



27 August 2026

Justice and Community Safety Directorate
ACT Government
GPO Box 158, Canberra ACT 2601

By email: civilconsultation@act.gov.au

RE: Submission on the Discussion Paper – Tribunal Pathway for Human Rights Complaints

ACT Shelter welcomes the opportunity to respond to the *Discussion Paper, Tribunal Pathway for Human Rights Complaints* (the Discussion Paper).

ACT Shelter supports the ACT Government's commitment to establishing an accessible pathway through which people can seek a remedy for breaches of their rights under the *Human Rights Act 2004* (ACT) (the HRA). This is an important and necessary reform. Rights are only meaningful if people can realistically enforce them and obtain an effective remedy when they have been breached. The proposed pathway to the ACT Civil and Administrative Tribunal (ACAT) has the potential to materially strengthen the practical enforceability of human rights in the ACT, including the human right to adequate housing.

The reform gives effect to the central proposition underlying the 2021 “No Rights Without Remedy” petition and subsequent Legislative Assembly inquiry: human rights must be capable of being vindicated in practice, not merely recognised in law.¹ ACT Shelter commends the ACT Government for progressing this longstanding commitment. The effectiveness of the proposed pathway, however, will depend not simply on whether a new legal avenue is created, but on whether that avenue is genuinely accessible, understandable, affordable and capable of delivering effective remedies for the people who need it most.

About ACT Shelter

ACT Shelter is the peak body for housing justice in the ACT. We are an independent, not-for-profit organisation that provides advocacy and strategic advice on systemic housing issues, with a focus on the ability of people on low, moderate or no incomes to have a home that is safe, secure, appropriate, and affordable.

ACT Shelter has a longstanding commitment to the recognition and realisation of housing as a human right. We campaigned for many years for the right to adequate housing to be

¹ E-petition: No Rights Without Remedy (November 2021), <https://epetitions.parliament.act.gov.au/details/032-21>; Standing Committee on Justice and Community Safety, (2022), [Report into the Inquiry into Petition 32-21 \(No Rights Without Remedy\)](#), Legislative Assembly for the Australian Capital Territory: Canberra.

recognised in the ACT's human rights framework, culminating in the enactment of the *Human Rights (Housing) Amendment Act 2025* in September 2025.

That advocacy rests on a simple principle: a right is only as meaningful as the mechanisms available to give it practical effect. Legal recognition alone is not enough. A right to adequate housing that cannot be effectively enforced – or that can only be pursued through processes that are costly, complex or inaccessible – risks being symbolic rather than substantive.

The proposed ACAT pathway is therefore of particular significance to ACT Shelter. This submission focuses on ensuring that the pathway is genuinely accessible and capable of delivering effective remedies, particularly for people experiencing homelessness, housing insecurity and other forms of disadvantage. These are among the people most likely to need the protection of human rights law, while also being among those most likely to face significant barriers to accessing justice.

Overarching position

ACT Shelter supports the introduction of an ACAT Pathway for human rights complaints. ACAT is an appropriately specialised forum for many complaints that may engage the right to housing. It already deals with a high volume of housing-related matters, including tenancy disputes under the *Residential Tenancies Act 1997* and reviews of Housing ACT decisions under the *Housing Assistance Act 2007*. However, establishing a pathway to ACAT will not, of itself, ensure meaningful access to a remedy. Its practical value to Canberrans experiencing homelessness, housing insecurity or other forms of disadvantage will depend on the choices made in designing the pathway, including those addressed by the Discussion Paper's three consultation questions, as well as a number of complementary features that fall outside their immediate scope. The pathway must ultimately be assessed not simply by whether people can bring a human rights complaint, but by whether they can realistically navigate the process and obtain an effective remedy where their rights have been breached.

The 2022 Standing Committee on Justice and Community Safety inquiry into Petition 32-21 (*No Rights Without Remedy*) provides important context.² The Committee considered detailed evidence about the likely volume and cost of a tribunal pathway. It was told that, in 2020–21, the ACT Human Rights Commission dealt with 218 discrimination complaints. Of these, 25 per cent were successfully conciliated, and only 13 per cent were referred to ACAT. Of the matters that reached ACAT, 45 per cent resolved before a hearing was required.

On that evidence, the Committee concluded that the proposed reform was unlikely to create a substantial additional resourcing burden, particularly when compared with the significantly greater cost of requiring such matters to proceed through the Supreme Court. This is consistent with the position ACT Shelter advanced in its submission on the *Human Rights (Housing) Amendment Bill*: concerns that expanded access to remedies will inevitably “open the floodgates” to litigation are not borne out by the ACT's own experience. We consider this context is relevant to each of the three consultation questions below, and in particular to the appropriate scope of remedies, where cost and caseload concerns should not be overstated.

² Standing Committee on Justice and Community Safety, (2021), [Report into the Inquiry into Petition 32-21](#).

ACT Shelter maintains that the reform should be anchored in a human rights-based approach. The PANEL principles – Participation, Accountability, Non-discrimination and equality, Empowerment, and Legality – provide a useful framework for translating legal rights into effective practice.³ Several of ACT Shelter's recommendations reflect these principles directly: meaningful participation by people with lived experience in the design and ongoing review of the pathway; accountability through remedies capable of responding appropriately to rights breaches, including compensation where necessary; empowerment through accessible intake processes, legal advice and community education; and legality through a pathway that is genuinely accessible in practice to the people whose rights it is intended to protect.

How the right to housing itself will interact with the ACAT Pathway

The design of the ACAT Pathway should take account of the particular structure of section 27D of the HRA, which commences on 1 January 2027, subject to section 5 commencing on 1 January 2029. From 1 January 2027, section 27D(2) identifies three aspects of the right to adequate housing that are immediately realisable: freedom from discrimination in housing; protection against unlawful or arbitrary eviction; and protection against unlawful or arbitrary withdrawal of an essential utility service. A substantive breach of these aspects of the right may therefore be directly established.

The broader right to adequate housing in section 27D(1) – which encompasses matters such as habitability, affordability, security of tenure and cultural adequacy – is subject to progressive realisation. Complaints concerning these dimensions may therefore engage questions about the reasonable implementation of the right over time and within available resources. The procedural obligation to give proper consideration to the right, however, applies from commencement. From 1 January 2029, section 5 will remove the closed nature of the list in section 27D(2), creating the possibility that additional aspects of the right may be treated as immediately realisable.

This structure has practical implications for the ACAT Pathway. In its early years, the two aspects of the housing right most likely to give rise to direct and substantive claims (protection against unlawful or arbitrary eviction and protection against unlawful or arbitrary withdrawal of an essential utility service) will frequently arise in matters already within ACAT's existing jurisdiction. These will include tenancy termination proceedings under the *Residential Tenancies Act 1997* and disputes concerning utility disconnection under the *Utilities Act 2000* and the *Utilities (Consumer Protection Code) Determination 2020*. Similarly, the protection against discrimination in housing substantially overlaps with the existing accommodation discrimination provisions in section 21 of the *Discrimination Act 1991*, which already operates through an established Commission-to-ACAT referral pathway.

This is significant. For the right to housing, the practical effectiveness of the ACAT Pathway will depend heavily on whether human rights arguments can be raised and determined within proceedings already before ACAT. In ACT Shelter's view, this makes the “piggyback” reform considered in Question 3 a particularly consequential design issue for the practical enforcement of the right to housing.

³ Australian Human Rights Commission, (2013), [‘Human rights-based approaches’](#) (online article), accessed 26 August 2026.

Question 1: Should the ACAT Pathway operate separately to the existing Supreme Court cause of action?

ACT Shelter supports Option 1 – that the ACAT Pathway should supplement, rather than replace, the existing standalone cause of action in the Supreme Court.

For most people experiencing housing stress or homelessness, ACAT is a far more accessible and realistic forum than the Supreme Court. The 2022 Committee inquiry heard evidence that initiating a Supreme Court proceeding costs an estimated \$1,544 in filing costs alone, before legal representation, with fewer than half of civil cases settled within twelve months. The Court's formalities also make it difficult for a self-represented litigant to run a matter effectively – unlike ACAT, which is well suited to lay applicants and not bound by the same rules of evidence. Many housing complainants are self-represented, have very limited financial resources, and need a resolution within a timeframe that reflects how quickly a housing crisis can escalate.

At the same time, it remains important for complainants to have the flexibility to select whichever pathway best suits their needs and circumstances. Direct Supreme Court access should remain available for matters that are complex, systemic, or likely to be precedent-setting, and some housing rights matters will raise genuinely systemic questions that warrant timely, authoritative determination by the Supreme Court, including through a declaration of incompatibility. Given the right to housing is new and its content is still being tested, ACT Shelter considers it important that such test cases not be delayed by a mandatory requirement to first exhaust conciliation and an ACAT determination.

We further recommend that this flexibility not come at the cost of clarity for complainants. People experiencing housing insecurity should not need legal advice simply to work out which forum to use. ACT Shelter recommends that clear, plain-language public guidance be developed, and that Commission intake staff provide active, informed referral support to help complainants identify the most appropriate pathway for their circumstances.

Question 2: What remedies should be available?

ACT Shelter recognises the complex legal and jurisdictional issues that arise in relation to different types of remedies, and we concede there are legitimate arguments for and against both options presented in the Discussion Paper. While acknowledging this complexity, however, we believe there is a compelling case for access to compensation in housing rights matters where it is necessary to provide an effective remedy.

We note there are strong arguments in favour of Option 2 – which would involve replicating the kinds of orders ACAT may make, and the matters it must consider with respect to discrimination complaints. This would provide a familiar and readily implementable model, carry a right to compensation without the caseload or cost consequences some fear, and avoid the jurisdictional uncertainty that could arise if ACAT were given the same powers as the Supreme Court, including the power to make a declaration of incompatibility under section 32 of the HRA. We note the original 2021 petition and the Standing Committee on Justice and Community Safety's 2022 inquiry into it both recommended a system that mirrors the existing discrimination complaints model, and the Committee's recommendation in that report was unanimous. We agree that the function of assessing whether legislation is compatible with the HRA, and referring any incompatibility back to the Executive and the

Legislative Assembly, is properly a Supreme Court function, and we would support any model – whether based on section 40C(6) or section 53E – expressly excluding ACAT from exercising that particular power.

Whichever model the Government adopts, ACT Shelter’s central concern is that ACAT must be equipped to grant the practical, typically non-monetary remedies that the diversity of housing matters requires – such as an order requiring urgent repairs, or reversing an unlawful termination of a tenancy or public housing decision – rather than being confined to a narrower toolkit designed around individual discrimination complaints. If the Government proceeds with Option 2, we recommend the available orders under that model be reviewed to ensure they are broad enough to deliver this kind of practical, tailored relief in housing matters, and are not limited to the cease-and-desist and compensation-style redress that suits most discrimination complaints. If the Government instead proceeds with Option 1, we reiterate that this should exclude ACAT’s power to make declarations of incompatibility, for the reasons discussed above.

On the question of compensation specifically, ACT Shelter recognises that housing rights breaches can sometimes cause harm that cannot be undone by a declaration or a forward-looking order. A person who has been unlawfully evicted into homelessness, or required to live for a prolonged period in unsafe or uninhabitable conditions, may have already suffered harm that cannot be remedied simply by reconsidering the original decision or directing future compliance. This goes to the heart of the problem the “No Rights Without Remedy” petition sought to address. A remedial framework that can identify a breach but provides no means of addressing harm already suffered risks leaving those who have experienced the most serious housing rights violations without an effective remedy.

ACT Shelter therefore recommends the Government give further consideration to a limited, capped compensation model, under which compensation would be available only after conciliation has failed, where necessary to provide “just satisfaction” for the harm suffered, where no other cause of action already provides a remedy, and subject to a fixed cap. Such a model would be materially narrower than a general civil damages regime. It would provide compensation only where necessary to ensure an effective remedy, while limiting exposure and addressing concerns about cost and caseload. On the evidence discussed above regarding the ACT Human Rights Commission’s track record as an effective conciliation filter, it is also unlikely to generate a significant increase in ACAT’s caseload or costs.

If the Government is not persuaded to adopt a limited compensation model at this stage, ACT Shelter recommends, as a minimum, that the exclusion of damages for housing-related complaints be explicitly revisited as part of the review of the operation of section 27D already required under section 44 of the HRA, which must be reported to the Legislative Assembly within five years of commencement.

We acknowledge that some housing providers exercising public functions may hold concerns about the operational implications of an expanded remedies framework, including the prospect of compensation. We consider the limited, capped, post-conciliation model recommended above is specifically calibrated to address these concerns. We also note that Housing ACT already operates within a jurisdiction – ACAT’s existing tenancy jurisdiction under the *Residential Tenancies Act 1997* – in which compensation-style remedies for housing failures are already awarded. The proposed approach would therefore represent a modest and measured extension of existing accountability mechanisms, rather than an entirely new or unfamiliar form of liability.

Whichever remedial model is ultimately adopted, ACAT should also have a clear capacity to grant urgent interim relief where this is necessary to prevent further or irreversible harm.

Question 3: How should human rights breaches raised in other proceedings (“piggyback” claims) be dealt with?

ACT Shelter supports Option 1 – amending the HRA to enable ACAT and lower courts to consider and grant relief for human rights breaches raised in other proceedings, regardless of whether the underlying claim succeeds or whether the relevant statute confers a particular discretion.

This issue is particularly important to the practical enforcement of the right to housing. Of the three aspects of the right to adequate housing that will be immediately realisable from 1 January 2027, two (protection against unlawful or arbitrary eviction and protection against unlawful or arbitrary withdrawal of an essential utility service) will frequently arise in matters already within ACAT's jurisdiction. These include tenancy termination proceedings and utility disconnection disputes. The piggyback question is therefore not a peripheral consideration in exercising the right to housing, but will substantially determine whether some of the right's clearest and most immediately enforceable protections are practically accessible.

Under the current framework, ACAT's ability to deal with a human rights issue arising in another proceeding depends on technical features of the underlying legislation and is further constrained by the outcome of the substantive application. In ACT Shelter's view, this may create an arbitrary and unjustified limitation. A person may have a legitimate human rights complaint but be unable to obtain a determination because their underlying application fails for unrelated reasons, or because the particular statutory provision involved does not confer the relevant discretion. Yet the same human rights claim may be capable of proceeding as a standalone complaint.

The availability of a human rights remedy should not depend on the technical structure or outcome of an unrelated claim. Such an approach creates an unprincipled two-tier system in which access to a remedy turns on how a matter happens to arise, rather than on the merits of the alleged human rights breach. For many people experiencing a housing crisis, an existing tenancy or public housing matter will be their first – and sometimes only – point of contact with ACAT. They may, for example, be responding to an application to terminate their tenancy, rather than independently identifying and commencing a human rights complaint. These complainants should not be required to navigate a separate process in order to have their human rights considered.

Option 1 would reduce unnecessary complexity, allow the human rights issue to be determined in the forum already dealing with the underlying dispute, and help ensure consistency between the remedies available in standalone and piggyback matters. ACT Shelter considers this essential to ensuring that the right to housing operates as a genuinely effective right across ACAT's housing-related jurisdiction.

Further design considerations for a housing-accessible ACAT Pathway

Beyond the three consultation questions, ACT Shelter recommends the Government consider the following matters in the detailed design of the ACAT Pathway, to ensure it is genuinely accessible to the people the right to housing is intended to protect.

Commencement aligned with the right to housing

The right to adequate housing commences on 1 January 2027. Ideally, the ACAT Pathway, and any necessary Commission processes, would be legislated, resourced and operational by that date – or as soon as practically possible – so the right does not commence with a gap before an accessible enforcement avenue is available. A right without an accessible remedy risks becoming symbolic in its earliest and most formative period.

Urgency and interim relief

Housing disputes can be acutely time sensitive. Imminent eviction, loss of essential services and unsafe living conditions may cause immediate and irreversible harm. The ACAT Pathway should therefore include clear mechanisms for expedited consideration and interim relief where necessary to prevent homelessness, loss of essential services or other serious harm while a complaint is being resolved.

Accessible intake and support

The pathway should be designed for people who may face significant barriers to engaging with formal legal processes, including a lack of a fixed address, digital exclusion, trauma, disability, competing crises, and language or cultural barriers. ACT Shelter recommends the design include fee waivers, accommodations for applicants without a fixed address, access to support persons and advocates including from the community sector, plain-language guidance, and culturally safe processes.

Capability and training

Given the technical and evolving nature of the right to housing, and the volume of housing matters likely to engage it, ACT Shelter recommends dedicated training and resourcing for ACAT members hearing housing-related human rights matters, and for Commission staff undertaking conciliation. We also recommend the Government ensure that, among the Presidential and other members appointed to ACAT, there is genuine depth of experience in human rights matters, so housing rights complaints are heard with the specialist understanding they warrant, rather than being treated as a marginal add-on to ACAT's existing tenancy and administrative review jurisdictions.

Access to legal advice and protection from costs risk

People experiencing housing insecurity are among the least likely to be able to afford legal advice, yet housing rights matters can raise genuinely complex questions about the interaction between the HRA and other legislation, such as the *Residential Tenancies Act 1997* and the *Housing Assistance Act 2007*. Legal Aid ACT does not currently fund human rights matters, and community legal centres such as Canberra Community Law have limited capacity to run full litigation. ACT Shelter recommends the Government consider amending the HRA to give the Commission the power to issue a certificate enabling a complainant to obtain pro bono legal advice. The Government should also ensure community legal centres with specialist human rights expertise are properly resourced to provide the additional legal services vulnerable complainants will need, alongside dedicated funding to educate the community about the new pathway.

ACT Shelter believes there is merit in the recommendation made by Canberra Community Law that the Supreme Court be given the power to make protective costs orders, shielding

applicants who bring proceedings alleging a breach of their human rights from an adverse costs order if their case is unsuccessful. Given ACT Shelter's support above for retaining direct Supreme Court access for complex, systemic or precedent-setting housing matters, the value of that access will depend on complainants not being deterred from using it by the risk of an adverse costs order they could not afford to bear.

Monitoring, data and public reporting

The ACT Human Rights Commission and ACAT should publicly report on the volume, nature and outcomes of housing-related human rights complaints. Data should, where possible and appropriate, be disaggregated by matter type and relevant population groups. Transparent reporting will support ongoing evaluation of whether the pathway is delivering genuine access to justice and identify barriers requiring further reform.

Meaningful consultation with people with lived experience

ACT Shelter recommends the Government continue to engage directly with people who have experienced homelessness or housing insecurity, and with the community organisations that support them, as the detailed design of the ACAT Pathway progresses, to ensure the final model reflects the practical realities of how people will access and use the system.

Summary of recommendations

1. **Establish an ACAT Pathway for human rights complaints**, recognising ACAT's existing role and expertise in housing-related matters.
2. **Adopt Option 1 for Question 1**, retaining the ACAT Pathway as a supplement to, not a replacement for, the existing cause of action in the Supreme Court.
3. **Provide clear guidance and active referral support** to assist complainants to identify the pathway most appropriate to their circumstances.
4. **Ensure ACAT has access to a broad and practical range of remedies** capable of providing effective relief in housing matters, while reserving declarations of incompatibility for the Supreme Court.
5. **Give further consideration to a limited, capped compensation model** (available only after failed conciliation, only where necessary to provide just satisfaction, and only where no other remedy is available). Alternatively, **expressly reconsider the exclusion of compensation as part of the statutory review of the right to housing** under section 44 within five years of commencement.
6. **Ensure the ACAT Pathway's design accommodates the staged scope of the right to housing.**
7. **Amend the HRA so ACAT and lower courts can grant relief for human rights breaches raised in "piggyback" matters**, regardless of the outcome of the underlying claim or the terms of the other statute relied on.
8. **Provide expedited processes and interim relief** for urgent housing matters.
9. **Design accessible intake processes**, including fee waivers, support persons, accommodations for applicants without a fixed address, and culturally safe processes.

10. **Invest in specialist capability**, including training and resourcing for ACAT members and Commission staff dealing with housing-related human rights matters.
11. **Improve access to legal assistance and community education**, including through direct support for specialist community legal services.
12. Consider **giving the Supreme Court the power to make protective costs orders for human rights complainants**, so the value of retained Supreme Court access is not undermined by the risk of an adverse costs order.
13. Commit to **public reporting on housing-related human rights complaints** to support transparency and accountability.
14. Continue **meaningful engagement with people with lived experience of homelessness and housing insecurity**, and the organisations that support them, throughout implementation and review.

Conclusion

ACT Shelter's advocacy for the right to adequate housing has always been grounded in the conviction that housing is a human right, not a commodity or a privilege, and that recognising it in law must be matched with meaningful, accessible mechanisms of accountability and remedy.

The proposed ACAT Pathway provides an important opportunity to give practical effect to that principle. Its success, however, will depend on more than creating a new jurisdiction. The pathway must be accessible to the people most likely to need it, capable of responding to urgent circumstances, and equipped to provide remedies that are effective in practice. For people experiencing homelessness and housing insecurity, ACAT may often be the only realistic forum in which to seek redress for a breach of their rights.

We urge the Government to design the ACAT Pathway with these realities squarely in mind, and would welcome the opportunity to provide further information or to discuss this submission further.

Yours sincerely,



Corinne Dobson
CEO, ACT Shelter