



NO RIGHTS WITHOUT REMEDY

Ensuring a consistent, simple, fair and less expensive approach to remedying breaches as the scope of human rights-associated laws extends

The ACT Human Rights Act (HRA) has improved the culture of the ACT public service and the performance of ACT decision makers. However, the ACT has evolved a two-tier process for handling human rights complaints and managing human rights that is increasingly outside the influence of the Human Rights Commission (ACTHRC). This has led to inconsistency in the complaints process.

The scope of rights will extend in the new Assembly under expanded people-oriented laws, and the government needs a uniform structure to ensure that all rights are treated consistently, and that all complainants have a relatively easy and quick access to a remedy through the admin/legal structure.

CLA Proposal:

An independent review of the HRA and associated legislation run in parallel with the ACT Government's human rights agenda that will:

- celebrate the role played by the HRA in underpinning the ACT's ethical infrastructure, in particular improving government decision making and service delivery; and
- make recommendations on a consistent, one tier approach to complaints handling for all rights covered by the HRA as new provisions are included, noting that all rights are equally important and there are no rights without remedy.

The outcome of the review can be enacted as a celebration of the 20th anniversary of the HRA in 2024. It would address four key issues that affect the application of the Act.

Key issue 1: The current system for human rights remedies in the ACT

All human rights are inter-related, indivisible, inter-dependent and equally important and when a human rights breach affects an individual, the opportunity to seek remedy should therefore be consistent, irrespective of the right or the individual. Complaints handling should offer a consistent approach to rights breaches that:

- allows complainants to appear before an independent referee on an equal footing with those alleged to have breached the complainants' rights, giving people access to remedies when their rights have been breached;
- allows rights to be balanced consistently by a single competent authority; and
- provides an independent circuit breaker for disputes between Executive government, Parliament and individual citizens on rights matters.

However, this does not happen in the ACT because the system for human rights protection is currently two-tiered:

1. Canberrans can take formal complaints to the ACTHRC and seek remedy under discrimination law and in health, disability, community services, and abuse of the vulnerable; and
2. other rights under the HRA, and in other laws. These are outside the ACTHRC complaints process and can only be remedied by regulatory or administrative fiat or by recourse to the Supreme Court, either as a first cause or as part of a broader case.

Key Issue 2: Risk of increasing complexity and confusion as rights protection increases

The range of rights under the HRA is set to increase as the Assembly gives effect to reforms identified in the Parliament and Government Agreement, which commits to:

- enact ACT modern slavery legislation;
- raise the minimum age of criminal responsibility;
- review the Discrimination Act as part of the “Capital of Equality” strategy;
- enact the Multicultural Recognition Act to establish a Multicultural Charter;
- consider introducing the “right to a healthy environment” into the Human Rights Act; and
- develop a Charter of Rights for parents and families involved with the care and protection system and embed this in the Children and Young Peoples’ Act.

Much of this agenda will fall outside the ACTHRC complaints process. Rights outside the ACTHRC complaints process are also increasingly being covered by specific “charters” included in separate legislation. They include:

- Charter on mental health (ACT Mental Health Act);
- Charter of Rights for the Victims of Crime (Victims of Crime Act);
- Charter of Rights for Kids in Care (Children and Young People Act); and
- Privacy Principles (ACT Privacy Act),

This list will shortly include the ACT Multicultural Charter (Multicultural Recognition Act).

While these specific charters are consistent with the HRA, they do not provide a consistent path to remedy for the rights breaches they cover.

Generally, human rights jurisdictions are exploring and enacting extensions of human rights acts into economic, social and cultural rights. CLA expects that this will provide an external incentive for the Assembly to consider continuing to ensure the scope of the HRA meets the needs of the ACT.

Key Issue 3: The HRA is underused in the ACT lower courts

While the HRA has been successful in influencing ACT public service decision making and culture, it has had limited success before the ACT lower courts. There is a lack of clarity on the extent to which ACAT/lower courts can access the HRA, which limits its value as a means to remedy minor breaches of public authority, which ideally would have quicker and simpler resolution options.

Key Issue 4: Budgetary implications

There can be substantial cost savings from streamlining the human rights complaints process. The promise of external scrutiny of complaints procedures delivered by extending the complaints process will also pressure Departments to improve their own complaints processes, making it more likely that complaints can be dealt with at entry level. More effective and efficient complaints processes will also have a positive impact on key indicators for future “Well being” budgets.

Next Steps:

The 20th anniversary of the HRA in 2024 (1 July) offers an opportunity to review progress on human rights in the ACT. The review will need to address:

- the role played by the HRA in underpinning the ACT's ethical infrastructure, in particular improving government decision making and service delivery;
- a consistent, one-tier approach to complaints handling, noting that all rights are equally important and there are no rights without remedy;
- how new rights laws are incorporated into the HRA, ensuring consistency in complaints handling and effectiveness in underpinning the ACT's ethical infrastructure; and
- the effect on the budget of a more consistent, simpler, fairer and less expensive approach to complaints handling, in the context of a well-being budget model.

CLA notes that a properly conducted review would provide:

- An opportunity to demonstrate ACT's credentials as a human rights leader in Australian jurisdictions;
- positive press for the achievements of the current ACTHRA and the value of further reform; and
- guidance for the review of the national human rights framework promised in chapter 5 of the Australian Labor Party's (ALP) national platform should the ALP win the next Federal election.

Civil Liberties Australia's approach to a review of the HRA and associated legislation

In any review of the HRA, CLA will advocate for:

1. Extending complaints handling to cover all rights in the HRA with a right for a complainant to ask for a complaint to be referred to ACAT if it cannot be resolved by the ACTHRC.
2. CLA notes early feedback from Queensland HRA complaints handling on breaches of the Human Rights Act (HRA) showed Departments cleaning up their own complaints procedures because of scrutiny from the Queensland HR Commission.
3. A consistent approach that creates a standard "charter" to be included as a schedule to any legislation directly affecting individuals and their rights under the HRA that identifies:
 - how people can expect to be treated under any legislation related to the charter;
 - any specific rights that underpin that treatment; and
 - the ethical infrastructure needed to seek fast, fair remedy for breaches of those rights.

CLA notes that this will direct all complaints back to the ACTHRC complaints process and allow the Assembly to create an efficient pathway to the courts, while retaining the right of Assembly Members to make firm, final decisions about the nature, structure and extent of rights – and remedies – in and for the Territory.

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Civil Liberties Australia (CLA) is a registered ACT community service association. Among other activities, we campaign for national rights laws for Australia, and for the states and the NT which do not have such laws, as well as proposing improvements to the laws in the ACT, Victoria and Queensland. All CLA members are volunteers: no-one is paid.