



ACT
Government

Discussion Paper

Tribunal Pathway for Human Rights Complaints

Justice and Community Safety Directorate

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1. Purpose of this Discussion Paper

The Government is committed to expanding the mechanisms for making a complaint about a breach of the *Human Rights Act 2004* to include a new pathway to the ACT Civil and Administrative Tribunal (ACAT Pathway) and is seeking stakeholder views on options for how this pathway should be designed.

2. Background

A. No Rights Without Remedy

In 2021, Petition 32-21 “No Rights Without Remedy” called for an accessible way for people to enforce their rights under the Human Rights Act.¹ The Standing Committee on Justice and Community Safety made one recommendation in its inquiry report on the petition, released on 23 June 2022 (the Standing Committee Report):

The Committee recommends that the ACT Government support and enact the terms of the petition to create a system that mirrors the current approach with respect to discrimination complaints.²

In its response, the Government:

- agreed to the proposal to enable a complaint about a breach of the Human Rights Act to be made to the ACT Human Rights Commission for confidential conciliation, and
- agreed in principle to the proposal to enable a complaint about a breach of the Human Rights Act to be made to the ACT Civil and Administrative Tribunal (ACAT) for resolution if conciliation is unsuccessful.³

The *Human Rights (Complaints) Legislation Amendment Act 2023* passed on 28 November 2023 and introduced a new pathway for individuals to make a complaint to the ACT Human Rights Commission (the Commission) where a person believes that a public authority has acted in contravention of section 40B of the Human Rights Act (Public authorities must act consistently with human rights). The new complaints pathway commenced on 11 June 2024.

The Government has committed to expanding the human rights complaints mechanism to include a pathway to ACAT.

¹ACT Legislative Assembly Closed ePetitions <<https://epetitions.parliament.act.gov.au/details/032-21>>.

² Standing Committee on Justice and Community Safety of the Tenth Assembly, ACT Legislative Assembly, *07. Inquiry into Petition 32-21 (No Rights Without Remedy)* ([Report 7 – Report into the Inquiry into Petition 32-21 \(No Rights Without Remedy\), June 2022](#)).

³ACT Government, [Revised Government Response to Report No. 7 of the Standing Committee on Justice and Community Safety – Report into the Inquiry into Petition 32-21 \(No Rights Without Remedy\)](#) (October 2022).

B. Key Questions for Discussion

1. Should the ACAT pathway operate separately to the existing cause of action to the Supreme Court?

Option 1: ACAT Pathway supplements existing cause of action

- A person may commence proceedings about a breach of human rights in the Supreme Court at any time without having first applied to the Human Rights Commission or ACAT.

Option 2: ACAT pathway replaces existing cause of action

- A person may only have their claim about a breach of human rights heard by the Supreme Court on appeal from ACAT, on referral from ACAT or in proceedings commenced under another law.

2. What remedies should be available?

Option 1: Replicate section 40C(6) of Human Rights Act

- Allow ACAT to exercise the same powers as the Supreme Court – to grant the relief it considers appropriate except damages.

Option 2: Replicate section 53E of the Human Rights Commission Act

- Replicate ACAT's powers to deal with discrimination complaints (without damages).

3. How should human rights breaches be dealt with if they are raised in other proceedings ('piggyback' claims)?

Option 1: Amend the Human Rights Act to provide that the ACAT and lower Courts can consider and grant relief for breaches of human rights that are raised in other proceedings

- This would allow the ACAT and lower Courts to order a wider range of remedies where human rights breaches are raised as part of other proceedings.

Option 2: No change

- There would continue to be limited remedies available for human rights breaches raised in other proceedings.

C. Making a Submission

Submissions may be made in writing to civilconsultation@act.gov.au. The closing date for submissions is **Friday 21 August 2026**. Individual submissions will not be published, but a consolidated summary report will be prepared and published online.

If you have any questions about the Discussion Paper or making a submission (including any reasonable adjustments), please contact civilconsultation@act.gov.au.

3. Structure of the ACAT Pathway

Under section 40B of the Human Rights Act, it is unlawful for a public authority:

- to act in a way that is incompatible with a human right; or
- in making a decision, to fail to give proper consideration to a relevant human right.

Currently, a person may:

- make a human rights complaint to the Commission,
- commence proceedings in the ACT Supreme Court about an alleged breach of rights by a public authority under the Human Rights Act, or
- rely on their rights under the Human Rights Act in other legal proceedings.

The first key question in this Discussion Paper is how a pathway to ACAT will fit within the existing human rights complaints framework, and how ACAT will interact with the ACT Supreme Court's jurisdiction under the Human Rights Act.

This section will examine the existing complaints mechanisms in the ACT, compare them with the approaches in Victoria and Queensland, and propose two possible models for consideration.

A. ACT Human Rights Commission Complaints

i. Complaint to the ACT Human Rights Commission

A person may complain to the Commission about a contravention of section 40B of the Human Rights Act by a public authority.⁴

Under the *Human Rights Commission Act 2005*, the Commission is able to:

- investigate complaints,
- request information,
- offer confidential conciliation,
- close complaints,
- make a final report and
- make recommendations.

However, the person is first required to make the complaint directly to the relevant person about the contravention claimed, and may only complain to the Commission if they have not received a response within 45 days, or if the response they received was inadequate.⁵

⁴ [Human Rights Commission Act 2005](#) (ACT) s 41D.

⁵ *Ibid* s 41D(2).

The Commission has discretion to accept complaints without requiring the complainant to wait 45 days where the person makes another complaint under the Human Rights Commission Act about the same act, circumstances or subject matter, or in exceptional circumstances.⁶

Conciliation can be an effective alternative dispute resolution mechanism which assists parties to resolve disputes efficiently, flexibly and confidentially.

Victoria

The second jurisdiction in Australia to introduce a legislated bill of rights was Victoria with the [Charter of Human Rights and Responsibilities Act 2006](#) (Vic) (Victorian Charter).

A person may make a complaint to the Victorian Ombudsman about a breach of the Victorian Charter under the [Ombudsman Act 1973](#) (Vic). Under section 13(2), the Victorian Ombudsman may enquire into or investigate whether a relevant administrative action is incompatible with a human right and, if the administrative action involves a decision, whether there was a failure to give proper consideration to a relevant human right. The Victorian Ombudsman is not able to make determinations about breaches of human rights, and does not provide dispute resolution, however it does have powers to report on findings and make recommendations under section 23 of the Ombudsman Act.

Queensland

The Queensland Human Rights Commission can deal with human rights complaints about an alleged contravention of section 58(1) of the [Human Rights Act 2019](#) (Qld) (the Queensland Act) by a public entity in relation to an act or decision of the public entity.⁷ The Queensland Human Rights Commission's powers are similar to the ACT Human Rights Commission's powers: in addition to investigating, reporting and making recommendations, the Queensland Human Rights Commission may also conciliate complaints.

ii. Referral of Discrimination Complaints to ACAT

As set out above, the Standing Committee Report recommended that the Government create a system which mirrors the current approach with respect to discrimination complaints.

A person may make a complaint to the Commission about an unlawful act under the *Discrimination Act 1991*.⁸ As with human rights complaints, the Commission may:

- investigate complaints,
- request information,
- offer confidential conciliation,
- close complaints,
- make a final report and
- make recommendations.

Under the Human Rights Commission Act, where the Commission closes a complaint (section 82) or decides not to refer the complaint for conciliation (section 45(3)(d)), the Commission must include a discrimination

⁶ Ibid s 41D(3).

⁷ [Human Rights Act 2019](#) (Qld) s 61.

⁸ [Human Rights Commission Act 2005](#) (ACT), s 42.

referral statement which provides notice that the Commission has closed the complaint.⁹ The complainant may ask the Commission to refer the complaint to ACAT within 60 days in the following circumstances:

- where the Commission decides not to refer the complaint for conciliation (section 45(3)(d), and
- where the Commission has closed a discrimination complaint (section 82(2)).

The Commission may also refer a Commission-initiated discrimination matter to ACAT under section 53BA of the Human Rights Commission Act, after a Commission-initiated report has been prepared under section 84.

B. Tribunals and Human Rights

The ACAT Pathway will not represent a completely new jurisdiction for ACAT. ACAT has experience in considering human rights through “piggyback” complaints and interpreting legislation in a way that is consistent with the Human Rights Act.

This section will provide an overview of how tribunals in the ACT, Victoria and Queensland currently consider human rights in proceedings, and some discussion of the implications of when ACAT is itself a public authority.

i. “Piggyback” matters

While there is no jurisdiction in Australia where a person may make a direct application to a tribunal solely about a breach of human rights, tribunals may consider human rights within the context of their existing jurisdictions.

ACT

In addition to an ACT Supreme Court application, a person may also rely on their rights under the Human Rights Act in other legal proceedings, also known as a “piggyback” matter.¹⁰ While this does not create a new jurisdiction to conduct a human rights review of a public authority, it does allow the ACT Courts and Tribunal to consider human rights issues in the exercise of any discretion.¹¹ However, this means that a person’s ability to bring a human rights claim in ACAT hinges on whether the statute (other than the HRA) on which they rely is framed to grant discretion to the decision-maker or not. For example, ACAT has since found that where the only discretion it has relates to the orders available, and the availability of those orders relies on the success of the original application, if the application is not successful then there is no discretion to make orders and therefore human rights issues are not a relevant consideration.¹²

⁹ The requirement to provide a referral statement where the Commission has closed a discrimination complaint does not apply where the parties have made a conciliation agreement in relation to the complaint, the complaint has otherwise been resolved to the Commission’s satisfaction, the complainant has withdrawn the complaint or the complaint has been closed due to the complainant’s failure to take reasonable steps to resolve it ([Human Rights Commission Act 2005](#) (ACT), s 82(2)).

¹⁰ [Human Rights Act 2004](#) (ACT), s 40C(2)(b).

¹¹ [Commissioner for Social Housing v Cook \(Residential Tenancies\)](#) [2020] ACAT 36.

¹² [Applicant DT62023 v Canberra Institution of Technology](#) [2024] ACAT 30.

These ACAT decisions suggest that there is a narrower ability for ACAT to consider human rights in “piggyback” matters, compared to “piggyback” matters in Victoria and Queensland. The differences in the legislation and case law of these jurisdictions are set out below.

Victoria

Although there is no direct cause of action in the Victorian Charter, a person may raise a breach of rights as part of another proceeding i.e. a “piggyback” matter. Namely, section 39(1) of the Victorian Charter states that:

[i]f, otherwise than because of this Charter, a person may seek any relief or remedy in respect of an act or decision of a public authority on the ground that the act or decision was unlawful, that person may seek that relief or remedy on a ground of unlawfulness arising because of this Charter.

Section 39(3) states that a person is not entitled to be awarded any damages because of a breach of the Victorian Charter.

The Victorian Supreme Court has clarified that even if the original matter is not successful, where the claim of a breach of rights is successful, the applicant may nevertheless seek relief or remedy under either jurisdiction where the relief or remedy is the same.¹³ This differs from the approach in the ACT where, as noted above, case law has indicated that the court or tribunal may only consider human rights as part of an existing discretion under the original jurisdiction in which the claim is brought.¹⁴

Recommendation 6 of the *Yoorrook for Justice* Report was that the Victorian Charter be amended to enable individuals to bring cases to the Victorian Civil and Administrative Tribunal (VCAT) for government decisions made in breach of the Victorian Charter as a low cost and accessible pathway for dispute resolution.¹⁵ In its 2024 response, the Victorian Government noted this would involve considerable expansion of VCAT’s remit and did not support the recommendation at the time.¹⁶

Queensland

Under section 59(1) of the Queensland Act:

a person may seek any relief or remedy in relation to an act or decision of a public entity on the ground that the act or decision was, other than because of section 58, unlawful.

Again, this relief or remedy does not extend to damages.¹⁷

Unlike the ACT and Victoria where case law has been required to interpret whether the success of the “piggyback” matter is contingent on an existing discretion or the success of the original claim, section 59(2) of the Queensland Act explicitly states:

¹³ [Goode v Common Equity Housing](#) [2014] VSC 585.

¹⁴ [Applicant DT62023 v Canberra Institution of Technology](#) [2024] ACAT 30.

¹⁵ Yoorrook Justice Commission, [Report into Victoria’s Child Protection and Criminal Justice Systems](#), (Report, August 2023) 99.

¹⁶ Victorian Government, [Victorian Government Response to the Yoorrook for Justice Report](#) (April 2024), 7.

¹⁷ *Human Rights Act 2019* (Qld), s 59(3).

[t]he person may seek the relief or remedy mentioned in subsection (1) on the ground of unlawfulness arising under section 58, **even if the person may not be successful in obtaining the relief or remedy on the ground mentioned in subsection (1).**

This makes it clear that in contrast to the case law position in the ACT, in Queensland a person may seek relief or remedy for a breach of human rights in a piggyback matter, even if they are not successful in the original claim or there is no discretion available to the court or tribunal under the relevant legislation.

In its submission to the Review of Queensland's Human Rights Act, the Queensland Human Rights Commission recommended that human rights complaints should be able to be referred to a tribunal for determination.¹⁸ Recommendation 60 of the Final Report, tabled in the Queensland Parliament on 26 March 2025, reflects this submission and states:

The *Human Rights Act* should be amended to allow the Queensland Human Rights Commission to refer unresolved human rights complaints, and complaints that are otherwise unsuited to the Commission's dispute resolution process, to the Queensland Civil and Administrative Tribunal for determination and effective remedy.¹⁹

The Queensland Government is yet to respond to this recommendation.

ii. ACAT as a public authority

One additional factor to consider when developing a model for an ACAT Pathway is what will happen when ACAT itself is acting as a public authority, and someone wishes to bring a complaint against ACAT for acting in a way that is incompatible with a human right or failing to give proper consideration to a relevant right in making a decision.

Section 40(2)(b) of the Human Rights Act notes that a public authority does not include a court, except when acting in an administrative capacity. Case law in the ACT has found that this occurs when ACAT is exercising its administrative (merits) review function, or other non-judicial functions (e.g. the actions of Registry staff):

ACAT is a public authority...Although ACAT falls within the definition of 'court' in the Human Rights Act...ACAT acts in an administrative capacity by exercising the scope [of] the respondent's functions upon an application for review being filed with ACAT. In addition to the function that ACAT exercises when standing in the shoes of the respondent, it also acts as a public authority in its own right when acting in an administrative capacity.²⁰

While this approach has been upheld in subsequent matters, there does remain some ambiguity about the extent to which ACAT is acting as a public authority in the exercise of some powers, such as striking out an application as frivolous or vexatious under section 32 of the ACAT Act in an administrative review matter.²¹

¹⁸ Queensland Human Rights Commission, [Submission to Independent Reviewer](#), *Review of Queensland's Human Rights Act 2019* (July 2024).

¹⁹ Professor Susan Harris Rimmer, [Placing People at the Heart of Policy: First independent review of the Human Rights Act 2019 \(Qld\)](#) (September 2024).

²⁰ [Thomson v ACT Planning and Land Authority \(Administrative Review\)](#) [2009] ACAT 38 (2 October 2009).

²¹ [Warren Gardner & Julie Beaver v ACT Planning and Land Authority \(Administrative Review\)](#) [2010] ACAT 64, [46], [48].

Given this, there may need to be a specific provision that deals with what happens where ACAT itself is the subject of a human rights complaint, so that such a complaint may only be heard by the Supreme Court.

C. Interaction between Tribunal and Higher Court

One of the key questions in this discussion paper is how the new ACAT pathway should interact with the existing standalone cause of action in the ACT Supreme Court. This section sets out how questions of law may already be referred to the Supreme Court, and how tribunal matters may be appealed to the Supreme Court. This section will compare the approaches in the ACT, Victoria, Queensland and the UK.

i. ACT

The ACT is the only jurisdiction in Australia that has a standalone cause of action in the Supreme Court for a breach of human rights.

Section 30 of the Human Rights Act requires that ACT laws must be interpreted in a way that is compatible with human rights, so far as it is possible to do so consistently with their purpose. This means that ACAT is required to consider human rights when interpreting legislation, another way in which human rights may be relevant to ACAT proceedings. However, only the Supreme Court may make a declaration that an ACT law is not consistent with a human right under section 32 of the Human Rights Act.

While there is no specific requirement that questions of law relating to the Human Rights Act or questions relating to the interpretation of legislation in accordance with the Human Rights Act be referred to the Supreme Court, section 84 of the ACAT Act allows ACAT to refer a question of law to the Supreme Court on its own initiative or on application by a party. This could include a question of how legislation is to be interpreted with respect to human rights.

Finally, section 86 of the ACAT Act provides that parties may appeal decisions of the appeal tribunal to the Supreme Court on a question of law or fact. This may include decisions in “piggyback” matters raising human rights issues.

ii. Victoria

Unlike the ACT, there is no standalone direct cause of action for a breach of human rights under the Victorian Charter.

However, proceeding before a Victorian court or tribunal may be referred to the Victorian Supreme Court where a question of law arises relating to the application of the Victorian Charter, or a question arises with respect to the interpretation of a statutory provision in accordance with the Victorian Charter.²² As in the ACT, the Victorian Supreme Court may make a declaration of inconsistent interpretation under section 36(2). Human rights claims may also be considered on appeal from Tribunal or lower court proceedings, in “piggyback” matters.

²² *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 33(1).

iii. Queensland

Similar to Victoria, there is no standalone cause of action for a breach of human rights in the Queensland Act, but a question of law that relates to the application of the Queensland Act or a question in relation to the interpretation of a statutory provision in accordance with the Queensland Act, may be referred to the Supreme Court.²³ As in Victoria, human rights claims may also be considered on appeal from Tribunal or lower court proceedings, in “piggyback” matters.

iv. United Kingdom

In the United Kingdom (UK), human rights are set out in the *Human Rights Act 1998* (UK) (the UK Act) which includes a standalone cause of action. Under section 7(1) of the UK Act, a person who claims that a public authority has acted in contravention of human rights may either bring proceedings in the appropriate court or tribunal or rely on their rights in any legal proceedings. There is no requirement that a matter be considered by the Equality and Human Rights Commission first.

Section 7(2) states that the appropriate court or tribunal may be determined in accordance with rules. Rule 7.11 of the [Civil Procedure Rules 1998 \(UK\)](#) states that any claim under the UK Act may be brought in any court, with the exception of a claim about a judicial act which may only be brought in the High Court. Of note, no Australian jurisdiction allows a claim about a breach of human rights to be made against the judiciary.

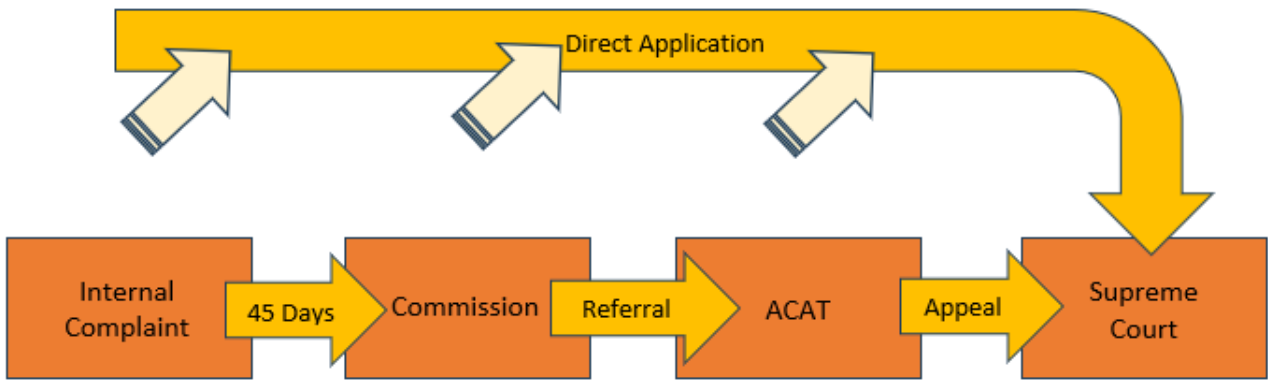
D. ACAT Pathway Models

There are two primary models for how the ACAT pathway could fit within the existing human rights complaints system. The first is that the ACAT pathway sits alongside the existing direct cause of action to the Supreme Court, and the second is that the ACAT pathway becomes a prerequisite for an application to the Supreme Court.

i. ACAT Pathway Alongside Standalone Cause of Action

The first possible option is to introduce a referral pathway to ACAT while preserving the existing standalone cause of action to the Supreme Court. This option would allow a complainant to choose to progress a complaint more informally through an internal complaint, to make a complaint to the Commission and to request a referral to ACAT if it is not able to be resolved, without removing the possibility of making a direct application to the Supreme Court instead at any time (provided that the complainant did not seek to pursue both pathways at the same time). This approach would be similar to the UK model where there is no prerequisite to make a complaint to the UK equivalent of the ACT Human Rights Commission first.

²³ *Human Rights Act 2019* (Qld), s 49.



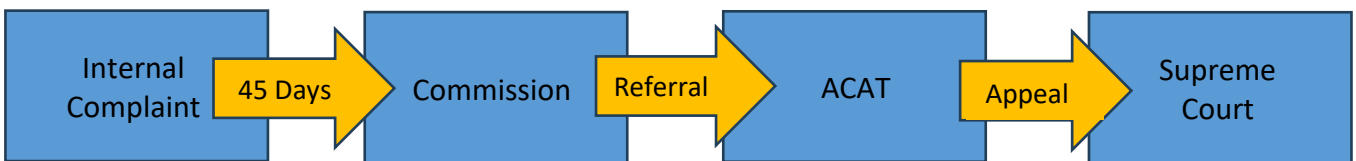
An advantage to this option is that complainants will have flexibility to select the pathway that best suits their needs and circumstances. The pathway would “be supplementary to and not replace the direct right of action in the Supreme Court”.²⁴ This option would:

retain the ability of the Supreme Court to address complaints under the [Human Rights Act] if the complainant wishes to continue to pursue the matter. Accordingly, the more formal and complex process of litigation in the Supreme Court would still be available for cases in which it is appropriate.²⁵

For example, if, during a conciliation conference at the ACT Human Rights Commission, it appeared that there was a fundamental disagreement about the meaning of a law within the context of human rights, the complainant could decide to withdraw the complaint and commence proceedings, without being required to seek a referral to ACAT first and have ACAT decide the matter should be so referred to the Supreme Court.

ii. ACAT Pathway Replaces Standalone Cause of Action

The second option is to remove the existing standalone cause of action and replace it with a “single, inexpensive and clear pathway...for resolving and remedying human rights complaints”.²⁶ This option would make consideration by ACAT a prerequisite to consideration by the ACT Supreme Court.



Division 8.2 of the ACAT Act would still apply, allowing parties to apply to remove the application from ACAT to the ACT Supreme Court (section 83), for questions of law or issues of public importance to be

²⁴ [Evidence to Standing Committee on Justice and Community Safety](#), ACT Legislative Assembly, *Inquiry into Petition 32-21 (No Rights Without Remedy)*, 28 April 2022, 22, (Dr Helen Watchirs).

²⁵ Nicholas Bullbeck, [Submission 18 to the Standing Committee on Justice and Community Safety, ACT Legislative Assembly, Inquiry into Petition 32-21 \(No Rights Without Remedy\)](#) (13 April 2022) 4.

²⁶ ACTCOSS, [Submission 11 to the Standing Committee on Justice and Community Safety, ACT Legislative Assembly, Inquiry into Petition 32-21 \(No Rights Without Remedy\)](#) (13 April 2022) 3.

referred to the ACT Supreme Court (section 84) and for appeals to be dealt with by the ACT Supreme Court (sections 85 and 86).²⁷

Division 8.2 would also assist in the situation that someone makes a human rights complaint about ACAT in its administrative capacity, or where a matter has “already been the subject of a direct right of action to the Supreme Court, or raised in ACAT, or another oversight body”.²⁸ In these circumstances, it would not be appropriate for the Human Rights Commission, or ACAT, to deal with the complaint but Division 8.2 would allow types of matters to be removed to, referred to or appealed in the Supreme Court where appropriate.

This option has the advantage of being a simple pathway which consists of clear, straightforward steps for the complainant to progress through. This approach would help remove any confusion for applicants about which forum to select, would involve a single entry point and would mean that all complaints are treated equally. This option also acknowledges that the majority of complaints benefit from early, informal resolution and the more formal forums of ACAT and the Supreme Court would be reserved for the small proportion of complaints which cannot be resolved through alternative dispute resolution.

A disadvantage of this approach is that it may be seen as regressive because it removes the option for access to justice through the Supreme Court without first pursuing the other steps. This may delay significant human rights matters including test cases being determined by the Supreme Court.

CONSULTATION QUESTION 1

Should the ACAT Pathway operate separately to the existing cause of action to the Supreme Court?

Option 1: ACAT Pathway supplements existing cause of action

- A person may commence proceedings about a breach of human rights in the Supreme Court at any time without having first applied to the ACT Human Rights Commission or ACAT.

Option 2: ACAT pathway replaces existing cause of action

- A person may only have their claim about a breach of human rights heard by the Supreme Court on appeal from ACAT, on referral from ACAT or in proceedings commenced under another law.

4. Remedies in ACAT

A new ACAT pathway will need to consider the types of remedies ACAT may order. This section will provide an overview of two possible options: replicate the existing power of the Supreme Court under the Human Rights Act to make orders (except for damages), or replicate ACAT’s current powers with respect to discrimination complaints.

²⁷ Legal Aid ACT, [Submission 26 to the Standing Committee on Justice and Community Safety, ACT Legislative Assembly, Inquiry into Petition 32-21 \(No Rights Without Remedy\)](#) (13 April 2022) 3.

²⁸ ACT Human Rights Commission, [Submission 06 to the Standing Committee on Justice and Community Safety, ACT Legislative Assembly, Inquiry into Petition 32-21 \(No Rights Without Remedy\)](#) (13 April 2022) 20.

A. Replicate Section 40C(6) of Human Rights Act

Under section 40C of the Human Rights Act, a person may start a proceeding in the ACT Supreme Court about a contravention of section 40B by a public authority.²⁹ Under section 40C(6), the Supreme Court may grant the relief it considers appropriate except damages.³⁰ This is understood to include declaratory and injunctive relief.³¹ Other remedies could include an order of mandamus compelling a public authority to fulfil a duty, an order of habeas corpus, an order that a public apology be made, an order that evidence obtained in breach of human rights be excluded,³² or an order quashing an administrative decision as unlawful.

Additionally, the Supreme Court may, in any proceeding, make a declaration of incompatibility under section 32 of the Human Rights Act where it is satisfied that a territory law is not consistent with a human right. One way in which a person may receive vindication is through declarations of incompatibility.³³

Specific examples of orders the Supreme Court has made about either alleged contraventions of section 40B or about territory laws inconsistent with human rights include:

- a declaration that a person's human rights have been breached under the Human Rights Act,³⁴
- declarations that a public authority failed to give proper consideration to a person's rights under the Human Rights Act,³⁵
- a declaration that an operating procedure is incompatible with the Human Rights Act,³⁶ and
- a declaration that legislation is incompatible with the Human Rights Act.³⁷

One option could be to amend section 40C(6) so that any court or tribunal may grant the relief it considers appropriate except damages. This option would also allow ACAT to deal flexibly with matters and make orders appropriate to the individual circumstances of each case. This would align somewhat with the approach in the UK, which allows an applicant to seek the same range of orders no matter the court or tribunal they have applied to.

However, this would mean that the orders available for human rights complaints would remain different to the orders available for discrimination complaints. Another matter for consideration is whether it would be appropriate that ACAT could make declarations of incompatibility, or whether this should be reserved for the Supreme Court only.

²⁹ *Human Rights Act 2004*, s 40C(2)(a)

³⁰ *Ibid* s 40C(6).

³¹ *Mclver v Australian Capital Territory; Williams v Australian Capital Territory* [2024] ACTSC 112, [276], [341].

³² See e.g. ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act: Report of the ACT Bill of Rights Consultative Committee* (Final Report, May 2003), [4.74].

³³ ACT Government, *Economic, social and cultural rights in the Human Rights Act 2004: Section 43 review* (November 2014).

³⁴ *Davidson v Director-General, Justice and Community Safety Directorate* [2022] ACTSC 83.

³⁵ *Millington v Peach (No 2)* 2025 ACTSC 21.

³⁶ *Davidson v Director-General, Justice and Community Safety Directorate* [2022] ACTSC 83.

³⁷ *In the matter of an application for bail by Isa Islam* [2010] ACTSC 147.

B. Replicate section 53E of the Human Rights Commission Act

Another option could be to replicate the orders ACAT may make and matters it must consider with respect to discrimination complaints under section 53E of the Human Rights Commission Act. This option would make the discrimination and human rights jurisdictions consistent, and provide clear guidance for ACAT in the orders it may make and what it must consider.

Under section 53E of the Human Rights Commission Act, ACAT may make the following orders about a referred discrimination complaint:

- that the person complained about not repeat or continue the unlawful act,
- that the person complained about perform a stated reasonable act to redress any loss or damage suffered by a person because of the unlawful act, or
- that the person complained about pay to a person a stated amount by way of compensation for any loss or damage suffered by the person because of the unlawful act.

In making an order, ACAT must consider:

- the person's right to equality before the law and the impact of the discrimination on the enjoyment of that right,
- the inherent dignity of all people and the impact of the discrimination on that person's dignity,
- the public interest in ensuring an appropriate balance between the right to equal and effective protection against discrimination and equality before the law without distinction or discrimination and other human rights,
- the nature of the discrimination, and
- any mitigating factors.

While the Human Rights Commission Act appears to be more prescriptive in the types of orders ACAT may make as compared to the orders the Supreme Court may make in the Human Rights Act, it is not clear that in practice, apart from damages and potentially declaratory relief and the ability to quash a decision, that there is a significant practical difference.

However, this option would mean that the exact types of orders available through ACAT could be different to those available through the ACT Supreme Court, which could lead to uncertainty where ACAT matters are appealed to the Supreme Court or perceived inequalities if a matter is required to be heard in one forum and not another. This is especially because ACAT may currently award damages for unlawful discrimination, but the ACT Supreme Court cannot award damages for breaches of human rights.

There have been two recent significant amendments to the Human Rights Act, including the introduction of a new right to a healthy environment and a new right to housing. Section 40(C)(8) imposes a litigation bar on claims about breaches of the right to a healthy environment until 1 October 2028 to allow the ACT Government time to fully understand, implement and institutionalise the right to a healthy environment in decision-making, policies and legislation. Similarly, the new right to housing will not come into effect until 1 January 2027.

Given this, the ACT Government does not propose considering amendments to allow the award of damages for breaches of human rights while some rights, and aspects of some rights, remain uncommenced.

Furthermore, there are likely to be significant cost implications for the ACT Government of introducing damages as a remedy for human rights breaches, and these need to be fully considered separately to the ACAT Pathway reforms.

CONSULTATION QUESTION 2

What remedies should be available?

Option 1: Replicate section 40C(6) of Human Rights Act

- Allow ACAT to exercise the same powers as the Supreme Court to grant the relief it considers appropriate except damages.

Option 2: Replicate section 53E of the Human Rights Commission Act

- Replicate ACAT's powers to deal with discrimination complaints (without damages).

5. Reforming “Piggyback” Proceedings

One possible consequence of introducing a new ACAT pathway for breaches of human rights is that it may create an inconsistency between the remedies available via the new ACAT pathway and the remedies available in a “piggyback” matter raised in existing court and tribunal proceedings.

Case law has confirmed that in the ACT, express powers to grant relief for breaches of human rights are only given to the Supreme Court. In “piggyback” matters, other courts or the tribunal must address breaches of the Human Rights Act within the context of their existing powers and processes.³⁸

Therefore, while the other courts and tribunal cannot grant a remedy under the Human Rights Act (including making a declaration that a territory law is not consistent with a human right under section 32) they retain their inherent, statutory or common law jurisdictions to grant remedies otherwise available to them in the original application.³⁹

Some examples of orders that may be made in these types of matters include:

- taking a breach of human rights into account in sentencing,⁴⁰
- a stay of criminal proceedings where there has been a breach of the right to be tried without

³⁸ i.e. “Human rights issues are relevant matters to be considered by the Tribunal in the exercise of any discretion”, [Commissioner for Social Housing v Cook \(Residential Tenancies\)](#) [2020] ACAT 36, [23]; [Russell v Pangallo](#) [2012] ACTMC 4; [LM v Childrens Court of the Australian Capital Territory and the Director of Public Prosecutions for the ACT](#) [2014] ACTSC 26; ACT Government, *Economic, social and cultural rights in the Human Rights Act 2004: Section 43 review* (November 2014) p 24.

³⁹ [LM v Childrens Court of the Australian Capital Territory and the Director of Public Prosecutions for the ACT](#) [2014] ACTSC 26; ACT Human Rights and Discrimination Commissioner, [Look Who’s Talking: A snapshot of ten years of dialogue under the Human Rights Act 2004](#) (2014) p 6.

⁴⁰ [Mclver v Australian Capital Territory; Williams v Australian Capital Territory](#) [2024] ACTSC 112.

- reasonable delay,⁴¹ and
- setting aside a decision and substituting a decision in relation to the date of effect of a rent rebate where a person’s right not to have their home arbitrarily interfered with has been breached.⁴²

This means that, for example, a person who raises a breach of human rights in the context of an existing ACAT matter may be disadvantaged compared with someone who accesses the ACAT pathway, because the Tribunal’s jurisdiction and the remedies that are available in a “piggyback” matter will be confined to the discretion ACAT has in hearing the original application which may be narrower.

Additionally, a person with an existing matter in ACAT (or another lesser court) may be restricted from having the complaint dealt with by the Commission at all because the Commission must close a complaint under section 78(2)(c)(iii) of the Human Rights Commission Act where the matters raised by the complaint have been, or are being, dealt with by a court or tribunal or have been dealt with by the commission.

This may result in unfairness and inconsistency in the legal system because the remedies available through a “piggyback” matter may be less than those which may be available in the ACAT pathway.

An amendment to section 40C(2)(b) could provide that a person may raise a breach of the HRA in a court or tribunal application brought under another statute, regardless of the terms of that other statute and whether or not the claim under it succeeds, similarly to the position in Victoria and Queensland.

This would still mean that a person could not bring an application in a lesser court or tribunal on human rights grounds alone, without first making a complaint to the Commission (i.e. via the new pathway), but would ensure that the outcomes that may be achieved in “piggyback” matters are consistent with those that are available via the ACAT pathway.

CONSULTATION QUESTION 3

How should human rights breaches be dealt with if they are raised in other proceedings (‘piggyback’ claims)?

How should human rights breaches be dealt with if they are raised in other proceedings (‘piggyback’ claims)?

Option 1: Amend the Human Rights Act to provide that the ACAT and lower Courts can consider and grant relief for breaches of human rights that are raised in other proceedings

- This would allow the ACAT and lower Courts to order a wider range of remedies where human rights breaches are raised as part of other proceedings.

⁴¹ [R v Upton](#) [2005] ACTSC 52.

Option 2: No change

- There would continue to be limited remedies available for human rights breaches raised in other proceedings.