights Commission.
- ii. The HRC Act should be amended to include a clear jurisdiction to receive complaints about breaches of human rights obligations under s 40B of the HR Act by public authorities.
- iii. The complaints should be based on the model applying to discrimination complaints with the following modifications:
 - a. Before making a complaint, the complainant must have made a complaint to the relevant public authority who should have 45 days to provide a response to the complaint.
 - b. Only if the complainant does not receive a satisfactory response can they make a complaint to the Commission.
 - c. Complaints relating to facts that are related to criminal proceedings still awaiting finalisation would not be accepted by the commission (to avoid offending rules against *sub judice*).
 - d. Conciliation may be attempted before the Commission can finalise the complaint.
 - e. An unconcilliable complaint could not result in the Commission making any conclusive finding about whether the act or decision of a public authority was unlawful, but a report may include the facts of the complaint, the Commission's actions to find a resolution, and actions recommended that may assist the public authority to ensure its actions and decisions are compatible with human rights.

⁷⁴ Victorian Justice and Community Safety Department, *Website*, accessed on 28 February 2022 at [Government response to the 2015 review of the Charter of Human Rights and Responsibilities Act | Department of Justice and Community Safety Victoria](#).

⁷⁵ *Australian Human Rights Commission Act 1986*, s 20.

⁷⁶ *Ibid*, s 20A.

- iv. If conciliation is unsuccessful, a human rights referral statement can be given to the complainant and an application can be made to ACAT seeking orders within ACAT's jurisdiction.
- v. Conciliated agreements from the Commission could be lodged with ACAT and a party could apply to ACAT to make orders for performance of those agreements, which can then be enforced in the normal manner in a superior court.
- vi. Complaints should not be able to be made in respect of specific circumstances if those facts already been the subject of a direct right of action to the Supreme Court, or raised in ACAT, or another oversight body, but matters would be appealable from the Tribunal to the Supreme Court, in accordance with the inherent appellate jurisdiction of the Supreme Court.

Realising the full transformative and restorative potential of human rights

97. With additional resources, the Commission could readily incorporate human rights disputes into its current complaint handling and dispute resolution framework. The types of remedies that result from conciliations at the Commission can include:

- apologies;
- changes in policies and procedures;
- staff training; and
- compensation.

98. Better individual enforceability of human rights increases community awareness and participation in the human rights dialogue and creates more direct incentives for public authorities to comply with their obligations.

99. Over time the HR Act has infused public debate, influenced public attitudes, shaped legislation and improved the conduct of service providers – we can be proud that the vision of a human rights culture has been woven into the fabric of law and society with some success, but this legacy can be further built on by an accessible complaints mechanism.

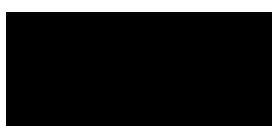
We would welcome the opportunity to meet with the Committee to discuss these matters further.

Yours sincerely,



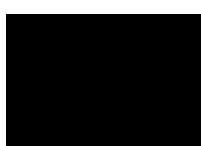
Dr Helen Watchirs OAM

President and Human Rights
Commissioner



Jodie Griffiths-Cook

Public Advocate and
Children and Young
People Commissioner



Karen Toohey

Discrimination, Health
Services, and Disability
and Community Services
Commissioner



Heidi Yates

Victims of Crime
Commissioner

Attachment A: Human Rights Commission Complaints Jurisdiction

