



Environmental Defenders Office

21 August 2026

Justice and Community Safety Directorate

ACT Government

Submitted via email: civilconsultation@act.gov.au

Dear Justice and Community Safety Directorate,

Submission on Discussion Paper ‘Tribunal Pathway for Human Rights Complaints

Environmental Defenders Office (**EDO**) welcomes the opportunity to make a submission on the Discussion Paper ‘Tribunal Pathways for Human Rights Complaints’ (**Discussion Paper**).

In 2022 the EDO made extensive submissions and recommendations on this topic to the Standing Committee on Justice and Community Safety Committee (**SC-JACS**) inquiry into the enforcement provisions of the *Human Rights Act 2004* (ACT) (**HRA**) in response to Petition 32-21 (No Rights without Remedy). We encourage the Directorate to refer to our previous submission in full as it is highly relevant to the present Discussion Paper, linked [here](#) for ease of access.

We strongly support establishing a pathway for human rights complaints to be heard in the ACT Civil and Administrative Tribunal (**ACAT**) and commend the ACT Government on their commitment to implementing the recommendation from SC-JACS to do so.

This submission makes three primary recommendations in response to the specific questions and options raised in the Discussion Paper. These recommendations should be implemented together as a suite; they do not achieve the same outcome if taken alone:

1. The ACAT pathway should operate separately to, but not replace, the existing cause of action to the Supreme Court.
2. ACAT’s powers to deal with human rights complaints should provide for effective remedies, including compensation.
3. The HRA should be amended to provide that ACAT and lower courts can consider and grant relief for breaches of human rights that are raised in other proceedings.

We also recommend that:

4. The one-year limitation period to bring a complaint about a breach of the HRA should be extended to allow people in the ACT sufficient time to apply for a remedy.
5. The ACAT pathway should be genuinely “low-cost” and accessible.
6. Standing should explicitly extend to community organisations or representative groups who are acting in the public interest.
7. The HRA be amended to enable complaints to be brought for human rights violations against corporate entities.
8. Additional resources are allocated to community legal centres including the Aboriginal Legal Service (NSW/ACT) and the ACT Human Rights Commission to support public access to the new ACAT pathway through representation and community legal education.

In addition, we continue to recommend the adoption of relevant recommendations set out in our 2022 submission.

Background and overview

EDO is a community legal centre specialising in public interest environmental law. As such, our recommendations focus on strengthening enforcement mechanisms in relation to human rights violations with the view to achieving environmental justice for people living in the ACT.

Access to justice is a key element of achieving environmental justice, which includes the right to access effective remedies including in relation to human rights violations. Environmental justice recognises the impact of environmental degradation on individuals and communities – often disproportionately on those who face structural disadvantage.

We live in a jurisdiction with a strong human rights framework and appetite for strengthening human rights accountability and enforcement mechanisms. Recent reform to the HRA include establishing a human rights complaint mechanism to the ACT Human Rights Commission and recognising the right to a clean, healthy and sustainable environment (**RTHE**).¹ Additionally, the new right to housing comes into effect on 1 January 2027. These are examples of progress being made towards aligning the HRA with international human rights legal obligations.

Under international environmental law there is an obligation to provide “[e]ffective access to judicial and administrative proceedings, including redress and remedy.”² Framework Principle 10 proposed by the former Special Rapporteur on Human Rights and Environment provides that effective remedies for violations of human rights and domestic laws relating to the environment should be available.³ We encourage the ACT Government to review the Framework Principles that include basic requirements for effective judicial and administrative procedures including, for example, incorporating a right of appeal to a higher body, and the ability to issue binding decisions including for compensation.⁴ The HRA also recognises the cultural rights of groups to enjoy culture, to practise their religion and to speak their language, whether publicly or privately, including First Nations rights to maintain, control and develop their cultural heritage and traditional knowledge, and have their material and economic relationships with Country recognised and valued. Like the obligation to provide effective remedy pursuant to international environmental law, it is essential that these distinct cultural rights be accompanied by effective and accessible remedies for breach.

Currently the pathways available for people seeking remedies for human rights violations in the ACT are to make a complaint to the ACT Human Rights Commission, or to commence legal proceedings in the Supreme Court. These pathways are not accessible for everyone in the ACT or do not always deliver effective remedies. We note that:

¹ See HRA, ss 41D and s 27C.

² UN General Assembly, Report of the United Nations Conference on Environment and Development, UN Doc A/CONF.151/26/Rev.1 (Vol. I), p.5 (Principle 10).

³ UN Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (24 January 2018) at [29].

⁴ Ibid.

- While a human rights complaint may lead to a positive outcome through conciliation, it does not result in a legally enforceable outcome, meaning any outcomes can be ignored without repercussions.
- Where conciliation is unsuccessful, there is currently no appeal pathway to ACAT.
- While human rights arguments may be “piggy-backed” onto other proceedings, remedies for human rights violations in those proceedings are not available.
- Commencing Supreme Court proceedings is not widely accessible due to complex and lengthy processes and procedures.
- Proceedings in the Supreme Court may be prohibitively expensive or risky due to filing fees, the cost of legal representation and potential adverse cost orders.

Recognition of the RTHE in the HRA brings an opportunity for people in the ACT to act to protect and hold government accountable for environmental harms flowing from acts and practices that violate the requirement for a public authority not to act in a way that is incompatible with the RTHE, or in making a decision, fail to give proper consideration to the RTHE.⁵ While a human rights complaint can be made in relation to an alleged violation of the RTHE, there is a bar on litigation until 1 October 2028.⁶

Accordingly, we strongly support establishing an ACAT pathway to enable access to justice for people in the ACT. Accessible remedies are a key element of achieving environmental justice and protecting First Nations rights and culture. With the current enforcement gap in relation to the RTHE, the ACAT pathway is crucial.

The Discussion Paper poses questions about how to best design a tribunal pathway for individuals to seek remedies in relation to violations of the HRA. Environmental justice and the protection of First Nations rights and culture, requires consideration of measures which redress inequitable access to remedies. Establishing a low cost and accessible ACAT pathway that can issue binding decisions and order damages goes some way to achieving this objective.

Responses to the Discussion Paper questions

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

The ACAT pathway should operate in addition to the existing cause of action to the Supreme Court as proposed by option 1 in the Discussion Paper. This pathway would be supplementary to, but not replace, the direct right of action in the Supreme Court. To access the ACAT pathway the complainant would be required to make an internal complaint initially, followed by a complaint to the ACT Human Rights Commission – which, if unsuccessful in reaching a resolution through conciliation can be referred to ACAT for a binding decision. The ACAT decision could be appealed to the Supreme Court.

We note that the requirement for ACAT proceedings to be preceded by an internal complaint followed by a complaint to the ACT Human Rights Commission is intended to safeguard the Tribunal from being overburden by complaints which may be resolved through conciliation.

⁵ HRA, s 40B.

⁶ HRA, ss 40C (8)-(10).

While the ACAT pathway has an important role to play, it is crucial that the ACT retains a pathway to directly commence proceedings in the Supreme Court as a standalone action. We note that the Supreme Court is an important pathway, distinct from ACAT's powers and functions, to seeking environmental justice including in relation to matters:

- dealing with complex questions relating law, for example, disagreement about the meaning of a law as it relates to human rights and the environment;
- where flexible remedies are sought which are not within the scope of ACAT's powers;
- that are so serious, egregious or urgent that the jurisdiction of the Supreme Court and its powers to grant effective remedies and orders are required; or
- where the primary cause of action is within the jurisdiction of the Supreme Court and not the ACAT and the applicant is making supplementary human rights arguments. For example, an application for judicial review.

We note that the Supreme Court remains an important forum in which to challenge environment and planning decisions. The ACAT pathway should not preclude the Supreme Court from hearing human rights arguments in relation to these matters and granting relief accordingly.

Recommendation #1: The ACAT pathway should operate alongside, but not replace, the existing cause of action to the Supreme Court.

What remedies should be available?

Although the Supreme Court may grant any relief that it considers appropriate, it cannot grant damages in human rights proceedings.⁷ The Discussion Paper states that damages are not being considered as an available remedy in ACAT proceedings for violations of human rights.⁸

Our view is that the Supreme Court and ACAT should have the power to award compensation for a violation of human rights. In some circumstances compensation may be the only effective remedy available. We encourage the ACT Government to consider implementing a tribunal compensation model that is clear, workable and limited. This is in alignment with the remedies available in relation to discrimination complaints, and Australia's international legal obligations.⁹

The Discussion Paper highlights issues relating to both proposed options. Proper consideration of the issues each option raises will require technical legal analysis in relation to any procedural, jurisdictional or constitutional concerns that may arise. For example, while option 1 is to replicate some of the remedies the Supreme Court is able to grant as relief under s 40C (6) of the HRA, the ACAT will be limited in its jurisdiction by the fact that it is an administrative body formed by ACT statute. It is not a Court of inherent or general jurisdiction and will not be able to replicate completely the Supreme Court's powers to hear and determine a human rights complaint. However, we generally support a model where ACAT has broad powers to grant appropriate relief, particularly in situations of novel claims in relation to violations of the RTHE.

⁷ HRA, s 40C (4).

⁸ Discussion Paper, pp [15] – [16].

⁹ UN Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/HRC/37/59 (24 January 2018) at [29].

In relation to option 2 there is a compelling argument for the adopting a model that replicates ACAT's powers under s 53E of the *Human Rights Commission Act 2005* (ACT) in relation to discrimination complaints. Practically speaking, this approach will support the timely administration of complaints by adopting a known process and procedure the ACAT regularly deals. Additionally, this is the model aligns with the recommendation from the SC-JACS.

Recommendation #2: ACAT's powers to deal with human rights complaints should provide for effective remedies, including compensation.

How should human rights breaches be dealt with if they are raised in other proceedings?

The Discussion Paper notes that a "new ACAT pathway for breaches of human rights is that it may create 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".

To address this inconsistency and potential disadvantage to people who raise human rights issues in other claims, we support amending the HRA to provide that the ACAT and lower courts can consider and grant relief for breaches of human rights that are raised in other proceedings. A human rights complaint made on its own would still need to follow the new ACAT pathway process which would require a complaint being first made to the ACT Human Rights Commission. In recommending these amendments, we reiterate that the option of seeking in relief in the Supreme Court be maintained.

Recommendation #3: The HRA should be amended to provide that the ACAT and lower courts can consider and grant relief for breaches of human rights that are raised in other proceedings.

Additional recommendations to consider when establishing the ACAT pathway

In addition to our recommendations in response to the Discussion Paper questions, we make the following comments and supplementary recommendations:

- Section 40C(3) of the HRA requires proceedings in the Supreme Court to be started no later than 1 year after the day (or last day) the act complained of happened, unless the Court orders otherwise. This timeframe is especially prohibitive in the context of the new ACAT pathway should a complainant seek to resolve their complaint via the accessible and low-cost ACAT pathway in the first instance. We recommend this limitation period is extended to allow people in the ACT sufficient time to apply for a remedy, increased to at least three years consistent with the limitation for bringing tortious claims in the ACT.¹⁰ Additionally, the limitation period with respect to seeking relief in the Supreme Court should be paused if a complainant has accessed the ACAT pathway. Finally, a person should be able to apply for an order in the Supreme Court for an extension of the limitation period if the Court is satisfied that it is just and reasonable to allow an action to proceed outside of the limitation period, having regard to the circumstances of the case.
- Given the often-prohibitive costs of commencing legal proceedings in the Supreme Court, the ACAT pathway should be genuinely low-cost and accessible. This means there should be

¹⁰ See *Limitation Act 1985* (ACT), 16B.

an avenue to apply for a filing fee-waiver and protections against adverse cost orders. These avenues must also be available for proceedings commenced in the Supreme Court.

- Given the strong public interest in human rights being upheld, we recommend standing to bring a human rights complaint should explicitly extend to community organisations or representative groups who are acting in the public interest and/or representing the interests of their members, such as unions. Separately, standing must be available to First Nations organisations to bring human rights complaints for breaches of First Nations rights held both by individuals but also collectively.
- Only public authorities and contractors carrying out work of a public nature are subject to the obligations under the HRA. In the environmental context it is vital that remedies against private actors are available for violations of human rights as they are often responsible for acts or practices that infringe on the RTHE and First Nations cultural rights. We recommend the HRA be amended to enable complaints to be brought for human rights violations against corporate entities them.
- We are aware of concern about the ACAT pathway leading to an increased caseload on community legal centres. As such, we strongly recommend additional resources are allocated to community legal centres and the ACT Human Rights Commission to support public access to the new ACAT pathway through representation and community legal education.

Conclusion

We welcome the work the ACT Government is doing to implement SC-JACS's recommendation to enact a Tribunal pathway for human rights complaints.

We encourage the ACT Government to move on this reform and close the enforcement gap currently in place in relation to the RTHE. Under the RTHE, ACT residents have the right to clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, a non-toxic environment in which to live, work, study and play, and healthy biodiversity and ecosystems. We consider this to be a unique and real opportunity for the ACT to lead the way nationally by enacting an accessible pathway for people in the ACT to secure effective remedies for breaches of their human rights, including the RTHE. It is a strong step towards environmental justice.

For further information, please contact Loise Wells on loise.wells@edo.org.au

Yours sincerely,

Environmental Defenders Office



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Managing Lawyer, Policy and Law Reform



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