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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

PAPER FOR TABLING

GOVERNMENT RESPONSE - PROTECTION OF RIGHTS SERVICES REVIEW - FINAL REPORT

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GOVERNMENT RESPONSE

PROTECTION OF RIGHTS SERVICES REVIEW

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PURPOSE

The *Protection of Rights (Services) Legislation Amendment Act 2016* reformed the structure and operation of protection of rights services in the ACT, bringing the Public Advocate and the Victims of Crime Commissioner into the ACT Human Rights Commission (HRC), and transferring the guardianship functions of the Public Advocate to the Public Trustee and Guardian (PTG).

The complaints handling function of the HRC was consolidated under one Commissioner (the Discrimination, Health Services, Disability and Community Services Commissioner) and the Public Advocate and Children and Young People Commissioner role was combined. The leadership of the HRC was also reformed with the establishment of a position of President and the development of new governance mechanisms, including a Governance Protocol with the Justice and Community Safety Directorate, a Community Client Service Charter and an Internal Operations Protocol.

The aims of the reforms included strengthening the leadership, governance and co-ordination of key rights protection services forming the HRC, and improving accountability of these agencies, while ensuring that service accessibility was maintained. It was also intended that the reforms to the PTG would result in a joined-up service for clients and bring a wider range of experienced staff with expert personal, guardianship and financial management skills together to act for Canberrans with impaired decision-making capacity.

Under the *Human Rights Commission Act 2005*, the Minister must review the operation of that Act and the *Public Trustee and Guardian Act 1985*, as amended by the protection of rights services amendments, to review the effectiveness of the restructuring of the rights protection services including how the amendments promote the objects (express or implicit) of those Acts.

The Protection of Rights Services Review (the Review) formally commenced on 24 June 2020.

The Review considered, and consulted with stakeholders and the broader community on, the extent to which the protection of rights services reforms achieved their intended aims across the following areas:

- leadership and governance;
- complaint handling;
- service delivery;
- improving the operation of the Public Trustees and Guardian;
- visibility in the community; and
- other issues raised by stakeholders during the consultation.

The Review also considered and consulted stakeholders and the community in relation to the recommendation from the interim report on the *Our Booris, Our Way* (OBOW) review to establish an Aboriginal and Torres Strait Islander Children's Commissioner.

METHOD

The Review engaged with 154 stakeholders through interviews and focus groups. The Review offered all ACT residents an opportunity to provide input via written or audio submission, or through an accessible online survey.

The Review considered relevant documents, interviewed 102 stakeholders, conducted focus groups with 52 individuals, including service providers and consumers, conducted a survey open to all members of the public and invited written submissions.

The Review used feedback from stakeholders to gain a detailed appreciation of the functioning of the HRC and PTG within the reformed framework; recognise what is working well; and detail areas potentially requiring improvement.

FINDINGS AND RECOMMENDATIONS

The final Review report was provided on 25 February 2021.

The Review made 16 findings as to the Terms of Reference:

- 5 regarding the HRC's leadership and governance;
- 5 regarding the HRC's complaint handling;
- 4 regarding the HRC's service delivery; and
- 2 regarding the PTG's service delivery.

From these, they made 31 recommendations:

- Recommendations 1 – 10 relate to leadership and governance of the HRC;
- Recommendations 11 and 12 relate to complaint handling of the HRC;
- Recommendations 13 and 14 relate to service delivery of the HRC;
- Recommendation 15 relates to visibility and accessibility of the HRC;
- Recommendations 16 – 25 relate to the operation, Service Delivery and Visibility in the Community of the PTG;
- Recommendations 26 – 31 relate to the Our Booris Our Way Review.

GOVERNMENT RESPONSE TO RECOMMENDATIONS

The ACT Government welcomes the findings of the Review. The Review report highlights the commitment, expertise and professionalism of ACT protection of rights agencies and statutory office holders and the high quality services provided by the HRC and PTG. The report confirms that the protection of rights services reforms which took effect in 2016 have been effective in achieving their objectives.

The ACT Government welcomes the recommendations of the Review report. In large part, these are intended to further strengthen collaboration by and across the HRC and PRG and to ensure that the ACT continues to improve oversight, services and advocacy for vulnerable Canberrans, and to promote the human rights of everyone in the ACT.

The ACT Government also welcomes the findings of the community consultation undertaken by the review regarding the Our Booris Our Way recommendation to establish an Aboriginal and Torres Strait Islander Children's Commissioner, and the recommendations regarding next steps in this process. The recommendations and Government response to them are set out below.

RECOMMENDATION 1

The President and each Commissioner continue to lead and interact in ways which promote strong collegiality across the whole organisation and with other oversight bodies – an existing strength of the Commission.

Government response: **AGREED**

The ACT Government welcomes the report's finding that leadership and governance are strengths of the HRC, being both effective and of high quality. The HRC advise that the President and each Commissioner are committed to continuing to operate collegiately in interactions within the organisation and with other oversight bodies.

Status: Ongoing

RECOMMENDATION 2

Consideration be given by the President and Commissioners jointly as to the role and focus required of the President over the next strategic planning period.

Government response: **AGREED**

The ACT Government welcomes the report's finding that the role of President has been a strategic addition to the HRC's governance and structure. The ACT Government notes that the HRC has commenced work for the 2021-24 strategic planning period and the focus and role of the President is being considered during this process.

Status: In Progress

RECOMMENDATION 3

The Commission develop a systematic whole-of-Commission induction process for new staff to familiarise them with all of the Commission's functions and teams and their relevance to individual roles.

Government response: **AGREED**

The ACT Government notes that the collaborative and collegiate nature of the HRC workplace is a strength of the HRC, and this could be further enhanced through induction processes. The HRC advises that work is underway within the HRC to further develop its existing induction program and its collaborative and triaging practices.

Status: In Progress

RECOMMENDATION 4

Within a framework of collective strategy and the provision of consistent advice, the Commission examine ways to include divergent perspectives of individual Commissioners where strategic.

Government response: **AGREED**

The ACT Government notes that the HRC has developed and regularly reviews its processes to ensure that each of Commissioners' views are presented strategically within a framework of collective action. The HRC advises that it will continue to review processes to ensure that divergent perspectives are included in advice where strategic.

Status: Ongoing

RECOMMENDATION 5

The Commission develop robust means for evaluating and obtaining reliable feedback about all of its functions, including contribution to policy development processes, oversight, advocacy and services.

Government response: **AGREED**

The ACT Government notes that the HRC has a strong culture of continuous evaluation and improvement. HRC advises that it has already put in place processes for seeking reliable feedback on many of its functions and will continue to improve and develop robust evaluation processes for all of its functions, using a variety of means for obtaining feedback.

Status: Ongoing

RECOMMENDATION 6

In relation to complaints about the Commission: to encourage potential complainants and give assurance about the ease, independence and integrity of the process, the HRC publish

- a) a robust policy and process
- b) plain-language summary information, including in the Client Services Charter.

Government response: **AGREED**

During the course of the review, the HRC published a fact sheet on its website about the process for making complaints to the President under section 18(l) of the *Human Rights Commission Act 2005* about the quality of its services, including how a complaint will be handled impartially and the next steps for individuals not satisfied with the HRC's management of complaints about operations and service provision. The ACT Government notes the HRC's advice that it will also include plain language summary information about this process in its Client Service Charter.

Status: In progress

RECOMMENDATION 7

The Commission make the most of insights from staff and key external stakeholders in its next strategic planning process and articulate a coherent vision for the Commission as a whole into the future.

Government response: **AGREED**

The ACT Government notes that the HRC has included the views of employees in its Strategic Plans 2017-2020 and 2021-2024. The ACT Government is advised that the HRC has considered the views of external stakeholders in a variety of ways, including by considering their feedback to the Protection of Rights Services Review. The HRC advises that it has established an external Aboriginal and Torres Strait Islander Reference Group which provides feedback to the HRC and that it intends to establish an additional external Community Reference Group.

Status: Ongoing

RECOMMENDATION 8

The HRC monitor intake performance to ensure effective decision-making on which part of the HRC is best placed to lead any one matter, and to reduce clients' experiences of referral between teams.

Government response: **AGREED**

The ACT Government notes that the HRC has well-established policies and procedures in place to ensure that all clients are allocated to relevant services effectively and appropriately, and that the HRC is committed to ongoing improvement. The HRC advises that it will continue to monitor and review intake performance to ensure the necessary diversity of services is delivered seamlessly to clients with complex and multiple needs.

Status: Ongoing

RECOMMENDATION 9

The Commission consider whether it will be strategic to combine the community education functions of each Commissioner into one approach.

Government response: **AGREED IN PRINCIPLE**

The ACT Government notes that the HRC has an overarching community engagement approach, including a whole of Commission Communications Strategy. However, the HRC advises that depending on the target audience for community education, customised approaches may be required, and it may be appropriate for different areas of the HRC to undertake community education independently in some instances. The ACT Government notes that this approach will also support appropriate visibility of individual Commissioners.

Status: Ongoing

RECOMMENDATION 10:

The Commission continue to engage early and pro-actively with ACT Government policy, strategy and legislative development and review as invited.

Government response: **AGREED**

The ACT Government values the HRC's role in providing advice and input to new legislation and policy and looks forward to continuing to work with the HRC in this regard. The ACT Government notes that the HRC will develop processes for inviting feedback from policy makers.

Status: Ongoing

RECOMMENDATION 11

JACS and the HRC review and update the Key Performance Indicators related to Complaints and other services to ensure they appropriately inform an understanding of performance, demand and resourcing required.

Government response: **AGREED**

The HRC and the JACS have met to review and update the HRC's Key Performance Indicators for complaints and other services, having regard to the factors identified by the review.

Status: In progress

RECOMMENDATION 12

The HRC consult stakeholders on strategies to further improve the effectiveness of written and verbal communication throughout the complaints process, in order to:

- a) Enhance awareness and understanding among complainants of diverse backgrounds and vulnerabilities of:
 - i. risks in commencing a process
 - ii. limitations of what the HRC is able to achieve in their matter
 - iii. likely outcomes
- b) other options for them to pursue beyond the functions of the HRC
- c) Inform prospective complainants' decision-making on whether the complaints process is best suited to their situation and objectives.
- d) Support respondents to understand what is likely to be required of them during the process so they can properly assess who may need to be involved.

Government response: **AGREED IN PRINCIPLE**

The ACT Government acknowledges the importance of ongoing consultation with stakeholders regarding communications. The ACT Government is advised by the HRC that the matters in this recommendation are regularly discussed with complainants and form part of the existing complaints management process. The Discrimination, Health Services, Disability and Community Services Commissioner engages with stakeholders involved in the complaint process and refines and reassesses communication about that process on an ongoing basis, noting the diversity of complaint jurisdictions the Commissioner administers. The HRC advises that it will continue to seek stakeholder feedback regarding communications as part of its commitment to continuous service improvement.

Status: Ongoing

RECOMMENDATION 13

The Commission increase outreach and community initiatives with vulnerable cohorts including Aboriginal and Torres Strait Islander communities, people from culturally and linguistically diverse backgrounds, LGBTQIA+ people, people with disability and people in detention.

Government response: **AGREED**

The ACT Government is advised that the HRC will continue to review means of reducing the barriers for vulnerable cohorts to access HRC services. The ACT Government notes that during the review period the Commission established an external Aboriginal and Torres Strait Islander Reference Group which provides feedback to the HRC. The HRC intends to establish an additional external Community Reference Group. These groups assist in developing and advising on outreach and community initiatives for vulnerable cohorts.

Status: Ongoing

RECOMMENDATION 14

The Public Advocate review the volume of individual advocacy required by people subject to ACAT mental health proceedings, devise a response with key stakeholders, and advise The ACT Government.

Government response: **AGREED**

The ACT Government notes that the Public Advocate has indicated her willingness to continue to engage with ACAT and stakeholders in relation to the need for independent advocacy and advise The ACT Government about a proposed approach including any resource implications. Government welcomes advice from the Public Advocate in this regard.

Status: In progress

RECOMMENDATION 15

The Commission raise community awareness and understanding of human rights and how they are protected by the HRC, by:

- a) 'universal' promotion on traditional and social media
- b) continued promotion of the Commission's client engagement resources such as its Client Services Charter, Social Inclusion Plan and the Deadly Advice: Legal information for Aboriginal and Torres Strait Islander peoples in the ACT website
- c) tailored education strategies for vulnerable cohorts and communities, co-designed with community stakeholders
- d) targeted outreach and joint community ventures such as 'Young Thinkers forums' which help embed human rights information in communities and also build the Commission's awareness of community issues

Government response: **AGREED**

The ACT Government notes the ongoing efforts of the HRC to raise community awareness and understanding of human rights and the role of the HRC in protecting these rights. The HRC advises that it will undertake ongoing universal promotion through a range of means including social media and will also continue conducting targeted promotions and outreach activities for vulnerable cohorts and communities including Aboriginal and Torres Strait Islander communities, people with disability and children and young people. The ACT Government supports the HRC to continue this work in accordance with this recommendation.

Status: Ongoing

RECOMMENDATION 16

The PTG continue to cultivate a consistent culture across Guardianship and Financial Management as a rights protection agency operating in a manner consistent with human rights and best practice for people with impaired decision making.

Government response: **AGREED**

The ACT Government is advised that the PTG has made significant progress since the 2016 reforms to achieve well-functioning and conjoined teams. The ACT Government notes that the legislation requires Guardianship and Financial Management teams to function separately while delivering a joined up and coordinated service for mutual clients. Co-location of the Guardianship and Financial Management units has ensured a commonality of culture and a constant consultation and cross-referral in matters involving mutual clients. At the same time, appropriate safeguarding in relation to decision making has been maintained.

Status: Ongoing

RECOMMENDATION 17

The PTG continue to improve its ICT systems, including through the acquisition of a suitable customer management platform for the delivery of financial management services.

Government response: **AGREED**

The ACT Government notes that the PTG has commenced ICT system development and this work will continue, in accordance with the recommendation. These improvements will help increase the efficiency and quality of the PTG's decisions and communications, particularly for managers with large caseloads.

Status: In Progress

RECOMMENDATION 18

The *Public Trustee and Guardian Act (1985)* be updated to enable the delegation of decision making to guardians and financial managers.

Government response: **AGREED**

Section 9A(2) of the *Public Trustee and Guardian Act (1985)* (PTG Act) restricts the PTG's power to delegate certain functions where the PTG has been appointed as a Guardian for a person. Amendments have been made as part of the *COVID-19 Emergency Response Legislation Amendment Act 2020* to allow greater flexibility for delegation during the emergency period. Government is working with the PTG to develop more permanent amendments to provide a workable delegation regime which will allow the PTG to delegate decision making to appropriately qualified officers while ensuring that human rights of vulnerable clients are properly considered.

Status: In progress

RECOMMENDATION 19

The PTG and Government continue the transition to a supported decision-making framework, including through the timely amendment of legislation.

Government response: **AGREED**

Under Goal 4.8 of the Disability Justice Strategy 2019-2029 The ACT Government has committed to exploring opportunities to reform decision-making laws in the ACT to provide greater options for supported decision-making by people with disability. JACS will continue to work with PTG to develop amendments to legislation to provide for a supported decision-making framework.

Status: In progress

RECOMMENDATION 20

The PTG engage with key stakeholders to consult on and refine its role – including in relation to rights advocacy, external collaboration and the sourcing of options for decision making - and its dependencies on external agencies for service delivery. This would inform PTG and stakeholder policy and lead to a better shared understanding with stakeholders of each other's functions and limitations around shared clients.

Government response: **AGREED**

The ACT Government notes that the PTG has developed strong relationships with its stakeholders and that the PTG is committed to further strengthening these relationships through increased engagement and education about the role and functions of the PTG, particularly regarding individual advocacy.

Status: Ongoing

RECOMMENDATION 21

The PTG develop accessible practice guidance for the quality delivery of guardianship functions.

Government response: **AGREED**

The ACT Government supports the quality delivery of guardianship functions by the PTG. The PTG advises that it already introduced National Standards that establish minimum expectations of staff of the Public Guardian and will develop a practice manual for its guardian practitioners.

Status: In Progress

RECOMMENDATION 22

The ACT Government seek joint advice from the PTG and Public Advocate regarding:

- 1) the allocation of responsibilities to pro-actively support the quality of private guardianship and management,
- 2) including the investigative function, community capacity building and
- 3) adequate representation of people subject to guardianship hearings at ACAT.

This should address any associated legislative change and resourcing requirements.

Government response: **AGREED**

Government will work with the Public Advocate and the PTG to explore the current division of responsibilities and functions between the Public Advocate and PTG and changes required to ensure that these responsibilities are able to be met. Any legislative change and resourcing requirements will be considered by The ACT Government following these discussions.

Status: In progress

RECOMMENDATION 23

The PTG revisits its policies, practices and website regarding:

1) complaints; and

2) feedback

and better align them to best practice.

Government response: **AGREED**

The ACT Government notes that the current information provided by the PTG on its website addresses some of these issues. The ACT Government understands that the PTG is currently considering improvements that could be made to its policies to better align them to best practice, particularly with regard to providing options for tiered complaint handling to allow for escalation and review.

Status: In Progress

RECOMMENDATION 24

The PTG actively engage with key stakeholders for feedback and continuous improvement, and support this with a strategic approach to ongoing evaluation.

Government response: **AGREED**

The PTG advises that it will continue to actively engage with stakeholders and reaffirms its commitment to continuous improvement and ongoing evaluation of its policies, procedures and practice resources.

Status: Ongoing

RECOMMENDATION 25

The PTG improve the information it provides to people with impaired decision making and those working with them, including through improving its website.

Government response: **AGREED**

The PTG advises that it has commenced work to improve accessibility of its website for people with impaired decision making and those working with them, including through the use of Easy English resources.

Status: In Progress

RECOMMENDATION 26

The process to establish an Aboriginal and Torres Strait Islander Children's Commissioner from here ought to involve:

- a) The ACT Government confirm that it will create a new Commissioner for oversight in relation to Aboriginal and Torres Strait Islander children and families, along with a wider intent to use the role to lift oversight for Aboriginal and Torres Strait Islander people's services and outcomes more broadly.
- b) The ACT Government commit resources and engage Aboriginal and Torres Strait Islander community members in the process of design and establishment of the new Commissioner and team so that they are well understood and supported from the start. Specifically:
 - i. Co-design be led by Aboriginal community organisations and members, in partnership with JACS, and involve wider community networks including the Our Booris Our Way committee, and the Human Rights Commission
 - ii. Co-design be used to develop the new role, functions, governance and recruitment process.
- c) The co-design work commence quickly in order to enable the selection of a Commissioner within twelve months from formal receipt of this final report or as soon as practical while also delivering sufficient quality of co-design, budget and legislative processes.
- b) Publication of a timeline for establishment that, along with allocated resources, gives stakeholders confidence in the process.

Government response: **AGREED**

The ACT Government is committed to establishing an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT.

JACS has engaged an Indigenous consultant to facilitate a co-design process led by Aboriginal and Torres Strait Islander community members and organisations to design and establish the new Commissioner. The co-design process will develop and refine the proposed Commissioner's scope, functions, governance arrangements and recruitment process. A timeline will be developed with the consultant, noting the importance of the co-design process being progressed in a timely way to enable legislation to be introduced and a Commissioner role commenced as soon as possible.

Status: In Progress

RECOMMENDATION 27

The Commissioner be independent of the HRC but co-located, with high collaboration and interaction, including strong legislative expectations on the new Commissioner, HRC and other oversight bodies that they work collegiately and avoid duplication.

Government response: **AGREED IN PRINCIPLE**

While Government supports this approach, the details of the new Commissioner role, particularly whether the office is to be co-located, separately located or part of the Commission, will be finalised following the co-design process, to ensure that the views of the community are fully reflected in the final model.

Status: In Progress

RECOMMENDATION 28

All relevant legislation be amended to enable information sharing and collaboration between the Aboriginal and Torres Strait Islander Children's Commissioner and the HRC, especially the Public Advocate and Children and Young People's Commissioner and the Discrimination, Health Services, Disability and Community Services Commissioner.

Government response: **AGREED**

The ACT Government agrees that appropriate information sharing powers will be critical to enabling the Aboriginal and Torres Strait Islander Children's Commissioner to work effectively as part of the ACT's broader rights protection and oversight framework.

Status: In progress

RECOMMENDATION 29

The Aboriginal and Torres Strait Islander Children's Commissioner and the HRC develop a Protocol to provide governance for their complementary and collaborative work.

Government response: **AGREED IN PRINCIPLE**

The ACT Government is supportive of any mechanism agreed between the new Commissioner and the HRC to strengthen governance and collaboration. The Protocol will be a matter for negotiation between the HRC and Commissioner once established. As noted above, it may depend on the outcomes of the co-design process.

Status: In progress

RECOMMENDATION 30

As a starting point, the Commissioner have similar powers and functions to those of the current Public Advocate and Children and Young People Commissioner and the ability to actively support complainants to access the existing HRC complaints processes. This would enable:

- a) Individual advocacy – including involvement in individual Care and Protection and justice processes
- b) Systemic advocacy and reforms – including regarding early support
- c) Inspections and visits – in coordination with the Official Visitors, Inspector of Corrections, Public Advocate and Children and Young People Commissioner
- d) Investigations and Reviews
- e) Compliance/regulatory functions
- f) Service and systems development and improvement
- g) Community outreach, participation and engagement
- h) Oversight and accountability mechanisms back to community

Government response: **AGREED IN PRINCIPLE**

The ACT Government intends to progress legislation to establish an effective Commissioner for Aboriginal and Torres Strait Islander Children with appropriate powers and functions. The details of

the Commissioner role will be finalised following the co-design process to ensure that the views of the community are fully reflected.

Status: In progress

RECOMMENDATION 31

Community stakeholders were clear that, consistent with self-determination and cultural safety, the Commissioner needs to be Aboriginal or Torres Strait Islander. The community ought to be consulted further on other key attributes for the Aboriginal and Torres Strait Islander Children's Commissioner. It will be important for there to be community representation and/or leadership of the recruitment process.

Government response: **AGREED**

The ACT Government shares the view of community stakeholders, and the final report, that the new Commissioner should be Aboriginal or Torres Strait Islander. Decisions on other key attributes for the new Commissioner and an appropriate recruitment process, will be made following the feedback from the co-design process.

Status: In Progress