

2021

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

PAPER FOR TABLING

PROTECTION OF RIGHTS SERVICES REVIEW - FINAL REPORT

**Presented by
Tara Cheyne MLA
Minister for Human Rights**

ACT Protection of Rights Services Review



Insight Consulting Australia

Strategy, policy, research

Contact: Ross Beaton, Director
Office: 1800 572 035
Mobile: 0439 777 905
Email: ross.beaton@insightaus.com.au
www.insightaus.com.au

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National Multicultural Festival, Canberra Australia, February 2020

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Review Terms of Reference

The *Protection of Rights (Services) Legislation Amendment Act 2016* brought about a range of reforms to 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 roles of Public Advocate and Children & Young People Commissioner are now delivered by the same office holder. 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.

The review will consult with stakeholders and the broader community to consider the extent to which the protection of rights services reforms achieved their intended aims across the following areas:

1. Leadership and governance:
 - a. strengthening the accountability and governance of the HRC, and
 - b. enhancing strategic planning and coordination of service, oversight and advocacy functions.
2. Complaint handling:
 - a. improving complaints handling within the HRC (including streamlining intake and processing of complaints), and
 - b. improving service efficiency in complaints handling.
3. Service delivery:
 - a. improving the experience and service provided to users of rights protection services for both the PTG and HRC.
4. Public Trustee and Guardian:
 - a. enabling the PTG to deliver a more joined up services for clients with impaired decision-making capacity.
 - b. Allowing the expertise of the PTG in management and administration of personal affairs to be applied to assist in facilitating and expediting

guardianship administration.

- c. Ensuring the guardianship functions would remain separate within the office of the PTG, with the guardianship management requiring a different focus and skill set.

5. Visibility in community:

- a. ensuring that each independent statutory office holder is appropriately visible and accessible to the community and able to perform their functions within the new protection of rights framework.

The review will also consider other issues raised by stakeholders during consultation.

In addition, the review will also consider and consult stakeholders and the community in relation to the recommendation from the interim report on the *Our Booris, Our Way* review to establish an Aboriginal and Torres Strait Islander Children's Commissioner.

A report of the review must be provided to the Minister within approximately 6 months and presented to the Legislative Assembly within 12 months of commencement of the review.

1. Executive Summary

The ACT Justice and Community Safety Directorate (JACS) commissioned Insight Consulting Australia (Insight) to conduct a review into the rights protection services provided through the ACT Human Rights Commission (HRC) and Public Trustee and Guardian (PTG). This review is required by the legislation which reformed those two organisations in 2016.

The Terms of Reference (pages 3-4 above) provide the areas for review as to whether the reforms achieved their intended aims. The review was also to draw from its consultations to provide input to both organisations' ongoing improvement efforts, noting that these office holders are not subject to external direction.

The **Findings** in each section primarily address the Terms of Reference, with wider issues addressed through the analysis and recommendations. Potential recommendations were discussed with the HRC, PTG and JACS in October 2020 and a draft report provided in November, hence some matters have been progressed in the meantime.

In the context of the statutory review Insight was asked to consider and consult the community about the recommendation from the *Our Booris, Our Way* review to establish an Aboriginal and Torres Strait Islander Children's Commissioner in the ACT.

We have structured the report to deal in turn with the HRC, PTG and then the *Our Booris, Our Way* recommendation.

The commencement of the review was delayed by some months due to the impact of the Covid-19 pandemic on public administration. A review Reference Group was established with representatives from JACS, HRC, PTG and the *Our Booris, Our Way* Implementation Oversight Committee.

1.1. Method

The review engaged with 154 stakeholders through interviews and focus groups. Key stakeholders were approached directly while a broader set of stakeholders were invited to participate through the distribution of information via

- Direct emails from the review to more than 100 identified stakeholders across the HRC, PTG, other rights protection roles, ACT Government agencies, non-government peaks, advocacy organisations, legal services, service providers and consumer groups and ACT Aboriginal and Torres Strait Islander organisation
- An ACT Council of Social Services (ACTCOSS) email to all its networks, followed by a reminder
- The JACS, HRC and PTG websites.

The review offered all ACT residents an opportunity to provide input via written or audio submission, or through an accessible online survey.

In summary, the review:

- Considered relevant documents (see References)
- Interviewed 102 stakeholders
- Conducted focus groups with 52 individuals, including service providers and consumers
- Conducted a survey open to all members of the public (nine valid responses)
- Invited written submissions (eight received).

A full list of stakeholders who were consulted and/or provided written submissions is at Appendix 1.

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. The experiences of those who work within and alongside each organisation, and of clients and their community advocates, are a significant resource for understanding the real world operation and impact of each organisation and constituent teams. It is not the review's purpose to reprise the detail of all that the HRC and PTG do – this is accomplished through their respective annual reports. As commissioned, the review focusses on the Terms of Reference primarily through exploring the observations and issues raised by stakeholders as these provide significant and often expert insight to each of the Terms of Reference – in most cases from several years of experience.

1.2. Overall findings

On the basis of extensive stakeholder feedback, we are confident that each independent office holder is able to perform their functions within the 2016 protection of rights framework. This is partly due to the functionality of the architecture of those reforms, and partly due to the professionalism and capabilities of the office holders and their teams who make it work.

The main reform-related issues have in-part arisen due to the separation of Guardianship from Public Advocate functions, and in-part from the ongoing evolution of each of those functions. However, that separation seems to be strategic and appropriate. The delivery of both functions, and of relevant community based services, needs to respond to the issues raised regarding individual advocacy and of safeguarding in the ACT Civil and Administrative Tribunal (ACAT).

Both the Human Rights Commission and the Public Trustee and Guardian benefit from capable leadership, effective governance, fierce independence, and a commitment to collaborative operation across other office holders, other oversight bodies and wider stakeholders. These are critical success factors for the ACT's protection of rights framework, and ought to continue to be a central consideration in the selection of future office holders.

The overall picture of both organisations is positive and their strengths ought to be recognised, maintained and built upon. It is important to note that each office holder delivers their functions and services in complex fields so they will frequently be criticised, and a proportion of those criticisms will be warranted. Strategic approaches to evaluation and stakeholder engagement are required to ensure each organisation delivers as intended and keeps improving the rights protection of Canberrans.

The self determination of Aboriginal and Torres Strait Islander people in the ACT ought to include oversight and advocacy. The current experience of Aboriginal and Torres Strait Islander people in terms of outcomes, services and systems warrants a specific, culturally informed, culturally safe and accessible oversight body.

The *Our Booris, Our Way* review and this review have brought together community input which can be used to shape the future of rights protection in the ACT.

1.3. Human Rights Commission

1.3.1. Leadership and governance

The Terms of References guided consultation on how to strengthen the HRC's governance and accountability and enhance its strategic planning and coordination of services, oversight and advocacy functions.

External stakeholder feedback about the Human Rights Commission was overwhelmingly positive as to the capability, professionalism and collegiality of its statutory office holders, senior staff and overall functioning. These largely consistent experiences and perceptions attest to effective leadership and governance in the context of implementing and consolidating significant reforms over the previous four years.

Most stakeholders believed that the creation of the role of President had been appropriate and that the HRC benefited from being able to advocate with the combined voices of four highly regarded Commissioners.

The President and Commissioners actively participate in ACT oversight structures and processes which enable an appropriate level of coordination with other oversight bodies, including the avoidance of duplication.

Stakeholders spoke highly of the level of coordination between Commissioners in service provision, oversight and advocacy. Integration of Commissioners' community education functions may assist the HRC to provide clear messaging on its reason for being as a whole, and help Commissioners raise each other's profiles within their individual areas of work.

Overall stakeholders saw the HRC as suitably strategic and playing the role the ACT community needs it to play. Its focus on issues like the minimum age of criminal responsibility, elder abuse, and external review of care and protection decisions were seen as demonstrating suitable judgement – selecting the right sorts of issues and giving emphasis to an actionable number rather than too many.

The HRC expects to develop the next Strategic Plan early in 2021. Stakeholders and staff expressed strong interest to be involved, and saw it as an opportunity to reflect a matured view of the HRC as a whole, its purposes and objectives. Areas for strategic consideration regarding leadership and governance, discussed further in Chapter 4, include:

- the role and focus required of the President as a larger and more complex organisation moves forward
- how the Commission both leverages its united voice and represents any divergent perspectives by individual Commissioners.

In the context of the framework for rights protection having proven itself robust over the past four years, the main risk evident to sustained quality of delivery seems to lie in resourcing. Since 2016/17 the budget for the whole Commission has increased by almost 24% in dollar terms - a significant increase even accounting for modest wages growth and the addition of functions since that time. Over the same period many areas of service provision have doubled in volume (eg. discrimination complaints, Cabinet and other submissions, and Victims of Crime case coordination and Financial Assistance Scheme). Performance data and stakeholder feedback for most of the HRC's areas of responsibility do not indicate that services are currently struggling to meet community expectations (except perhaps for individual advocacy) however, they do demonstrate significant growth in the volume and complexity of services delivered. To fully comply with the United Nations Principles Relating to the Status of National Human Rights Institutions (Paris Principles) the Government needs to constantly ensure the HRC's services and functions are resourced to keep pace with demand and complexity. This warrants Government consideration over coming budget cycles.

Evaluation of the HRC's delivery and coordination of its functions is a current weakness in its governance and is crucial to informing strategic planning and negotiation of staffing and budget requirements. Current Commission surveys of users of its services do not yield the same reliability or usefulness of information for improvement as tailored evaluation strategies. As part of developing a robust culture of evaluation and review, clearer information for service users who wish to complain or provide feedback about HRC service provision is crucial.

Findings as to the Terms of Reference

- The leadership and governance of the Human Rights Commission is effective and of a high quality, and maintains a high level of trust among its stakeholders.
- The Commission retains both the independence and accountability intended by the legislation and as largely expected by stakeholders.
- It is now timely for the HRC to revisit its strategic planning and strengthen its ongoing monitoring and evaluation.
- The HRC has achieved a high degree of coordination across its services, oversight and advocacy functions to the benefit of clients, stakeholders and government.

- The HRC's role in providing advice and input to new legislation and policy is highly valued.

1.3.2. Complaint handling

The 2016 reforms saw the HRC's complaints function fall under the remit of a single Commissioner – the Discrimination, Health Services, Disability and Community Services Commissioner. Stakeholders supported this structure and described its effect on the complaints process as positive, as it promotes an integrated client response and shared expertise between teams.

Stakeholders' experiences and observations of the complaints process were primarily positive, with some issues raised that related to resources, respondents, expectations and communication. Best-practice examples of complaint handling were provided, which included: taking account of complainants' needs and planning accordingly to ensure equitable participation; supporting complainants to understand the complaints process at every step; and conducting complaint conciliation processes in a professional manner that honours complainants' time and commitment.

Key issues raised about complaint handling by a range of stakeholders related largely to a mismatch between what complainants thought the HRC is empowered to do and what it is able to deliver through a complaints process. Stakeholders requested more effective:

- up-front information about the best complaints pathway and other options available to the complainant (through the HRC and externally) for a specific matter, given their concerns, objectives and risks
- up-front and iterative information about the range of possible outcomes from a complaints process, and the limitations of what the HRC can require of respondents during the process and in terms of outcomes
- protection of vulnerable complainants through the process where respondents apparently engage in bad faith or refuse to engage
- HRC capability to hold respondents to account for unreasonable delays, and including to hold government agencies to their own 'model litigant' policy.

Government and non-government respondent agencies similarly sought better information at the commencement of complaints processes. While complaints processes were often seen as resource intensive they were also largely seen as of value to government and services as well as to complainants.

Findings as to the Terms of Reference

- The consolidation of the complaints function under one Commissioner has strengthened complaints service delivery as many complaints relate to more than one jurisdiction (eg. health and disability).

- The consolidation of the complaints function under one Commissioner has strengthened the functioning of the HRC as a whole, adding to the patterns of connection across different teams and functions.
- The complaints function delivers sound value for government and non-government services, as well as complainants.
- While complaint handling is largely efficient, fair and effective, the increase in jurisdictions and volume of complaints means resources and issues such as timeliness and the engagement of respondent organisations should be monitored.
- While most organisational stakeholders are satisfied with the overall quality of the complaints process, strategies to improve the effectiveness of up-front communication would benefit many complainants and respondents.

1.3.3. Service Delivery

The terms of reference focussed consultation on improving client experiences and services. Findings related to the PTG are summarised in Section 1.4 below and detailed in Chapters 8-10 of this report.

The HRC primarily provides services to individuals through the Victims of Crime Commissioner (supports for victims of crime and intermediary services for witnesses); the Public Advocate (individual and systemic advocacy); and the complaints function, including Commission-Initiated-Considerations. Staff and external stakeholders reported a high level of coordination across these functions and the HRC's teams more broadly. This has meant that appropriate expertise is generally being accessed for each matter, and clients access the right mix of services for their circumstance.

The HRC's service functions keep it well connected to the lives of Canberrans, especially the vulnerable, and to the services and systems which affect residents. These service functions play an important role in informing the systemic advocacy and oversight functions, and in drawing otherwise disparate teams together through frequent collaboration and communication.

Stakeholders considered the HRC to have a commitment to high standards of service provision. Stakeholders valued accessibility and responsiveness, and generally reported positive practice in these areas.

While stakeholders appreciated the HRC's efforts in community outreach and education, accessibility of HRC services was seen to be an issue for some groups in the community. Aboriginal and Torres Strait Islander people, LGBTQIA+¹ people, people with disability and people in detention were highlighted as the cohorts most at risk of experiencing access barriers to HRC services. Stakeholders sought increased investment in staff diversity and staff language and cultural literacy resources, as well as staff skill in working with people

¹ The acronym 'LGBTQIA+' refers to lesbian, gay, bisexual, transgender, intersex, queer/questioning and asexual people, and other marginalised sexualities and genders.

with disabilities and impaired decision making. Ongoing evaluation and review of performance can help inform future investment.

Aboriginal staff in the Victims of Crime team and Corporate team were seen to be an excellent resource to the whole HRC and an example of best practice in culturally safe and accessible service provision for Aboriginal and Torres Strait Islander people.

A broader systemic gap in individual advocacy services in the ACT was raised by multiple stakeholders. As this was raised in the context of input regarding the PTG and people with impaired decision making, this issue is addressed in Chapter 9 on PTG service delivery and includes discussion of the role of Public Advocate.

While a few stakeholders raised in-principle concerns about the location of operational functions within an oversight body, these concerns seem outweighed by the value those operations add to the oversight and advocacy roles through the HRC's effective coordination.

Findings as to the Terms of Reference

- The integration of services within the one Commission achieved through the 2016 reforms has largely benefited people who access those services – in terms of service quality and user experience.
- The HRC holds itself to a high standard for delivery of services to its clients.
- There is a significant level of satisfaction with the HRC's service delivery which is generally of a high quality, with some areas for improvement also observed.
- Access barriers remain for some vulnerable groups of clients. A continuous improvement approach will assist the HRC innovate and improve in this area.

1.3.4. Visibility and accessibility

Stakeholders generally valued that the four statutory office holders were very accessible and responsive and highly engaged around strategic issues. Some wished to see specific Commissioners more visible in public dialogue but appreciated the limitations on their time and resources and multiple responsibilities.

Most stakeholders, especially organisational stakeholders, understood the statutory office holders to be able to perform their functions within the 2016 protection of rights framework.

Community understanding of the HRC and its functions requires continuing community education, especially with vulnerable populations. The HRC should consider whether it will be strategic to combine the community education functions of each Commissioner into one effective approach.

1.4. The Public Trustee and Guardian

Under the Terms of Reference this review is focussed on the provision of services for people with impaired decision making as delivered by the Public Trustee and Guardian (PTG).

1.4.1. Joined-up service delivery

At the time of the 2016 reforms there was concern among stakeholders that the bringing together of the Financial Management Services Unit and Guardianship Unit would create risks for protected persons. During this review, stakeholders did not report that these concerns have been realised, and most did not have concerns regarding the two functions continuing within the one organisation. Partly this is due to the PTG's pursuit of a "fierce separation" between the two functions, reflecting the different considerations affecting each function's work. There has been an effective joining-up of the two functions enabling improved consultation and cross-referral regarding mutual clients. PTG staff report benefits for clients deriving from co-location and a range of collaborations including in relation to leadership, shared expertise, shared ICT, and improved processes regarding the ACT Civil and Administrative Tribunal (ACAT) and National Disability Insurance Scheme (NDIS).

In line with its human rights framework, the PTG is moving towards a model of supported decision making, rather than the currently legislated substitute decision making. Stakeholders acknowledged that the conjoining of the Trustee and Guardian functions is a valuable enabler for supported decision making. The Government has committed to implementing legislative reform to facilitate supported decision making as part of the Disability Justice Strategy.

In some circumstances it is appropriate that there be differences of approach between Guardians and Managers regarding mutual clients. Notwithstanding this, consumer advocates note that, where a person does have a Guardian and financial Manager, coordination between these two functions is not always evident, and that information sharing and coordination with external partners – on whom the PTG relies for service delivery - can also be wanting.

Community advocacy organisations seek greater communication and collaboration from the PTG regarding shared clients, and greater responsiveness to requests for an internal review by the PTG of its decisions and delivery with individual clients. Within the constraints of privacy, consent and duty of care, these are reasonable expectations given these organisations' significant role in the lives of their clients.

Significant progress has been made since the time of the reforms to achieve functional conjoined teams, including through physical co-location, effective leadership, cultural evolution and ICT improvements. The PTG has laid a sound foundation from which it can further strengthen and refine its operations.

A few stakeholders recommended re-joining the Public Advocate and guardianship functions in order to address gaps in individual advocacy services which have emerged in the ACT since the reforms. While the gaps (discussed below) are of concern the re-structuring of bodies does not seem to be necessary nor sufficient for improving the issues raised.

Findings as to the Terms of Reference

- The PTG has effectively implemented integration of its teams to an appropriate extent – consistent with maintaining safeguarding in relation to decision making. The expertise of the Public Trustee and guardianship functions are suitably available to each other and accessed to support guardianship administration and financial management.
- The guardianship functions remain clearly separate within the PTG and continue to be staffed by people with different skills and experience to that of the Public Trustee's other units.

1.4.2. Service delivery improvement and other issues raised by stakeholders

Gaps in individual advocacy

Prior to the 2016 reforms guardians were much more involved in their client's lives than is the case now. They effectively provided some services and supports beyond their intended functions. The PTG thoroughly reviewed the scope of guardianship functions and have focussed the role tightly around decision making.

If the PTG is to continue to cleanly delineate its role around decisions, the design and delivery of this change would be better achieved through the active involvement of key partners on whom its effectiveness relies.

To the degree external agencies are to be responsible for developing options related to clients' life decisions then those organisations ought also to be informed by comprehensive, transparent and timely communication by PTG for that purpose, with appropriate consents and safeguards. Organisations delivering case coordination functions and/or community advocacy for protected persons have higher interaction with the person than the Guardian and so are valuable partners to the Guardian's work. The quality of guardianship delivery would benefit from strong and open two-way communication with such partners.

Strengthened practice guidance and consideration of protected person's customer rights would give guardians clearer expectations for their service delivery.

Private guardians and managers

On request, the PTG provides advice to private individuals who have been appointed by the ACAT or via an Enduring Power of Attorney to manage people's finances or make decisions. Currently in the ACT there is no pro-active community education and capacity building strategy targeting people who are financial managers or decision makers for working with people with impaired decision making, which may help reduce the need for the eventual appointment of the PTG where private arrangements fail.

The PTG's legislation provides a function for it to investigate where there is a suspicion that private guardians, financial managers or Attorneys are acting improperly. While the PTG reviews financial accounts annually it does not believe it is the appropriate body to investigate such suspicions as it has a potential conflict of interest - being the body which

may subsequently be appointed as guardian or financial manager. The PTG believes the investigation function ought to be removed from its legislation as it aligns better with the functions of the Public Advocate who is empowered to advocate for people with a disability and investigate matters “in relation to which the public advocate has a function” (Human Rights Commission Act, S.27B).

There is no consistency in other jurisdictions on this. Neither the PTG nor the Public Advocate report that they have the resources to adequately address this function and this is supported by their current performance data and the internal and external interviews of this review. The Government needs to consider whether it wishes the PTG to exercise this function – given its existing expertise and the opportunity to thereby integrate this level of safeguarding for people with guardians or financial managers, or whether the alignment with the Public Advocate’s functions and independence of the PTG are more strategic considerations. Joint advice to Government from the PTG and Public Advocate would assist resolve this matter in legislation, resourcing and practice.

PTG’s role in the ACT Civil and Administrative Tribunal

Due to its experience and understanding of relevant law and practice the PTG acts as a ‘friend of the court’ – providing advice on matters before the ACT Civil and Administrative Tribunal (ACAT) regarding guardianship and financial management. This assists the Tribunal, who hear a wide range of matters, to deliver appropriate orders.

The ACAT has agreed it does not now require submissions from the PTG where private guardians and/or financial managers have consented to be appointed. Stakeholders expressed two concerns from their experiences of ACAT hearings regarding clients with impaired decision making capacity:

- An absence of safeguarding for private guardianship and financial management matters. Previously the ACAT benefited from the Guardian’s review of proposed and existing arrangements.
- Decreased involvement of the PTG in mental health hearings and other matters where a guardian has been appointed.

By function, the Public Advocate is also an appropriate body for addressing this gap. However, the Public Advocate does not hold the same expertise as the PTG who equally applies a human rights paradigm to matters before ACAT. Similar to the issue of investigations, this is a policy decision as to whether the Government wishes to use the PTG’s expertise and wider presence in the system as an explicit resource for safeguarding or whether by function such roles better belong with the Public Advocate. Discussion between the ACAT, the Public Advocate, the Public Trustee and Guardian and JACS would assist clarify a way forward.

Evaluation, feedback and complaints

Since the reforms the number of complaints received by the Ombudsman and Commission about the PTG, and the number warranting investigation or leading to a finding of

administrative deficiency have decreased notably. Those complaints that do emerge tend to relate to PTG's communication with people rather than the substance of those actions.

The Public Trustee and Guardian has hitherto been personally active in handling complaints in order to model a culture that is not defensive and values feedback as a means to improvement. The Public Trustee and Guardian has been able to use complaints to improve policy, systems and practice. While this approach has been useful during consolidation following the reforms, it would be timely to design and implement a policy that more strongly aligns with best practice and reserves the role of the office holder to providing oversight and as an option for escalation.

The PTG would benefit from effective formal and informal channels for feedback from external stakeholders whose engagement with the PTG's clients enable them provide useful perspectives. The PTG would also benefit from a strategic approach to evaluating the quality of its service delivery, practice, and governance.

1.4.3. Visibility in community

Stakeholders were satisfied with their connection to the senior levels of the PTG. The Public Trustee and Guardian engages in a number of ways with community organisations including through information presentations. The Public Trustee and Guardian participates in various coordination processes and on relevant working groups. Hence, the office holder is appropriately visible and accessible to the community.

The Public Trustee and Guardian is able to perform his functions within the 2016 protection of rights framework, albeit with a need to review the investigations function.

1.5. The Our Booris, Our Way Recommendation

There is strong community support for self-determined oversight of services and systems relevant to Aboriginal and Torres Strait Islander children and families, given the very poor outcomes currently experienced.

Most community stakeholders agree with the Committee that such oversight, in the form of a new Commissioner, needs to

- a. Focus on children, young people and their families
- b. Be holistic regarding child outcomes – across health, education, family, justice, community.

Community stakeholders generally wish to see the new Commissioner have more “teeth” than they perceive the HRC Commissioners as having. On exploration, it seems that the current Public Advocate and Children and Young People Commissioner (PACYPC) has many of the desired powers but is not as involved in Care and Protection and Justice processes as is envisaged for the new Commissioner.

While there is a clear potential for duplication, the specific focus of the proposed Children's Commissioner on Aboriginal and Torres Strait Islander children enables the HRC and new

Commissioner to work through ways of working complementarily – as the two Victorian Commissioners have.

The rationale for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner lies not in the creation of new powers but in:

- Respecting and strengthening **self-determination** for Australia's First Peoples
- Establishing a rights protection body that, in the context of the poor current outcomes, has a **unique focus** on Aboriginal and Torres Strait Islander children and families and a **culturally informed perspective**, with high **community engagement**
- Creating a body capable of stimulating and developing **tailored solutions**
- Increasing **cultural safety** for Aboriginal and Torres Strait Islander people
- Creating a **foundation** for further developing cultural safety across other rights protection and oversight bodies.

Representatives from ACT Directorates were generally strongly supportive of the need for more effective oversight for Aboriginal and Torres Strait Islander people – including with greater self-determination and community engagement. Respondents did see a range of potential complexities, and wanted to see clarity of scope and coordination with other oversight bodies. All respondents stressed that there would be high expectations and a large volume of complex matters brought to the Commissioner.

While the *Our Booris, Our Way* Committee has made a clear recommendation, they and most other stakeholders wish to see Government engage closely with community in the final design of the Commissioner role - in terms of its powers, functions, organisational and legislative context, and in terms of the kind of person who should be sought to fill the role.

Appropriate ongoing community connection will enable the Commissioner to evolve and deliver in a way that understands community priorities and expectations and maintains community confidence and understanding. This ought not be through any formal accountability structure – which would impinge on the Commissioner's independence.

2. Summary of recommendations

Term of Reference 1: Leadership and Governance

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.
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.
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.
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.
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.
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*.
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.
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.
9. The Commission consider whether it will be strategic to combine the community education functions of each Commissioner into one approach.
10. The Commission continue to engage early and pro-actively with ACT Government policy, strategy and legislative development and review as invited.

Term of Reference 2: Complaints

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.
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
 - iv. other options for them to pursue beyond the functions of the HRC
- b. Inform prospective complainants' decision-making on whether the complaints process is best suited to their situation and objectives
- c. 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.

Term of Reference 3: Service Delivery

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.
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 Government.

Visibility and accessibility

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.

Term of Reference 4: Public Trustee and Guardian

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.
 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.

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

Service delivery improvement and other issues raised

19. The PTG and Government continue the transition to a supported decision making framework, including through the timely amendment of legislation.
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.
21. The PTG develop accessible practice guidance for the quality delivery of guardianship functions.
22. The Government seek joint advice from the PTG and Public Advocate regarding the allocation of responsibilities to pro-actively support the quality of private guardianship and management, including the investigative function, community capacity building and adequate representation of people subject to guardianship hearings at ACAT. This should address any associated legislative change and resourcing requirements
23. The PTG revisit its policies, practices and website regarding complaints and feedback and better align them to best practice.
24. The PTG actively engage with key stakeholders for feedback and continuous improvement, and support this with a strategic approach to ongoing evaluation.

Term of Reference 5: Visibility

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

Our Booris Our Way Review

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.
 - a. 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.
- b. 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.
- c. Publication of a timeline for establishment that, along with allocated resources, gives stakeholders confidence in the process.

Commissioner's organisational context

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.
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.
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.

Commissioner powers and functions

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.

The Commissioner

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, including the dimensions of:

- a. Being locally respected and connected
- b. Being actively involved in the community
- c. Being qualified with relevant formal and/or cultural qualifications
- d. Having the skills and capability to effect change
- e. Having the ability to work across community and government, with existing respect and relationships.

It will be important for there to be community representation and/or leadership of the recruitment process.

3. Background

2016 reforms

In 2016 the ACT Government restructured rights protection services, in recognition of the growth and evolution of individual Commissioners' functions without an over-all strategy for gaps, duplications and user experiences.

In response to findings from an independent review that there were opportunities to deliver more effective and efficient services, the ACT Government implemented a new rights protection structure which aligned similar functions, and improved strategic coordination.

Public Trustee and Guardian

Guardianship functions of the Public Advocate, which were already being delivered by a discrete unit within the Office of the Public Advocate, were merged with the functions of the Public Trustee, to create the Public Trustee and Guardian. This was in recognition of the high proportion of protected persons subject to both guardianship and financial management. A joint office was expected to improve consistency in decision-making for shared clients, and provide opportunity to merge expertise in personal affairs administration and management.

Single human rights protection agency

The Victims of Crime Commissioner and the Public Advocate (individual and systemic advocacy functions only) were brought in to the HRC to establish a single agency for Commissioners supporting human rights protection in the ACT.

As part of this reform, the ACT Government separated functions from position titles in the legislation, to improve flexibility of arrangements within the HRC and to group together functions related to:

- advocacy
- community safety and victims of crime
- complaint handling relating to the function of community services.

Establishment of a President of the HRC

The Human Rights Commissioner was appointed as President of the HRC, with the purpose of improving the HRC's capacity to coordinate service delivery and make single, well-informed representations in strategic advocacy and parliamentary processes.

The President's role has a range of functions and responsibilities under Section 18 of the *Human Rights Commission Act 2005*, which relate primarily to: leadership of systemic advocacy; coordination of reporting; and administration and quality assurance.

Commissioners are independent statutory office holders responsible for their own investigation, advocacy and decision making processes. In this context the President's leadership relates to effective joint operation², and not to management or review of

² As outlined in Section 18(1) of the *Human Rights Commission Act 2005*

Commissioners' functions. Matters of joint operation include HRC administration and budget; review of complaints made about Commissioners' service provision; coordination of reports containing input from some or all Commissioners; and development and delivery of protocols relating to governance, operation and client services.

3.1. Terms of Reference

In late June 2020, a review under s105A of the Human Rights Commission Act began, examining the effectiveness of legislative changes enacted in 2016 to the Commission.

Insight Consulting were engaged to undertake the review and consult with key stakeholders and the broader community to consider the extent to which the protection of rights services reforms achieved their intended aims across the following areas:

1. Leadership and governance:
 - a. strengthening the accountability and governance of the HRC, and
 - b. enhancing strategic planning and coordination of service, oversight and advocacy functions.
2. Complaint handling:
 - a. improving complaints handling within the HRC (including streamlining intake and processing of complaints), and
 - b. improving service efficiency in complaints handling.
3. Service delivery:
 - a. improving the experience and service provided to users of rights protection services for both the PTG and HRC.
4. Public Trustee and Guardian:
 - a. enabling the PTG to deliver a more joined up services for clients with impaired decision-making capacity.
 - b. Allowing the expertise of the PTG in management and administration of personal affairs to be applied to assist in facilitating and expediting guardianship administration.
5. Visibility in community:
 - a. ensuring that each independent statutory office holder is appropriately visible and accessible to the community and able to perform their functions within the new protection of rights framework.

The review was also to consider other issues raised by stakeholders during consultation.

3.1.1. Our Booris, Our Way

The review was commissioned to consider and consult stakeholders, including the Aboriginal and Torres Strait Islander community, in relation to the recommendation from the *Our Booris, Our Way* Review to establish an Aboriginal and Torres Strait Islander Children's Commissioner.

In July, soon after this review commenced, the ACT Government accepted the above recommendation in-principle. Hence this review sought to:

- Confirm the extent of support for the recommendation among Aboriginal and Torres Strait Islander people in the ACT and other stakeholders
- Consider ways the proposed role could be designed and implemented consistent with stakeholder input
- Make recommendations as to next steps, consistent with the views expressed by Aboriginal and Torres Strait Islander people and organisations.

3.2. Stakeholders

Insight worked with the Human Rights Commission, Public Trustee and Guardian and Justice and Community Safety Directorate to ensure the review:

- Consulted with the right stakeholders in the right ways
- Elicited all relevant viewpoints, strengths and issues
- Considered valuable research, reviews and models from other jurisdictions
- Was conducted in ways that contribute to public and stakeholder understanding and trust in both bodies and each office.

Key stakeholders included government, non-government organisations, Aboriginal and Torres Strait Islander community-controlled organisations, advocacy, peaks, consumer networks and service users in the ACT.

We engaged with the *Our Booris, Our Way* Implementation Oversight Committee representatives to establish:

- The full context for the recommendation and primary considerations from the Implementation Committee's perspective
- The key objectives for the recommendation, and specifically what is most important in terms of what any response achieves
- The range of solutions the Committee sees as feasible and meaningful.

This informed our broader engagement with Aboriginal and Torres Strait Islander organisations and community members to gain their perspectives.

We facilitated small-group consultations with the following Aboriginal and Torres Strait Islander stakeholders, including people with lived experience:

- Elders
- Young people
- Key Aboriginal organisations including staff.

A list of stakeholder cohorts involved in the review is at Appendix 1.

3.3. Method and Approach

The methods for engaging stakeholders were designed to be practical and efficient, while also being guided by the principles, that:

- All relevant stakeholders ought to have a genuine opportunity to provide input to the Review, including stakeholders who face barriers to participation
- Stakeholders ought to be able to provide input via a method that suits their abilities, preferences and availability.

A layered approach was utilised to consult stakeholders to offer adequate opportunities for engagement with:

- Interviews with senior internal and key external stakeholders
- Small group consultations
- Written, video or voice-memo submissions – open to all stakeholders and the public, with questions and thematic prompts provided
- An accessible online Resident Survey.

Ways to contribute to the ACT Protection of Rights Services Review were advertised through the JACS, HRC and PTG websites and via ACTCOSS' email distribution to diverse sector peaks and service providers. We directly emailed over 100 stakeholders and organisations offering varying means of engagement for themselves, their clients and networks, and seeking access for the review to small groups of service users. Many of these we followed up via phone, email, etc.

Table 1 (below) outlines key stakeholders and the modes of engagement.

3.3.1. Survey methodology

As a complement to interviews and focus groups, an online survey was published on the HRC, PTG and JACS websites from 19 August 2020, and distributed via the ACT Council of Social Services (ACTCOSS) and the Review's email networks. The purpose of the survey was to provide an opportunity for any community members who wished to have a say to the review to do so. It was not intended to canvass the general views of the community, and survey results are not broadly representative.

The survey sought respondent views on

- rights protection services: current impact and effectiveness, considerations for improvements, experiences as service users, visibility and accessibility
- recommendation for an Aboriginal and Torres Strait Islander Children's Commissioner: support, considerations for consultation and implementation.

While 21 responses were registered, 12 of these were significantly incomplete (first question only answered). Nine responses were considered for the purposes of this report.

Demographic data (which was not provided by all of the nine respondents) suggests that the survey was generally accessed by adults under 65 years. One respondent indicated

that they were Aboriginal or Torres Strait Islander. One respondent indicated that they were born outside of Australia.

Table. 1 Key stakeholders and mode of engagement

Stakeholders	Mode of consultation	Methods for recruitment
President and Human Rights Commissioner Discrimination, Health Services, Disability and Community Services Commissioner Victims of Crime Commissioner Public Advocate and Children and Young People Commissioner Public Trustee and Guardian Our Booris Our Way Implementation Committee	Interview	N/A
Executive and staff within the Commission and PTG	Interview	N/A
ACT Government Directorates representatives	Interview	Directorate nomination / direct invitation
Key service user advocacy groups / other strategic service user stakeholders	Interviews Group consultation Open submission	Individual invitations
Users of services under the oversight of the Commission or accessing the services of the PTG. Existing service user networks included: women, LGBTQIA+, Aboriginal and Torres Strait Islander, Health, mental health, disability, young people, child protection/ OOH, carers, Parents and Citizens, students, and older persons.	Interview Small group consultations, different times of day, days and venues across the ACT. Open submission	Promotion of the opportunity to attend groups or provide a submission through: <ul style="list-style-type: none"> ▪ Existing service groups ▪ Relevant service providers to their current users/networks
Providers of services (Aboriginal community controlled, government, non-government, for-profit), and peaks for those providers.	Interviews with strategic peaks / key providers and agencies Small group consultations Open submission	Selection via Review Steering Group and personalised invitations to either interview, attend a group consultation or provide a submission. Distribution through inter-agencies and peaks
ACT residents	Online Survey Open submission	Online promotion through ACT Government websites and social media, and other existing community networks
Individuals via interviews and small groups: 154 Number of Written Submissions: 8 Responses to Online Survey: 9		

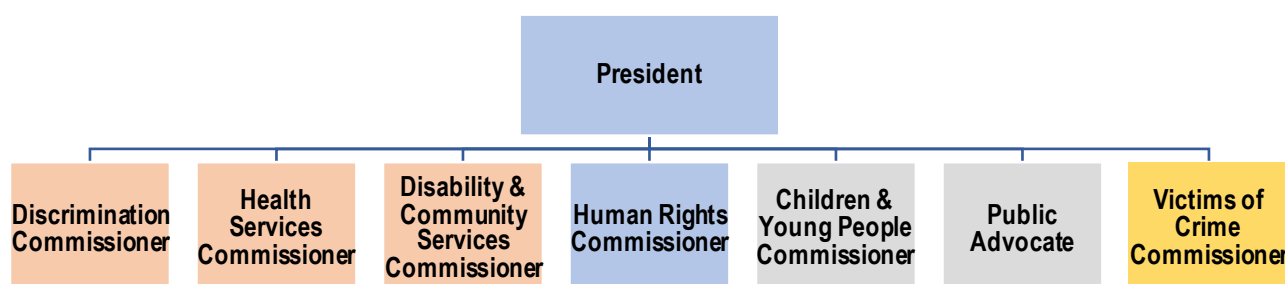
3.4. Current structure and functions

3.4.1. Human Rights Commission

The ACT Human Rights Commission (HRC) has eight statutory positions. An individual may hold multiple positions, and the positions of President and the Human Rights Commissioner are to be held jointly³.

All HRC Commissioners are statutory appointees and independent and equal in the delivery of their functions. They are autonomous in the delivery of their statutory responsibilities while administration, financial management and protocol development and implementation are functions centralised under the role of the President. Figure 1 below outlines this structure and is colour-coded to demonstrate how these positions are held by the four current statutory appointees.

Figure 1: Structure of the HRC as at 2020 (colour-coded to group by statutory appointees)



The HRC has a broad range of responsibilities to improve human rights in the ACT, both for individual complainants and at a systemic level. Collectively these include:

- complaints management and conciliation
- advocacy for individuals
- advocacy for systemic change in community, government and legislation
- oversight, investigation and monitoring; and
- support for victims of crime.

Further detail is provided in Table 2 below.

3.4.2. Public Trustee and Guardian

The Office of the Public Trustee and Guardian provides the following services for people who have impaired decision-making:

- guardianship of protected persons
- provision of advice to private individuals appointed as guardians of a protected person
- financial management for protected persons

³ *Human Rights Commission Act 2005*, Section 12 “Members of the Commission”.

- appointment as Attorney under an Enduring Power of Attorney.

Further detail is provided in the below table.

Table 2: Rights protection agencies' history and key functions as at 2020

Role	Key functions (2020)	2016 Reform
Human Rights Commission	<p>All Commissioners, led by President:</p> <ul style="list-style-type: none"> • Systemic human rights compliance monitoring and oversight in ACT. • Community education and promotion of human rights, collectively and also in the area of work of each individual Commissioner. • Systemic advocacy on key issues. • Provide advice and submissions to ACT Government on legislative and policy proposals that affect human rights, collectively and also in the area of work of each individual Commissioner. 	<p>Prior to the Reforms the HRC included</p> <ul style="list-style-type: none"> • Human Rights Commissioner • Children and Young People Commissioner • Disability and Community Services Commissioner • Health Services Commissioner • Discrimination Commissioner
President	<ul style="list-style-type: none"> • Coordination of advice, reporting and submissions, eg. to inquiries and reviews. • Promote community discussion, and publish information and provide community education, about legislation, Commission operations and complaints procedures. • Commission administration and financial management. 	<p>President role established in 2016, to be held by Human Rights Commissioner, as a way of strengthening the HRC's advocacy power and streamlining governance and budget.</p>
Human Rights Commissioner	<ul style="list-style-type: none"> • Intervention in court and tribunal cases that raise human rights issues. • Review and advise on human rights risks and compliance, of legislation and government and non-government policy and practices. 	
Discrimination Commissioner	<ul style="list-style-type: none"> • Consideration and conciliation of complaints about human services (eg. health, disability, community services) and about discrimination. • Own-motion investigation to address systemic issues. • Support improvements in services. • Education related to compliance and responsibilities. 	<p>These Commissioner functions were grouped together in 2016, as they all related to complaint handling.</p>
Health Services Commissioner		
Disability and Community Services Commissioner		

Children and Young People Commissioner	CYP Commissioner	
Public Advocate	<ul style="list-style-type: none"> ● Exercise HRC functions in relation to services for children and young people ● Consult with children and young people in ways that promote their participation in decision making. ● Amplifying the voices of children and young people in the development of systems that affect their rights. <p>Public Advocate</p> <ul style="list-style-type: none"> ● Individual and systemic advocacy on behalf of people at risk including children and young people, people with disability, people with mental health conditions. ● Investigation and monitoring of issues. ● 	<p>The advocacy unit of the Public Advocate was brought in to the HRC in 2016, at the same time as its guardianship unit was combined with the Public Trustee to form the Public Trustee and Guardian.</p> <p>The functions of the Public Advocate and the Children and Young Persons Commissioner were grouped together as they both related to individual and systemic advocacy for vulnerable cohorts.</p>
Victims of Crime Commissioner	<ul style="list-style-type: none"> ● Promotion and protection of the rights of people who experience crime. ● Head of Agency for Victim Support ACT including administration of: the Victims Services Scheme; the Financial Assistance Scheme; Volunteer Court Support Program; and specialist Aboriginal and Torres Strait Islander and Multicultural Outreach programs. ● Delivery of the Witness Intermediary Program. ● Investigation and resolution of victim concerns about engagement with criminal justice agencies. ● 	<p>The Victims of Crime Commissioner was brought into the HRC in 2016.</p>
Public Trustee and Guardian		
Guardianship	<ul style="list-style-type: none"> ● Personal and health decisions for a person who is found by ACAT to have a decision-making disability, which may include: where and with whom they live; education and training; whether and where they work; consent for medical procedures or other treatment; bringing or continuing legal proceedings. 	<p>Guardianship unit of the Public Advocate was merged with the Public Trustee in 2016, to form the Public Trustee and Guardian. This merge was in recognition of the similarity of decision making functions and client group, and of the value of connecting the Public Trustee and the Guardian for mutual clients (while keeping core functions separate).</p>

Enduring Power of Attorney	<ul style="list-style-type: none"> ● Substitute decision-making in the event of accident, illness, injury, dementia or mental illness, usually appointed by a person in advance/ in anticipation of future incapacitation. 	<p>The functions of the Public Trustee have not changed since 2016, excepting the intent that they work more closely with Guardianship to reduce conflicting decisions and confusion for people experiencing both guardianship and financial management.</p>
Financial Management	<ul style="list-style-type: none"> ● Management of the financial affairs of people under EPA or guardianship as specified by ACAT, in line with National Standards for Financial Management. 	
Other	<ul style="list-style-type: none"> ● Estate administration and will-making. ● Official Visitor Scheme administration and governance 	

The ACT Human Rights Commission

4. Leadership and governance

Terms of reference

1. Leadership and governance:

- a. strengthening the accountability and governance of the HRC, and
- b. enhancing strategic planning and coordination of service, oversight and advocacy functions.

4.1. Strengthening accountability and governance

The Human Rights Commission (HRC) has an effective governance structure that supports Commissioners to combine their knowledge and experience for the benefit of individuals and communities.

Commissioners are generally reported by stakeholders to be accessible and collaborative in their respective areas of work, and strategic in the ways that they work together to advocate and advise on policy and legislation.

Commissioners have achieved this high level of unified professionalism in the context of implementing and consolidating significant reforms in the four-year period since the 2016 restructure of the HRC.

4.1.1. A unified voice

External stakeholders generally reported favourable observations of HRC governance and leadership. The strengths observed included a:

- singularity of voice and consistency of approach on key human rights issues, in parliamentary processes such as inquiries, government processes, and in working groups and collectives
- strong advocacy presence in the ACT
- constructive, proactive approach to working jointly with each other and with other agencies and service providers, to protect clients' rights and improve community awareness of human rights.

Stakeholders spoke highly of the professionalism and dedication of the individual Commissioners and were generally impressed with the accessibility and performance of the teams led by these Commissioners.

Discussions with those who worked within the HRC revealed strong collaboration across teams and a shared commitment to achieve real change for individuals and for the community.

4.2. Culture of continuous reform

Internal stakeholders highlighted the need to build on the post-2016 strengths of the HRC, by taking stock of their achievements to date, and collaboratively defining:

- what the vision and role of the Commission as a whole should now be, and
- what the Commission ought to focus on for the ACT community from here.

Staff wanted opportunities to iteratively address these questions together as an organisation, and to work on shared external and internal challenges. The Commission plans to conduct strategic planning early in 2021.

Development of an induction program for new Commission staff, which introduces all Commissioners and their functions as well as the key ways of working together, would strengthen the Commission's culture of collaboration going forward and ensure appropriate referral of matters to other teams.

4.2.1. Role of the President

The President was seen to have a vital leadership role in strategic planning and developing a culture of ongoing reform and refinement of structure, strategy and policy so that the HRC maintains its relevance and reputation. Stakeholders, particularly those who operate alongside the HRC to achieve systems-level reform, appreciate the role of the President in the Commission's governance structure as integral to its achievement of a unified voice in ACT human rights processes, as described above.

The President has delivered on the legislative requirements of developing, publishing and implementing key frameworks for HRC strategy and governance:

- *Governance and Corporate Support Protocol*
- *Client Services Charter*
- *Operations Protocol*
- *Strategic Plan*
- *Cultural Safety Charter*, developed in consultation with Aboriginal and Torres Strait Islander stakeholders to replace the *Reconciliation Action Plan*.

The positions of President and Human Rights Commissioner are tethered by legislation that requires the positions are to be held jointly. Some stakeholders raised a potential conflict of interest inherent to this arrangement.

As the work of the HRC has expanded and diversified over time, the President's role has become both more complex and essential. In the context of 2021's strategic planning, it would be timely for the Commission to articulate the nature of role required of the President from here – within existing legislation - with consideration of key elements and focus.

Recommendations

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.
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.

4.3. Achieving a collective of independent leaders

The Commission's staff and stakeholders appreciated the cohesion in messaging and approach that the role of President has achieved since inception. Stakeholders saw real strength in the Commission speaking with the combined authority of four Commissioners, and in their selection of matters to address.

However, there was also a clear message from some staff and stakeholders that the remits of individual Commissioners seemed compromised, at times, when the HRC provides a perspective as a single entity. There was a call for greater discretion to present divergent points of view by Commissioners where the Commission reports as a whole, provided that these points of difference occur strategically within a framework of continuous collective action. This may strengthen critical discussion of human rights issues within the Commission, in government and in the community.

While the Commission has independence in the exercise of its functions, it is administratively supported through the Justice and Community Safety Directorate (JACS) and has obvious budget dependence on decisions of government. Several external stakeholders saw vulnerability in this, although they were confident that the Commissioners currently delivers their functions with full independence.

A few stakeholders, including Meridian (see attached submission), advocated for the Commission to become an Officer of the Assembly in order to achieve greater independence. While this approach has merit in terms of maximising independence, it does not appear necessary and would not change budget dependence. Location of the Commission within a Directorate has the advantage of readily enabling the Commission to review all Cabinet papers and this process ought not be lost – regardless of administrative context.

The Government would do well to continuously protect and promote the independence of the Commission. This may include better linking workload and complexity to resourcing.

Recommendations

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.
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.

4.4. Culture of evaluation and review

Internal and external stakeholders highlighted that a stronger culture of evaluation was a logical next step in the Commission's strategic directions, following the recent period of restructure and reform.

More rigorous evaluation of the performance of different functions of the Commission and

community satisfaction with its methods and results can assist the HRC to refine its structure and operation and identify areas of best practice and innovation. Stakeholders almost always offer different and more detailed information to independent evaluators, and qualitative methods such as interviews and focus groups offer greater scope for really understanding issues and developing solutions that will be effective for service users, partners and stakeholders.

Evaluation and performance measurement were also raised as crucial elements for:

- Monitoring the President and Commissioners' workloads and informing future decision-making on the allocation of functions
- Strengthening the Commission's power to secure appropriate resources and allocate strategically between teams.

4.4.1. Feedback and complaints about the HRC

By virtue of its independence, the Human Rights Commission is in a position of significant trust within the ACT community. There is limited external recourse for people who wish to complain about the quality of service or decisions made.

While complaints about the Commission are low in number stakeholders saw the need for improved clarity from the HRC on their complaints process, so that community members and organisations can quickly and easily access basic information about:

- How to make a complaint about Commission's operations and service provision
- What processes the Commission has in place to ensure that a complaint will be handled impartially, by an individual or team not mentioned in the complaint
- Next steps for individuals not satisfied with the Commission's management of feedback or complaints about their operations and service provision.

We note that the full five pages of the 2019 draft *Client Services Charter* satisfied much of these concerns whereas the simplified documents available on the website do not to the same degree.

Recommendations

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

4.5. Budget

Budget and resources were consistently raised in considerations of HRC leadership and

governance as well as service delivery. Stakeholders shared a view that limited resources hampered the leadership team in their work to improve human rights outcomes in the ACT.

Some stakeholders observed that HRC did not always follow up actions and outcomes on systemic matters that it reports on, and that this contributed to a sense of powerlessness in holding decision-makers to account.

External stakeholders wanted Commissioners to be more active in more policy and advocacy issues being progressed by community organisations and consumer representative groups, qualifying that Commissioners are committed and proactive in the areas in which they do engage. They cited the Commission's budget as the likely reason for their selectivity.

Staff within the Commission raised issues with the need to resource the work of different Commissioners through a consolidated JACS budget process, often requiring the Commission to ultimately prioritise one internal proposal over another. This was seen to introduce competition between Commissioners and to reduce the visibility of individual Commissioners' work in budget negotiations. It is useful that the Governance and Corporate Support Protocol requires the Commission's budget proposals to be communicated to the Minister even where not supported by JACS. While the HRC's staffing as a whole has grown over time this has not necessarily kept pace with the increased demand for its services and the addition of responsibilities – resulting in tightening efficiencies year-on-year. Service delivery now consumes much of the Commission's resources and places pressure on its broader systemic work. It would be useful for the Commission to benchmark its service delivery against other jurisdictions and report on this to government periodically.

4.6. Enhancing strategic planning and coordination of core functions

The HRC developed its *Strategic Plan 2017-2020* early in its formation and expects to develop its next Strategic Plan in early 2021. Staff and stakeholders see this as an opportunity to collaborate on new strategic directions which reflect a matured view of the Commission as a whole, and build on its achievements.

The Commission's areas of work expanded during and since the 2016 reform, most recently with the addition of service delivery responsibilities regarding:

- resolution of tenancy disputes between occupiers and grantors, under the *Residential Tenancies Amendment Act 2020*;
- management of complaints about neglect, abuse or exploitation of older people and adults with disabilities
- delivery of the new Intermediary program to assist vulnerable witnesses to communicate their evidence in criminal matters.

This growth in the Commission's core business, and in the diversity of its clients, is an indicator of the effectiveness of its strategy to date, the trust it holds among government

and stakeholders, and the timeliness of a new Strategic Plan as an opportunity to articulate the purpose and value of its evolving remit.

Internal stakeholders seek an active ongoing strategic planning process that includes annual collaborative review, as there is currently no shared process for Commissioners to annually revisit the Plan and connect through to unit planning.

Annual collaborative review was seen as a way to maintain the relevance and usefulness of the *Strategic Plan* in the day-to-day work of the Commission. Staff also acknowledged the need for the Commission to retain capacity to respond to emerging issues and priorities, beyond those forecast in the strategic plan.

Some stakeholders observed a historic emphasis on offenders within the justice system – despite the involvement of other oversight bodies and the addition of an Inspector of Correctional Services. They saw this focus as being late in the life of systemic failings, and out of proportion given significant ongoing reforms affecting people with a disability, older persons, children under care and protection, victims of crime, people in need of health services, etc. These are matters for reflection through the Commission’s forthcoming strategic planning processes. A few stakeholders viewed the Commission’s work as largely deficit focused rather than pro-actively aspirational.

4.6.1. Evolution of Commissioner roles

Part of good governance is monitoring the effectiveness of the current Commission structure and planning future changes in response to demand. The Commission’s structure is currently seen as effective by stakeholders.

The Public Advocate, through a small team of six, has delivered individual advocacy for approximately 500 people for each of the past two years, in addition to their other systemic work, voluminous document reviews, policy input and committees. The Public Advocate reports increasing complexity of individual advocacy matters, especially in the mental health and complex needs spaces. For example, the below table outlines the growth in notifications and occasions of advocacy *per person* in the mental health and forensic mental health portfolio.

Table 3: Advocacy per person in mental health and forensic mental health

	2016-17	2017-18	2018-19	2019-20
Average number of notifications per person for MH/FMH matters	4.77	5.08	5.25	5.82
Average number of occasions of advocacy for MH/FMH matters	2.41	2.78	3.19	3.39

Non-government organisations reported not always being able to access the public advocacy they sought for clients due to the volume of advocacy already being delivered.

Similarly, stakeholders perceived that the Children and Young People Commissioner seemed less visible and active in their work than prior to the reforms. We note this

perception may be impacted by a number of factors including the removal of complaints from the Commissioner's responsibility, the interconnected nature of the PACYPC's work across both roles, and the smaller size of the Commissioner's team. Nevertheless, given the focus and opportunity afforded by recent inquiries, royal commissions and reforms there is a lot of scope for the Commissioner to provide active leadership in spaces relevant to children and young people. Such leadership is important for advancing early intervention and improving Canberrans' lifetime outcomes.

Two stakeholder satisfaction surveys returned a combined overall satisfaction rating of 71 per cent in the work of the current PACYPC, and stakeholders we consulted had great respect for and trust in the PACYPC, and believed her to be delivering strategically and well for the ACT. They simply believed that resourcing constrained the PACYPC's functions, as evidenced by lower visibility and the constraints on accessing advocacy services. This observation is consistent with the recent desktop analysis of Australian Children and Young People Commissioners prepared for SNAICC which found that (like most other jurisdictions) the ACT CYPC was only partially compliant with the Paris Principle regarding adequate funding. We encourage the Government to consider levels of resourcing in the immediate term, and consideration of the mix of functions over the longer term. There are significant synergies between the two roles in regard to children and young people, and real value in the Commissioner being connected to individual advocacy through her role as Public Advocate. Public Advocacy for adults does not have the same synergies with the Commissioner's functions – both in terms of consumers and service systems - and could be delivered separately if future conditions warrant.

While the Discrimination, Health Services, Disability and Community Services Commissioner arguably has an even more complex role, the benefits of keeping complaints under one Commissioner outweigh considerations of splitting any functions. Government will need to actively monitor and respond to the level of demand and resourcing required. Stakeholders did not raise concerns of visibility and presence when asked.

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 of the role the Commission as a whole will play into the future.

4.7. Strategic coordination of service functions and accountability to service users

Commissioners have a direct service provision element to their role, ranging from the provision of support to the investigation of complaints lodged by individuals against employers or services. This grounds their oversight and advocacy functions in practical and contemporary knowledge of service users' needs and experiences. Coordination of service provision to shared clients across teams also strengthens collaboration across the Commission. It is common for people to access a mix of services from the complaints, Victims of Crime and/or Public Advocate teams.

Commissioners improve service user experiences by delivering truly integrated support and a 'no wrong' door approach. Most of the stakeholders in a position to observe the coordination of the HRC's service functions, spoke highly of their efforts to work together on complex complaints and to reach out to vulnerable client groups (for example in detention centres). Feedback from service providing organisations and consumer representative groups on the HRC's service delivery is discussed in full in Chapter 6.

Some stakeholders observed clients being referred between Commissioners, or between senior staff within Commissioner teams, resulting in clients having to explain their request for assistance multiple times. While most stakeholders reported excellent integration of services, closer examination by the Commission of their performance with initial referrals would help eliminate clients' exposure to false starts when they request assistance.

Recommendations

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.

4.8. Strategic coordination of oversight and advocacy functions

External stakeholders were generally highly satisfied with the way Commissioners work together to deliver systemic oversight and advocacy of human rights issues in the ACT. They saw strategic coordination of oversight and advocacy as one of the Commission's main strengths.

This high degree of coordination is necessary in the complex oversight environment the Commissioners work in, where they must operate as a single body while working within subtle differences and overlaps in the responsibilities of each Commissioner's role.

Improving community understanding of the oversight and advocacy functions of the Commission as a whole, and of each Commissioner, will help individuals and organisations to make full use of the Commission. Community education was raised by stakeholders as an area to which the Commission's reputation for highly coordinated practice could be extended, and as a valuable tool for raising public awareness of how the Commission works as a single entity. Commissioners' community education functions could be combined into a single program so they may be strategically coordinated to:

- provide clear messaging on the Commission's reason for being as a whole
- assist Commissioners to raise awareness and profile of services and functions within the Commission that intersect with their own functions, and the integrated service delivery approach that coordinates these intersecting areas of work while providing a single point of contact to the client
- achieve a unified approach to addressing other community awareness issues raised in this report such as establishing realistic public expectation of what the Commission can achieve for individuals through their complaint management process.

However, it remains important that each Commissioner be visible and accessible so we recommend consideration of how to achieve united and coordinated community education alongside appropriate individual visibility.

4.9. Oversight of legislation and policy

The role of the Commission in reviewing the human rights impacts of proposed legislation and legislative changes was seen by stakeholders as a crucial role. Some sought to strengthen this function by:

- formalising the Commission's role in reviewing proposed legislation by making it a function embedded in the *Human Rights Act (2004)*
- increasing the Commission's consultation with key stakeholders during such review (where able), in order that relevant community sectors are more informed of, and have input into, legislative reform impacting rights protection.

Currently JACS is responsible to provide advice to the Attorney General on the compatibility of legislation with the Human Rights Act, and works with Directorates who are developing legislation to assist them meet the Government's priorities in ways which are compatible with human rights. The Commission plays a broader role protecting human rights and promoting best practice, including through the option to comment on Cabinet submissions and legislation. Compared to other jurisdictions, this provides the HRC with an unusual level of access to Cabinet papers and is sufficient as is. Individual Directorates are responsible for the involvement of stakeholders and public consultation on proposed legislation or strategy.

Government stakeholders valued access to HRC expertise and advice when considering human rights impacts at the policy level. Respondents from ACT Directorates appreciated the opportunity to engage early and constructively with the Commission in the development of policy and strategy. Some questioned whether the Commission's focus on human rights was at times too narrow, preventing it from engaging more constructively with policy processes intended to improve outcomes for Canberrans and have a broader, longer-term human rights impact. "Narrow" considerations of human rights compatibility were seen to sometimes fail to give due weight to the bigger picture of what policy or strategy was seeking to achieve.

It would be valuable for the Commission to provide policy makers with clear channels for feedback as to their experience of the Commission's contributions to policy development and review.

Internal HRC stakeholders indicated that its current resourcing limited its ability to engage adequately with policy and legislation. The Human Rights Commissioner has a team of two lawyers who in 2019/20 drafted or coordinated formal legal advice, comments or submissions on 89 matters, including comment on 46 draft Cabinet submissions. This represents a doubling of their work since 2016/17.

Recommendation

9. The Commission consider whether it will be strategic to combine the community education functions of each Commissioner into one approach.
10. The Commission continue to engage early and pro-actively with ACT Government policy, strategy and legislative development as invited.

Findings as to the Terms of Reference

- The leadership and governance of the Human Rights Commission is effective and of a high quality, and maintains a high level of trust among its stakeholders.
- The Commission retains both the independence and accountability intended by the legislation and as largely expected by stakeholders.
- It is now timely for the Commission to revisit its strategic planning and strengthen its ongoing monitoring and evaluation.
- The Commission has achieved a high degree of coordination across its services, oversight and advocacy functions to the benefit of clients, stakeholders and government.
- The Commission's role in providing advice and input to new legislation and policy is highly valued.

5. Improving complaints handling

Terms of reference

2. Complaint handling:

- a. Improving complaints handling within the HRC (including streamlining intake and processing of complaints), and
- b. Improving service efficiency in complaints handling.

The HRC complaints function is the management of complaints from individuals in the ACT about:

- discrimination
- health services, services for children and young people and services for older people in the ACT
- abuse, neglect or exploitation of vulnerable people over 60 years of age or people with a disability.

The Discrimination, Health Services and Disability and Community Services Commissioner receives and investigates complaints, and facilitates conciliation between complainants and respondents where appropriate. The Commissioner's role is impartial – the Commissioner is not an advocate or advisor for the complainant.

Total complaints received by the team of 11 (including the Commissioner) have increased by 21% from 2018/19 to a total of 829 complaints during 2019/20, continuing a year-on-year growth trend. This is almost as many complaints as the Victorian Equal Opportunity Commission received last year (with a much larger population), and compares well with the Western Australia Equal Opportunity Commission's 475 discrimination complaints managed by 20 people in 2018/19. While the HRC's team manages about 75 complaints per position, other Australian jurisdictions seem to manage only 15 – 45 complaints per position. The HRC process therefore seems highly efficient – it is unlikely that further efficiencies could be achieved without being to the detriment of quality and community trust.

Complainants and respondents are surveyed when a matter is closed and, while response rates are not high, it is meaningful that in the past year 83% of responses indicated satisfaction with the process being fair, accessible and understandable. On the Commission's own measure, 79% of complaints were concluded within Commission standards. Health service complaints make up almost 70% of all complaints received and for these, only 6% of cases were closed because conciliation was considered unlikely to succeed.

Complaints may be finalised by the HRC without achieving resolution through conciliation, for a number of reasons including that conciliation was unsuccessful. Discrimination complaints not resolved by the HRC may be progressed by complainants in the ACT Civil and Administrative Tribunal (ACAT) or court system in some other matters.

The Commissioner may instigate Commission-Initiated-Considerations of systemic issues which come to light through managing individual complaints. Stakeholders were highly supportive of this function and the way it is currently used. The Commissioner initiated eight new Considerations over the past financial year. These valued processes are both complex and time consuming.

Consolidation of the complaints function under a single Commissioner, with one individual holding the three Commissioner roles related to complaints, has strengthened the efficiency and effectiveness of complaint management. Internal stakeholders report that this structure helps members of the complaints team draw on each other's expertise more readily when complaints involve multiple service systems and/or areas of discrimination, with flow-on effects on cross-team collaboration across the Commission. External stakeholders report that this structure has generally improved client experiences, as complaint intake and management is more integrated.

Organisational stakeholders generally spoke highly of the Commission's complaints process. Those which serviced highly vulnerable cohorts had witnessed examples of both best practice and areas for improvement in the handling of complaints. Several noted that complainants often had unrealistic expectations of what the complaints process could achieve for them, and found the process and its outcomes challenging.

Community members were recruited for focus groups for this review through service providers via an open invitation and some who responded had experience of the HRC complaints processes. Individual community members with direct experience as complainants consistently reported difficulties understanding and navigating the complaints process. They sought more information about each step of the process, from how and in which circumstances to make a complaint, to the kinds of outcomes they might expect. Often the mis-match between their expectations and the outcomes of the process led to a sense of disappointment. Complaints handling is a complex field, with different pathways and possibilities dependent on the nature of the complaint and the respondent so this is difficult to mitigate.

The variance between what stakeholders expressed to this review (and to community advocates) and the 83% satisfaction rating recorded through the HRC's survey is consistent with research, and reinforces the value of independent and multi-method approaches to gaining consumer and stakeholder feedback. Research indicates that courtesy bias, social desirability bias and other factors can contribute to client satisfaction survey results being strongly positively biased – especially for subjective questions (eg. regarding performance). This bias is especially true when the surveys are administered directly by the subject institution rather than a third party or where respondents have to actively opt-in to respond. While we acknowledge that complaints is by nature a field where there will inevitably be a level of dis-satisfaction, even on the basis of the satisfaction survey one in five respondents were not satisfied that the process was fair, accessible and understandable. It would be useful to better understand who those people

are and what could improve things for people like them.

Key themes in stakeholders' descriptions and observations were:

- the importance of dignity and respect in complaint handling
- the impact of delays
- the need for clarity on conciliation outcomes.

5.1. Respectful process

Management of complaints to the HRC requires the highest level of professionalism and best practice in customer service, because:

- where the person's experience involved the provision of services or employment in a harmful or neglectful way – whether or not discrimination or a breach of their rights occurred - any feeling by the complainant of being a victim of poor process makes them particularly sensitive to the impacts of poor conciliation practices
- where the complaint has been made to the Commission because the complainant was unable to resolve their issue independently in the first instance, they may well have already experienced protracted complaint management processes managed by the respondent in which they have felt distrusted, ignored, minimised or even victimised
- the process of conciliation through the HRC can be lengthy and complex, and will require the complainant to be committed and generous with their time and internal resources during a period of vulnerability, and they will more readily engage if the conciliation process feels fair and equal and if they feel the Commission is delivering the best possible process
- complainants tend to have high expectations of what the Commission can do in general, and what it can do for them specifically, and excellence in customer service is key to helping them to understand the risks and limitations of the complaints process in a way that keeps their focus on solutions.

A number of stakeholders highlighted the value of good process in reaching a resolution satisfactory to all parties. An open, empathetic and individualised complaints process has the power to legitimise the complainant's experiences and concerns, and for some this is key to conciliation and what they felt was denied to them in the first instance.

Drawing from best practice elements of the HRC complaints process as described by stakeholders, an 'open, empathetic and individualised' complaints process is in practical terms one in which:

- account is taken of the complainant's needs related to their culture, linguistic background, location, physical and mental health, disability or other circumstances that impact equitable participation so that they are resourced to fully articulate their experience and pursue their own goals for conciliation

- the complainant's experiences are fully considered by all parties so that the complainant feels 'heard' and is not required to repeat distressing parts of their story more than absolutely necessary
- the complainant is supported to have a comprehensive understanding of the conciliation process, and its progress at every stage
- the HRC demonstrates empathy for the complainant's position of relative disempowerment compared to a responding government agency, employer or a large organisation, and honours the complainant's commitment, by: minimising delays; communicating promptly and proactively; following through on commitments; and generally conducting themselves professionally.

While this is to the Commission's credit some stakeholders raised examples that fell short of best practice.

Some community members experienced referrals between different parts of the Commission, causing them to experience prolonged intake processes, and to have to describe their experiences to multiple staff members.

Among some client groups – and within some support services working with vulnerable client cohorts – there is a need to build a clearer understanding of the complaints process. Some clients have no clear understanding, and others have misunderstandings, of what the complaints process will entail. Stakeholders sought clearer information and community education from the Commission on each step of the complaints process, including:

- the circumstances in which a complaint may be made
- how to make a complaint
- typical processes, which could be illustrated by basic case studies
- typical timeframes for conciliations
- outcomes that complainants might expect, and associated risks and limitations.

5.2. Timeframes

In the context of general satisfaction with complaints handling, slowness of the process was raised by some stakeholders, involved with a broad spectrum of complainants. While some complaints were conciliated swiftly, others took longer to resolve. Where complaints involve the Australian Health Practitioner Regulation Agency (AHPRA) or other external complaints processes the HRC is not able to control the timelines.

Stakeholders partly saw delays to be due to the Commission's limited resources, and in part to its limited powers for holding respondents to account for timely responses and good-faith participation.

Slow progress was not perceived to be of issue where it was understood to be result of the thoroughness of the process or of complainants' needs (such as mental health). Delays were less likely to be seen by complainants as unreasonable when they were fully briefed

on the reasons for delay and were confident that all parties were doing their best to be fair and professional.

5.2.1. Resources

Most stakeholders considered the HRC to be insufficiently resourced to deliver their functions to the fullest extent, including consistently effective and efficient complaint management process. Delays in investigation and conciliation were seen to be the result of high staff caseloads and limited time and capacity to actively manage slow-moving respondents. The HRC reports that allocation of a complaint for action may be delayed by the volume of existing complaints in-process but that once a complaints process was initiated minimal delays are due to internal causes. The addition of jurisdictions without additional resources (retirement villages, and abuse, neglect or exploitation of vulnerable people) and growth in complaints received by the HRC of 33% over two years indicates that, unless resourcing keeps pace with demand year-on-year, the quality of delivery could quickly become challenged. This is particularly important in the context of the pending expansion of the Commissioner's jurisdiction in 2021 to include management of complaints about: breaches of the charter of rights for victims of crime; occupancy disputes; and sexuality and gender conversion practices.

It will be important for the ACT Government resource the HRC in a way that keeps pace with the number of complaints areas now allocated, and the volume and complexity of complaints received, in order to minimise delays, maintain quality and sustain stakeholder trust.

5.2.2. Respondents

Delays were sometimes seen to be imposed – intentionally or unintentionally – by respondent agencies, institutions and other organisations with comparatively large legal and human resources teams, and lengthy procedures.

Performance of government agencies when responding to complaints drew particular comment from a range of stakeholders. They were seen to fail too often to uphold their own 'model litigant' policy in HRC conciliation, for example by: failing to meet deadlines for the provision of information; continually postponing meetings; and drawing early and often from legal resources perceived as far greater to those of most complainants.

Over-all, stakeholders sought for the HRC to have the authority and willingness to actively address respondents' delays, in order to honour complainants' commitment to the conciliation process and afford them the respect they deserved. One stakeholder expressed suspicion as to the independence of the HRC from government.

Recommendations

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.

5.3. Resolution and outcomes

Satisfaction with the complaints process and successful conciliation was mostly achieved for clients who primarily sought validation of their experiences and apology from the respondent.

Those who sought policy or practice changes to prevent their experiences being repeated for others were more likely to be frustrated, for example by the rolling impacts of delays throughout investigation and/or conciliation (as staff involved in initial incidents may have moved on, and relevant policies, programs or practice guidance may have changed in the intervening years).

External stakeholders who worked closely with vulnerable client groups felt that some clients went into the conciliation process with unrealistic expectations of outcomes, including compensation and/or organisational reform. This relates to a consistent issue raised about Commission generally and the complaints process, that people want the Commission to have more power and capacity to: require organisations to participate in a complaints process; enforce changes to government or organisational policy or practice; and to hold respondents to account for those changes on an ongoing basis. A few stakeholders routinely recommend community legal services to potential complainants rather than the HRC's complaints process.

Through this review, stakeholders sought more effective communication from the HRC on:

- what people can expect to happen from the time that they lodge a complaint, including risks and limitations
- the impartial nature of the HRC's role and how to access support and advocacy services
- the range of likely outcomes complainants might expect – in general terms – from investigation and conciliation
- risks and limitations of the conciliation process
- alternatives to the HRC complaints process, and options available to those for whom conciliation is not successful or not the desired outcome.

The Australian Lawyers for Human Rights submission observes:

Despite the relative accessibility of the HRC's complaint handling function, many people are unable to navigate these processes or achieve just outcomes without the advice and/or assistance of a lawyer. ALHR submits that greater funding for community legal services is needed to advise and assist clients through these complaint processes, to further improve the services delivered by the HRC.

The ACTCOSS submission suggests:

Improving communication and information could improve the percentage of eligible cases submitted to the Commission.

The HRC has a range of communication products and processes in place. The issue is not the quality of these from the perspective of a desktop review, but the fact that a significant

proportion of stakeholders and clients report that the existing approaches are not adequately preparing and informing people to make appropriate choices with realistic expectations. It may be that only by engaging closely with past and present clients and relevant community advocates will the HRC be able to develop communication or process solutions which are more effective for their client groups.

We recognise that there are limits to what the HRC can appropriately advise complainants and respondents, and that at times the complaints process is the best or only option available to people and thus provides an important service in challenging contexts. It is also important to note that the Commissioner cannot refuse to accept a complaint even if they expect that another option may be better for the complainant.

Recommendations

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
 - iv. other options for them to pursue beyond the functions of the HRC
 - b. Inform prospective complainants' decision-making on whether the complaints process is best suited to their situation and objectives
 - c. 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.

5.4. Breaches of the Human Rights Act

Stakeholders, particularly those in legal services, sought legislative reform to allow the Commission to directly receive and investigate complaints about breaches of the *Human Rights Act (2004)*. Currently a person must take the litigious and costly path of pursuing a human rights breach that is not in scope of the HRC complaints process (for example, discrimination perpetrated by an individual rather than a service) through the Supreme Court. Stakeholders saw value in directing these matters through the HRC complaints process as a way to provide people with an alternative to litigation and to improve the Commission's line of sight on broad issues and trends in human rights protection in the ACT community. This matter warrants Government consideration through a more detailed exploration than this review is commissioned to provide.

Findings as to the Terms of Reference

- The consolidation of the complaints function under one Commissioner has strengthened complaints service delivery as many complaints relate to more than one jurisdiction (eg. health and disability).

- The consolidation of the complaints function under one Commissioner has strengthened the functioning of the Commission as a whole, adding to the patterns of connection across different teams and functions.
- The complaints function delivers sound value for government and non-government services, as well as complainants.
- While complaint handling is largely efficient, fair and effective, the increase in jurisdictions and volume of complaints means resources and issues such as timeliness and engagement of respondent organisations should be monitored.
- While most organisational stakeholders are satisfied with the overall quality of the complaints process, strategies to improve the effectiveness of up-front communication would benefit many complainants and respondents.

6. Service Delivery

Terms of Reference

3. Service delivery:

- a) improving the experience and service provided to users of rights protection services for both the PTG and HRC.

This chapter focusses on the Human Rights Commission. The PTG's service delivery is addressed in Chapter 9.

The ACT Human Rights Commission protects and promotes the human rights and welfare of people in the ACT by a range of oversight, advocacy, advice, awareness raising and intervention functions which have a human rights focus. The HRC's main functions involving delivery of services directly to clients are victims support, witness intermediary services, complaint handling and individual advocacy. Involvement in Supreme Court proceedings (as necessary), systemic advocacy and community education functions also have elements of client and community engagement.

The *Client Services Charter 2020-2022* (the Charter), published under s18B of the Human Rights Commission Act, explains what clients can expect from the HRC, how they provide services and how to offer feedback to help improve services. The Charter outlines four service commitments to clients who may access the HRC, guided by the principles of respect, collaboration, integrity, accessibility and independence:

1. Complaint handling
2. Advocacy
3. Victims services and
4. Education and training.

Stakeholders generally spoke highly of the HRC's service delivery standards. The integration of services within the one Commission achieved through the 2016 reforms was seen as a considerable strength and it is evident that a proportion of people are able to make use of various combinations of services through the complaints, Public Advocate and Victims of Crime teams which can assist deal with immediate and longer term needs appropriately. As outlined elsewhere, service usage has grown strongly year on year indicating consumer awareness of, and confidence in, the services is also growing. Consumer satisfaction data, service access and stakeholder feedback is all consistent with a high quality of services and user experiences in complex fields.

On the basis of four years' experience, most stakeholders observed that the 2016 reforms had strengthened the ability of Victims of Crime services to gain good outcomes for their clients through integration with the HRC, and improved its ability to advocate systemically. A small number of stakeholders were concerned about decreased visibility of the Commissioner and services but most observed the opposite. The strong growth in service access suggests visibility for clients is not a barrier.

The Australian Lawyers for Human Rights submission notes:

bringing the services of the Public Advocate and Victims of Crime Commissioner into the ACT Human Rights Commission has been beneficial for individuals reliant on these services. The most obvious benefit has been the ability of individuals to more easily access and be directed to the correct service, without first needing an in-depth knowledge of which organisation may be able to assist them. It has also had the benefit of increased referrals and collaboration between these services.

The service provision of the Victims of Crime Commissioner and staff was described as an example of good practice in outreach, support and engagement with the community and sector agencies. High quality service delivery has been achieved in the context of significant growth in the number of clients. The number of applications for Financial Assistance has grown at about 14% for each of the past two years, while the number of clients registered for case coordination has grown at about 30% each year for the same two years. Meanwhile, the percentage of client referrals responded to within five days has increased from 89% in 2016/17 to 99% in 2019/20. Client and stakeholder trust in any service is derived from the quality of its response hence it is important recurrent resourcing keep pace with demand.

The Children and Young People's Commissioner and Public Advocate has diverse service delivery functions that include consultation, advocacy, and representation of individuals in courts and tribunals. These are delivered alongside considerable oversight responsibilities including the review of compliance documents that, by law, must be provided as part of the PA's statutory oversight of child protection, mental health and forensic mental health systems. Stakeholder concerns regarding the current arrangements related primarily to individual advocacy (section 6.3 below).

Many stakeholders confirmed the appropriateness of the offices of Public Advocate and Children and Young People Commissioner being held by the one person given the synergies between the two roles – although these were not universally understood. As noted elsewhere, a number of stakeholders wished for the Children and Young People Commissioner role to have more prominence and exercise greater leadership and were concerned that the Public Advocate's oversight and service delivery responsibilities impaired this. It may be that in the future it will appropriate to separate public advocacy for adults from this role in order to give the PACYPC a clear and unambiguous focus on children and young people given the strategic value of intervening early and the nature of the service systems involved.

Service delivery in complaint handling is explored in the previous chapter.

Accessibility and responsiveness were highlighted by stakeholders as the key factors contributing to positive service provision and service user experiences. They identified that clients needed to be able to find and engage with the HRC, usually in a period of vulnerability, and maintain that engagement until an outcome was achieved.

While stakeholders had examples of positive practice in these areas and were generally

impressed with Commissioners' commitment to inclusive and dedicated service provision, experiences of clients and partnering services provided insight into some access barriers. These are outlined below.

6.1. Experiences of clients

Clients of the HRC's services spoke of experiences where they had sought information regarding their rights and what options were available to them to progress a matter. The service users consulted for this review mostly spoke of their experiences regarding complaint handling and individual and systemic advocacy for vulnerable groups - such as children and young people in care. Government and non-government organisations, including those who work with victims of crime, similarly had greater concerns regarding complaints handling and advocacy, in the context of an overall level of trust and respect for the HRC's work. This focus is not suggestive of the HRC's actual client volumes. The Victims of Crime Commissioner in particular has a large team which delivers the HRC's largest volume of services. The feedback received on this Commissioner's advocacy and service delivery was consistent and overwhelmingly positive. Service providers with contact with victims of crime reported that bringing the Victims of Crime Commissioner into the HRC had strengthened the team's ability to deliver well for clients and enhanced its status and reputation in the community. The interview process invited stakeholders to comment on the full range of services and input was obtained for all services, so stakeholders' focus on complaints and advocacy is in itself of significance.

Clients observed that ease of access was dependent on a number of individual factors:

- knowledge of which matters were 'in scope' for the HRC
- access to technology to find information or make contact with the HRC
- ability to navigate the information provided on the HRC website, or verbally by the HRC or another community organisation
- support needs related to literacy, language, disability or other access barriers.

Among clients there was limited knowledge of the advocacy, education and training services available through the HRC. Stakeholders acknowledged these areas as important to raising awareness of not just the HRC and its respective Commissioners, but of broader human rights and laws that protect people. They identified a particular need to access advocacy, community education and training services for vulnerable groups such as: the elderly; people with a disability; children and young people; Aboriginal and Torres Strait Islander people; people with impaired decision making and LGBTQIA+ people.

6.2. Groups most vulnerable to access barriers

External stakeholders more broadly (including service providers and stakeholders with direct experience as clients) reported that groups most at risk of experiencing access barriers to Commission services were:

- Aboriginal and Torres Strait Islander people

- people from culturally and linguistically diverse backgrounds
- LGBTQIA+ people
- people with a disability, and
- people in detention.

For these groups in particular, stakeholders sought improvements related to:

- diversity of Commission staff, to reflect the community
- staff language and cultural literacy resources
- skill in working with people with disability and impaired decision making.

Ongoing evaluation and review related to the HRC's visibility and access can help identify its strengths and weaknesses in this area and provide a basis for reducing barriers for its most at-risk client groups.

Outreach, information sessions, targeted communications and a social media presence were seen to be the best way to reach individuals and groups in the community to raise the knowledge and awareness of HRC services and to improve accessibility.

The employment of a Multicultural Liaison Officer within the Victims of Crime team, out of its internal resources, has been of benefit. If possible, it would be preferable to resource and position such roles as a corporate function, as in reality this and the Aboriginal Liaison roles have improved access and cultural safety across the whole Commission.

6.2.1. Engagement with Aboriginal and Torres Strait Islander communities

The HRC's engagement with Aboriginal and Torres Strait Islander Communities is guided by its *Cultural Safety Charter* (2019) which prioritises:

1. Protection of cultural rights, and the right to self-identity including cultural identity.
2. Providing a welcoming space for Aboriginal and Torres Strait Islander clients.
3. Engaging with trust and respect.
4. Providing safe, strengths-based services.

The HRC has also developed an *Aboriginal and Torres Strait Islander Community Engagement Plan* to provide detailed guidance for staff and expectations for clients on how the HRC will work with Aboriginal and Torres Strait Islander communities.

Aboriginal Liaison Officers in the Victims of Crime Commissioner's team and Corporate team are highly regarded by a range of stakeholders. They are seen to successfully provide crucial support and cultural safety to Aboriginal and Torres Strait Islander clients of Victims of Crime services and to the HRC as a whole. They are also considered to be invaluable for strengthening the HRC's ties with Aboriginal and Torres Strait Islander communities and leading its outreach engagement strategies with those communities.

6.3. Individual advocacy services

Several stakeholders believed the Public Advocate needs to be more present in ACAT's mental health matters in order to provide advocacy for people who may become subject to a mental health order. A few stakeholders saw a need for mandatory representation in these processes – whether by public advocacy, community advocacy or community legal services - given the significant impact of mental health orders on a person's life and rights.

Currently the Public Advocate's mental health and forensic advocacy team of two people reviews relevant documentation – receiving more than 7000 mental health documents last year relating to 1,233 consumers – including to identify matters where it may need to attend the Tribunal or provide written advice to ACAT. The Public Advocate also invites ACAT to contact it regarding matters where the Tribunal believes Public Advocate attendance would be beneficial. The Advocate only becomes involved where they believe advocacy is required to protect people's rights and is not present for all mental health proceedings in ACAT. This is to avoid being present for matters where the Advocate would add little value to proceedings and to instead direct public resources to where most useful. The Advocate prioritises matters on the information available to them.

The Public Advocate sees mental health proceedings in ACAT as part of its core business and acknowledges there may well be matters where their input would be useful but resources and other responsibilities prevent involvement. Stakeholders report that sometimes the mental health team simply does not have capacity to respond to additional matters, and indicate that this is a risk to the sound protection of people's rights in the ACT. The number of people for whom the Public Advocate has provided direct advocacy has decreased from 733 in 2016/17 to 493 in 2019/20 (or by 33%), reflecting the increased amount of compliance documentation the team deal with and the increased complexity of individual matters noted previously. This reinforces stakeholder concerns regarding the adequate resourcing of the PACYPC. Funding for two additional positions was provided during 2019/20.

The Government needs to determine the appropriate level of independent advocacy required for mental health matters before the ACAT. It may be useful for the Public Advocate to seek advice from stakeholders and the ACAT on examples of matters where the Advocate's presence would have been of value – for example retrospectively over a three-month period – and then assess the scale of this as an issue and who may have a role in addressing the gap. The Advocate would then be in a position to address the issue with key stakeholders.

The above indicates the importance of the ACT Government ensuring that the HRC's services are resourced to keep pace with demand and complexity, including Public Advocacy and Victims of Crimes services. A broader, more intersectional access issue raised in consultations was the gap in services for people requiring individual advocacy in relation to guardianship. Stakeholders reported a lack of clarity for both staff and clients in community-based services on:

- the extent to which the PTG should be providing advocacy with clients, to inform its decision making
- when to refer PTG clients or other clients with impaired decision-making capacity to the Public Advocate, or another arm of the HRC, for support when issues arise
- the degree to which other community organisations should provide individual advocacy support for clients subject to a guardianship order.

Stakeholders saw this as an issue arising from the separation of the Public Advocate and Public Guardian services in 2016, as following this split neither service has identified a consistent role for themselves in providing advocacy services to clients of the PTG. This has created uncertainty and a gap in services which community-based case management and advocacy services are not always able to fill. This is addressed in greater detail in Chapter 8.

Recommendations

13. The HRC 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.
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 Government.

Findings as to the Terms of Reference

- The integration of services within the one Commission achieved through the 2016 reforms has largely benefited people who access those services – in terms of service quality and user experience.
- The HRC holds itself to a high standard for delivery of services to its clients.
- There is a significant level of satisfaction with the HRC's service delivery which is generally of a high quality, with some areas for improvement also observed.
- Access barriers remain for some vulnerable groups of clients. A continuous improvement approach will assist the HRC innovate and improve in this area.

7. Visibility and accessibility

Terms of Reference

5. Visibility in community:

- a) Ensuring that each independent statutory office holder is appropriately visible and accessible to the community and able to perform their functions within the new protection of rights framework.

This chapter focusses on the Human Rights Commission. The PTG's visibility and accessibility is addressed in Chapter 10.

Stakeholders generally valued that the four statutory office holders were very accessible and responsive and highly engaged around strategic issues. Some wished to see specific Commissioners more visible in public dialogue but appreciated the limitations on their time and resources and multiple responsibilities. Where community members we consulted had contact with Commissioners they appreciated their genuine engagement.

Most stakeholders, especially organisational stakeholders, understood the statutory office holders to be able to perform their functions within the 2016 protection of rights framework. Visibility and accessibility of office holders is connected to the visibility and accessibility of the wider organisation and stakeholders had a number of reflections on this – as below.

7.1. Understanding of the HRC's role

Consultations revealed varying levels of knowledge of the role of the HRC and each Commissioner. The complaint handling function was the most visible in consultations, and most readily identified by community stakeholders.

Stakeholders reported that the broader community has limited knowledge and awareness of each statutory office holder's role and services. Community members representing some of the HRC's target cohorts had some knowledge of Commissioners' roles and functions, gained from verbal and written information provided by services and institutions including health services, hospitals, residential facilities, community organisations or legal offices.

At the same time, each Commissioner was recognised by external stakeholders – particularly those representing community-based organisations – as being highly active in their area of work and present in community settings. These organisations represent important referral channels to the HRC at times when people need it. However, increased community education to 'unpack' various human rights functions remains an important activity for the HRC. Individual community members were less likely to recognise individual Commissioners despite reporting HRC presence at community events.

Even well informed stakeholders reported some levels of confusion as to the different roles of each Commissioner and how they interact. External stakeholders generally wanted to know more about the detail of Commissioners' work and how they interact with each other, and to engage with the HRC to build understanding across the community through a range

of suggested strategies. Community organisations and consumer representatives sought increased opportunity to work collaboratively with the HRC on workshops, training and information sessions for their staff and clients.

7.1.1. Outreach

Outreach strategies were highlighted by stakeholders as more effective for reaching highly marginalised or vulnerable communities.

They acknowledged the work the HRC already does in this area, for example in the prison system, through community events and with children and young people in residential out-of-home care. Initiatives such as the HRC's 'Young Thinker' forums were seen as excellent strategies for mutual knowledge building and awareness raising. The HRC has notably increased its community engagement activities since 2016, although currently the pandemic is affecting this.

Stakeholders asked for increased outreach for community education, particularly with Aboriginal and Torres Strait Islander families and communities, and for people with disability. The role of the Aboriginal and Torres Strait Islander Outreach program in improving visibility and accessibility of the Victim Support Scheme was acknowledged by a broad range of stakeholders. Some highlighted that this team had positively impacted the visibility and accessibility of the HRC more broadly as a flow-on effect of their presence and engagement. Similarly, the Multicultural Outreach Program has demonstrated value in increasing the access of diverse communities.

Targeted resources for highly vulnerable groups were also requested, and it was suggested that these could be co-designed with people with lived experience, consumer groups and advocacy organisations. The *Deadly Advice* website which provides targeted legal information for Aboriginal and Torres Strait Islander residents of the ACT was highlighted as a good example of a targeted HRC resource.

The HRC's resources, including the *Client Services Charter 2020-2022* and the *Social Inclusion Plan 2019-2022*, are a strong foundation for development of targeted resources. They outline engagement and service provision standards and clear, plain-English messaging to adapt for specific audiences.

7.1.2. Diverse promotion strategies

The Human Rights Commission have developed a communications strategy that outlines their engagement and communications activities. Through its communication activities, the HRC seeks to:

- raise awareness and understanding of human rights particularly in target audiences, such as with Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse communities, victims of crime, people with disabilities, and children and young people
- raise awareness about Commission services, including:

- how, when and why the public can contact the HRC
- the types of services provided
- what to expect from a service
- publicise local, national and international human rights days and occasions
- contribute meaningful and informed comment to relevant public debates, both responsively and proactively.

Most stakeholders highlighted that Commissioners' accessibility could be improved with a communications and engagement strategy that would support broader promotion of HRC and services across a range of platforms targeting different groups who may have accessibility barriers.

Stakeholders sought increased promotion via traditional and social media of the HRC, and what each Commissioner does and how they may be accessed.

They also sought improved accessibility and content of the HRC website, so that community members can successfully seek further information themselves.

This complements discussions and recommendations made with regard to reducing access barriers for highly vulnerable cohorts above.

The HRC's current resources for strategic communication are a Media and Communications Officer (ASO 6) and a Cultural Advisor and Aboriginal Liaison Officer (ASO 6). These positions, located in the President's team, do not receive specific funding and are both part-time (0.6 FTE). Better resourcing community education and outreach has been prioritised by the HRC through its budget proposals and would enable the HRC to respond effectively to stakeholder requests for an expanded, more diversified communication strategy and strengthened accessibility.

Recommendations

15. The HRC 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 HRC'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 HRC's awareness of community issues.

8. Public Trustee and Guardian

Terms of Reference

4. Public Trustee and Guardian:

- a) Enabling the PTG to deliver a more joined up services for clients with impaired decision-making capacity.
- b) Allowing the expertise of the PTG in management and administration of personal affairs to be applied to assist in facilitating and expediting guardianship administration.
- c) Ensuring the guardianship functions would remain separate within the office of the PTG, with the guardianship management requiring a different focus and skill set.

8.1. Background

As per the Terms of Reference, this review is focussed on the provision of services for people with impaired decision making delivered by the Public Trustee and Guardian.

Where this chapter refers to the office holder we use the term Public Trustee and Guardian. Where this chapter refers to the organisation we use the acronym PTG.

The Public Trustee and Guardian can be appointed by the ACT Civil and Administrative Tribunal (ACAT):

- As Guardian to make personal and health decisions for a person who is found by ACAT to have a decision-making disability, which may include: where and with whom they live; education and training; whether and where they work; consent for medical procedures or other treatment; bringing or continuing legal proceedings
- As Public Trustee for the management of the financial affairs of people, in line with National Standards for Financial Management.

These appointments are rarely voluntary and often made by the ACAT in the context of voluntary and family arrangements having become unsatisfactory or unworkable. Where the PTG is appointed to exercise its functions it may be criticised as taking away people's choice and control. Where it is not appointed it may be criticised for not protecting vulnerable people.

The Public Trustee and Guardian can alternatively be appointed as a person's attorney voluntarily and in advance through an Enduring Power of Attorney. Currently about half of the ACT's population who need someone appointed to manage their financial affairs and/or make decisions are managed by the PTG – the remainder being through formally appointed family members or other existing relationships.

Most people who require the appointment of the PTG as Guardian also require the management of their financial affairs (almost 85%). However, only about half of the people whose financial affairs are under PTG management also require its Guardianship services.

The Guardianship function is delivered by a small team of about eight people (including the Deputy) who generally hold some form of social welfare or humanities degree and are often experienced in the provision of human services. Guardianship is wholly budget

funded. Financial Management is delivered by a team of about 15 people (including the Deputy) who understand and have experience of household budgets, most of whom have more than seven years of valuable experience within the Financial Management Services Unit (FMSU). The FMSU is one part of the wider functions of the Public Trustee, which also includes wills, estates, trusts and finance. Financial Management is partly own-source funded and partly funded as a Community Service Obligation.

The *Guardianship and Management of Property ACT, 1991* (the Guardianship Act) (s.7) requires that for a Guardian to be appointed the ACAT must be satisfied that:

- (a) someone has impaired decision-making ability in relation to a matter relating to the person's health or welfare; and
- (b) while the person has the impaired decision-making ability—
 - (i) there is, or is likely to be, a need for a decision in relation to the matter ...
- (c) if a guardian is not appointed—
 - (i) the person's needs will not be met; or
 - (ii) the person's interests will be significantly adversely affected.

The decision-making principles to be followed by the decision-maker are the following:

- (a) the protected person's wishes, as far as they can be worked out, must be given effect to, unless making the decision in accordance with the wishes is likely to significantly adversely affect the protected person's interests;
- (b) if giving effect to the protected person's wishes is likely to significantly adversely affect the person's interests—the decision-maker must give effect to the protected person's wishes as far as possible without significantly adversely affecting the protected person's interests;
- (c) if the protected person's wishes cannot be given effect to at all—the interests of the protected person must be promoted;
- (d) the protected person's life (including the person's lifestyle) must be interfered with to the smallest extent necessary;
- (e) the protected person must be encouraged to look after himself or herself as far as possible;
- (f) the protected person must be encouraged to live in the general community, and take part in community activities, as far as possible.

Hence, PTG staff described that the Guardianship functions are exercised only where:

- There is evidence of decision making impairment
- There is a decision to be made – and for the time of that decision
- There is a serious risk of adverse consequences if no decision is made.

The Financial Management team work within the same decision making principles.

In line with people's human rights and the Guardianship Act's decision making principles, the PTG Guardianship team look to work with people with the least possible intrusion ("lightest touch") and for the least duration of time. At the time of appointment, and/or where a decision is required, they seek to establish the person's "values, will and

preference” so that, wherever practical, they deliver decisions which align with the person’s wishes.

Also congruent with its human rights framework, the PTG is moving towards a model of supported decision making, rather than the currently legislated substitute decision making. This direction has been explored by the ACT Law Reform Advisory Council and is strongly supported by government and non-government stakeholders, but is yet to be articulated in legislation or strongly reflected in all the decisions of the ACAT. The Government has committed to implementing legislative reform to facilitate supported decision making as part of the Disability Justice Strategy.

8.2. What we heard

At the time of the 2016 reforms there was concern among stakeholders that the bringing together of Financial Management and Guardianship would create risks for protected persons. During this review, stakeholders did not report that these concerns have been realised, and most did not have in-principle concerns regarding the two functions continuing within the one organisation. Partly this is due to the PTG’s appropriate pursuit of a “fierce separation” between the two functions – with the Financial Management and Guardianship units not having access to each other’s records, nor allowing a person’s financial position to affect Guardianship decisions, so that the decision is primarily based in the person’s values, will and preference.

Notwithstanding the above, there has been an effective joining-up of the two functions enabling improved consultation and cross-referral regarding mutual clients. PTG staff report benefits for clients deriving from co-location and:

- Each team having a far better understanding of each other’s roles and key considerations
- Improved communication and collaboration rather than the previous adversarial atmosphere between the two functions
- Strong collaboration at leadership levels
- The ability for each team to readily and informally access each other’s expertise and general advice
- The ability – through recent ICT changes - to know when a client is shared with the other function
- The delivery of joint visits to protected persons
- Coordination of ACAT representation and tracking of matters
- A single Service Agreement for NDIS clients – rather than two.

Further, stakeholders acknowledged that the conjoining of the two functions is a valuable enabler for the move towards supported decision making.

While now mostly comfortable with the reform's structuring of guardianship and financial management within the PTG, key stakeholders see room for more safeguards, including through:

- Sufficient individual advocacy services
- The Public Advocate's oversight of PTG clients' experience of services and systems
- Transparent reporting by the PTG to enable public scrutiny of its service delivery at an organisational level, including through reporting in relation to human rights and consumer rights via annual reports.

The role of Public Advocate may be accessed voluntarily by ACT residents who are experiencing vulnerability, not only people with impaired decision making, so the separation of the Guardian Unit from the Public Advocate and the positioning of the latter in the HRC has clear advantages and was supported by most stakeholders. A few stakeholders recommended re-joining the Public Advocate and guardianship functions in order to assist address the gaps which have emerged since the reforms. While the gaps (discussed under 'service delivery' below) are of concern, the re-structuring of bodies does not seem to be necessary nor sufficient for improving the issues raised.

In some circumstances it is appropriate that there be differences of approach between Guardians and Managers regarding mutual clients. Notwithstanding this, consumer advocates note that, where a person does have both a guardian and financial manager, coordination between these two functions is not always evident, and that information sharing and coordination with external partners – on whom the PTG relies for service delivery - can also be wanting. There is room for the PTG to further explore appropriate means for providing seamless and efficient services to people who are clients of both the guardianship and financial management teams.

In one case we got into contact with the Public Guardian to look at options for a client, and were also liaising with the Trustee. We were questioning why the Trustee and the Public Guardian weren't having these conversations together. Having (an NGO) involved as a third party seemed to make things more confusing and more time consuming. It would have also helped if both of those offices had fully involved (the NGO) as the advocate, and not just provided information to (the NGO) on a 'need to know' basis. It's not a transparent process if nobody's talking to each other, and things tend to go around in circles a lot longer. It's confusing for the client too. (Non-government organisation)

Community advocacy organisations seek greater communication and collaboration from the PTG regarding shared clients, and greater responsiveness to requests for an internal review by the PTG of its decisions and delivery with individual clients. Within the constraints of privacy, consent and duty of care, these are reasonable expectations given these organisations' significant role in the lives of their clients. We understand that information sharing will necessarily be limited by client consents and sometimes by the complexities associated with the family circumstances which necessitated the appointment of a Guardian and/or Financial Manager.

Internal PTG stakeholders noted issues arising from decision making only being delegated to Deputies and no other staff. This can cause delays at times when a decision is required urgently, and decision making is unduly impacted by the availability of just three people. Delegation to other staff would be consistent with other jurisdictions, expedite decision making and reduce vulnerabilities associated with key senior staff being unavailable. Such delegation has been enabled during the current pandemic, although need for it has been reduced by officers not needing to travel for local or inter-state meetings and therefore being more available for decision making. These delegations could be made permanent.

Staff and external stakeholders observed that the differences in culture between the guardianship and financial management teams have decreased over time but remain in need of better alignment. This is particularly in relation to ensuring that financial management decisions are sufficiently informed by human rights considerations, and are made primarily according to the values, will and preference of the person (to the greatest degree possible) – rather than primarily according to “best interests” perspectives.

Working with people with impaired decision making is challenging in many ways for all service providers. The PTG regularly trains its people to strengthen customer service and the management of difficult situations. This will always be a necessary focus for continuing attention.

A significant improvement to the delivery of financial management services would be achieved through the implementation of a suitable customer management ICT platform which steps staff through required processes and better tracks decisions and communications. Managers can have a case load of 60 – 70 clients so reliable and readily accessible tracking would increase efficiency and quality. This may also assist address stakeholder concerns regarding the amount and quality of communication with clients. The PTG is in the midst of continuing development of its ICT systems.

8.3. Findings as to the Terms of Reference

Significant progress has been made since the time of the reforms to achieve well-functioning conjoined teams, including through physical co-location, effective leadership and governance, cultural evolution and ICT improvements. The PTG has laid a sound foundation from which it can further strengthen and refine its operations.

The PTG has effectively implemented the appropriate con-joining of its teams – consistent with maintaining appropriate safeguarding in relation to decision making. The expertise of the Public Trustee and guardianship functions are suitably available to each other and accessed to support guardianship administration and financial management.

Joined-up services also needs to consider the effects of separating guardianship from the Public Advocate. This is canvassed in the below section on service delivery.

The guardianship functions remain clearly separate within the PTG and continue to be staffed by people with different skills and experience to that of the Public Trustee’s other units.

Recommendations

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

9. PTG service delivery and other issues raised

Terms of Reference

3. Service delivery:

- a) improving the experience and service provided to users of rights protection services for both the PTG and HRC.

The review will also consider other issues raised by stakeholders during consultation.

9.1. Gaps in individual advocacy

Prior to the 2016 reforms guardians were much more involved in their client's lives than is the case now, delivering services well beyond the remit of their role. Following the reforms, the PTG thoroughly reviewed the scope of guardianship functions and have focussed the role tightly around decision making. When a decision is to be made about where a person lives, or their care, the PTG consults the person and their carers, and asks organisations with relevant expertise to gather information and present them with options and recommendations from which the Guardian can make a decision.

The PTG frames this approach in terms of

- Keeping to their legislated roles and responsibilities
- Accessing relevant expertise and avoiding just referring people to providers/ options known to PTG
- Ensuring the decision maker function is separate from the development of options through an advocacy function – so the PTG is able to safeguard the process objectively
- Minimising PTG's involvement in people's lives as an agency whose involvement has usually not been invited.

Some stakeholders support this approach for the same reasons, while others described it as follows:

"They appear to want us to do the research and groundwork for them, to inform their Guardianship decisions. We consider that to be part of a Guardian's role. They state that they don't have capacity to provide this level of casework support, but neither does (the NGO). Their referrals have to go to the waiting list for our service." (Non-Government Organisation)

"With the ACT PTG there seems to be a very hands-off approach, to the point that where issues arise under guardianship orders, such as 'should this person work,' or, 'where are they going to live,' they seem to be outsourcing those decisions to us and saying you need to work with the client and find out what is happening and let us know. They tick the box after we have done all the interaction with the client to find out what they want and what the situation is." (Non-Government Organisation)

Some stakeholders, similar to a recent ACAT decision, expect that where a Guardian is appointed the Guardian will also fulfil the role of advocate rather than add to the number of entities involved in the person's life by appointing a Public Advocate. Other stakeholders

point to the importance of the Guardian's safeguarding role not being clouded by involvement in identifying options.

Some argue that the obligations for the PTG to make decisions and to understand the wishes of the person are closely inter-connected with exploring options with that person. They questioned whether it is always appropriate for external bodies to be primarily responsible for this ground work – if, for example, specialist health knowledge is not required or a suitable entity to conduct the ground work is not already part of the person's support network. Interaction with the person during the development of options may better inform decision making and better expose the decision maker to the values, will and preferences of the person. Other methods for safeguarding could be pursued.

These stakeholders are not seeking a return to the previous over-involvement of Guardians, nor for them to fulfil a case management function. They perceive value for the protected person in the Guardian being more involved in the development of options around a decision with the person. The PTG itself notes risks in involving service providers in decision making processes where they may have an interest in subsequently delivering services for the person.

Stakeholders describe very limited contact occurring between both the guardianship and financial management teams and the protected persons they work with. While this is consistent with a lightest touch and for least duration approach, it leaves some clients wishing for more communication and engagement around the decision making which affects their lives. This is distinct from the sometimes unreasonable expectations or needs people with impaired decision making can have around particular issues or times of stress - which can place PTG staff in very difficult situations.

There is a need for the PTG to clarify with community stakeholders their respective roles, responsibilities, level of involvement and mutual expectations.

Similarly, there is a lack of agreement between the PTG and Public Advocate as to each other's advocacy responsibilities for people who have a PTG Guardian appointed. The PTG notes that its own Act makes no reference to an advocacy function – beyond expressing the known wishes of the person - and sometimes refers protected persons to the Public Advocate.

In relation to public advocacy, the Public Advocate's perspective is that where a person has a PTG Guardian appointed and the PTG (or another organisation) makes a referral for Public Advocacy services that this is most often unnecessary as the PTG is the responsible lead agency. The PACYPC Decision Making Framework states:⁴

9.3 Public Trustee and Guardian matters

If the Public Trustee and Guardian (PTG) are appointed as guardian or financial manager for a person, the PACYPC recognises they have decision-making authority in relation to

⁴ PACYPC Decision Making Framework, 2020

the matters for which they are appointed, and they will be the lead agency for that person. The PACYPC does not routinely provide advocacy for PTG clients.

While the PACYPC is available to be consulted by the PTG on matters relating to those for whom they are appointed, the PACYPC would only engage directly in matters where the PTG indicates they have a conflict of interest or where there are other complexities or high risk circumstances that indicate the PACYPC should be involved. Requests for PACYPC assistance from the PTG are subject to the assessment and review processes of the relevant portfolio area of the PACYPC (children and young people, disability/complex needs, mental health/forensic, and family violence/personal protection).

All matters referred by the PTG (where the PTG are appointed as guardian or financial manager) are subject to a decision by the Senior Advocate prior to acceptance. In more complex matters, the Senior Advocate may refer the matter to the Deputy Public Advocate for their advice and/or for a decision.

The Public Advocate positions itself as an advocate of last resort where existing systems are failing to deliver for a person, there are high levels of risk and/or complexity, and statutory advocacy is required. Community advocacy is often able to meet people's needs where there is less complexity and lower risk.

The Public Advocate and PTG have not yet arrived at common understanding of each other's roles in relation to people with a PTG Guardian appointed and this is affecting people's access to advocacy services.

9.1.1. Analysis

This review endorses the move towards supported decision making and notes the importance of legislative alignment and supportive practice within the ACAT for effective implementation.

While the PTG's reasons for its tight focus on decision making have merit and are accepted by some stakeholders, it is clear that there is not clarity nor agreement among all central stakeholders as to what the PTG's role is and ought to be. We recognise that this review comes at a time of continuing evolution of the guardianship function, so while that lack of unanimity is to be expected it remains an important area for attention.

If the PTG is to continue to cleanly delineate its role around 'decisions' the design and delivery of this change would be better achieved through the active involvement of key partners on whom its effectiveness relies – hospital social work units, community advocacy providers, the Public Advocate, disability support providers and others. Numerous stakeholders observed a shortage of capacity for individual community advocacy within the ACT to do this kind of work with people with impaired decision making in a timely way. This shortage was seen as being more severe for people not able to access the NDIS (eg. due to age), while within the NDIS there are gaps in relation to case coordination and case management.

We acknowledge that there is some value in the PTG being free to fulfil a safeguarding function without being involved in the minutia of exploring options for services and

supports within very complex and dynamic systems – especially in the context of constrained resources within the PTG and some resources being available in the community for those activities. Hence, to the degree external agencies are to be responsible for developing options then those organisations ought also to be informed by comprehensive, transparent and timely communication and collaboration by the PTG for that purpose, with appropriate consents and safeguards. Organisations delivering case coordination functions and/or community advocacy for protected persons have higher interaction with the person than the Guardian and so are valuable partners in the Guardian’s work. The quality of guardianship delivery would benefit from pro-active and open two-way communication with such partners.

Given the PTG’s relationship with the person, its expertise, and its role as decision maker, it does seem that the PTG ought to act as advocate for the rights of the person as needed – as the person themselves would if they had decision making capacity – and according to the values, will and preference of the person. We note, however, that advocacy is not a function specified in the legislation, and that the JACS discussion paper prior to the reforms envisaged that the merging of guardianship functions with the Public Trustee⁵:

allows the Public Advocate to more robustly advocate for the rights of clients at risk of neglect, abuse, exploitation or oversight throughout the guardianship and management process.

Strengthened practice guidance and consideration of the customers’ rights of protected persons would give Guardianship practitioners clearer expectations for their service delivery and a clearer basis for managing performance. The PTG led the development of the National Standards for Guardians and Managers and has developed a practice manual for Financial Management. It plans to similarly provide a practice manual for guardianship. The articulation of key competencies for guardians would be of benefit.

Each member of the small Guardianship team can have 40 – 45 clients who they will work with at different levels of intensity over time as decisions are required. Most stakeholders observed that the team seems to be under-resourced for delivering services of a suitable quality. Any additional expectations regarding the sourcing of options with a person (as discussed above) would have resourcing implications. Equally, if community advocacy organisations and/or the Public Advocate are to deliver this work the resourcing requirements for this need consideration, albeit through different mechanisms.

9.2. Private guardians, managers and attorneys

On request, the PTG provides advice to private individuals who have been appointed by ACAT or via an Enduring Power of Attorney to manage people’s finances or make decisions. To better avoid the failure of private arrangements and subsequent appointment of the PTG there remains a need for pro-active community education and capacity building

⁵ Designing a Model for the Effective Protection of Human Rights: A Discussion Paper, JACS, April 2015

for people who are financial managers or decision makers for people with impaired decision making capacity.

Given the PTG's expertise and the absence of others to play the role, some stakeholders wished to see the PTG play a larger role in educating and building the capacity of private guardians, managers and attorneys in order to prevent poor practice, abuse, neglect or exploitation. For oversight they recommended the mandatory registering of Enduring Powers of Attorney in the ACT.

The *Public Trustee and Guardian Act* provides for the PTG to:

investigate complaints and allegations about the actions of a guardian or manager or a person acting or purporting to act under an enduring power of attorney;

The PTG's view is that this function historically sat with the Public Advocate so that any investigation was conducted independently of the Guardian - who may be appointed to replace the existing decision maker. The PTG believes this function ought to have been removed from its legislation at the time of the reform and notes that the Public Advocate is already empowered to advocate for people with a disability and investigate matters "in relation to which the public advocate has a function" (Human Rights Commission Act, S.27B).

It is possible the 2016 reform missed the opportunity to transport the responsibility and maintain that independence, or alternatively that the PTG's expertise makes it suitable to fulfil this function despite the potential for a conflict of interest. The Public Advocate has not taken on this responsibility without change to the legislation but nor does the PTG accept it as its proper function. Nor is there consistency in other jurisdictions as to the allocation of this responsibility. Neither the PTG nor the Public Advocate report that they have the resources to adequately address this function and this is supported by their current performance data and the observations of stakeholders. Recently, a broader jurisdiction to receive complaints regarding abuse, neglect or exploitation of vulnerable people over 60 years of age or people with a disability has been added to the functions of the Discrimination, Health Services, Disability and Community Services Commissioner.

Clarity regarding this investigative function needs to be determined, alongside considerations of resourcing and any legislative change. The Government needs to consider whether it wishes the PTG to exercise this function – given its existing expertise and the opportunity to thereby integrate this level of safeguarding for people with guardians or financial managers, or whether the alignment with the Public Advocate's functions and independence of the PTG are more strategic considerations. Joint advice to Government from the PTG and Public Advocate would assist determine a sound and sustainable resolution to this matter. If the Government wishes the PTG to have holistic responsibility for supporting the quality of guardianship and financial management in the ACT (including private) then it makes sense for the PTG to retain this investigative

function. Otherwise, the relevant legislation should be amended to specifically empower the Public Advocate in this regard.

9.3. PTG's role in the ACT Civil and Administrative Tribunal

While some stakeholders had concerns in 2016 that the joining of Financial Management and Guardianship functions would risk the PTG having financial incentives to accept appointment as Guardian and Financial Manager this has not eventuated. Rather, the PTG has demonstrated a willingness to resist, seek revocation or resign appointments, in line with its legislation and commitment to human rights principles, even where the ACT Civil and Administrative Tribunal (ACAT) is inclined to make an appointment, or make it more extensively than the PTG assesses as necessary.

The PTG's careful consideration of people's circumstances is to be applauded as the appointment of a guardian or financial manager is not something to be done where other appropriate options can be identified.

The *Public Trustee and Guardian Act* (19B.1.a) provides for the PTG to have the function of:

representing people with a disability at hearings before the ACAT in relation to guardianship applications;

The joining of Financial Management and Guardianship functions has enabled the PTG to provide a single liaison person to ACAT hearings. Where the PTG attends the Tribunal it acts as a 'friend of the court' (*amicus curiae*), due to its experience and understanding of relevant law and practice. This assists the Tribunal, who hear a wide range of matters, deliver appropriate orders in this specialised field. ACAT can direct the PTG to represent a person or provide a report to it regarding a matter.

The ACAT allocates two days each week to hear applications and reviews regarding guardianship and financial management matters. Where the applicant has nominated that the PTG be appointed under the Act, the PTG makes written submissions to ACAT, and only attends where useful and feasible. The ACAT has agreed it does not require submissions from the PTG where private individuals have consented to be appointed. In other Australian jurisdictions practice varies - the PTG equivalent attending all matters in some and not in others. The PTG reviews annual statements from private financial managers, and major financial decisions require PTG approval.

Stakeholders expressed two concerns:

- An absence of safeguarding for private guardianship and financial management matters in ACAT for people with a disability. Previously the ACAT benefited from the Guardian's review of proposed and existing arrangements. This is now seen as a gap in the protection of rights for vulnerable people in the ACT, leaving people without expert safeguarding and the ACAT without the PTG's expert input.

- Decreased involvement of the PTG in mental health hearings and other matters, where a Guardian has been appointed.

Until recently the PTG was not advised of mental health listings regarding its clients but now attends to represent the protected person's views if they express opposition to an application for an order. This addresses the latter concern.

The PTG advises that attendance at all Guardianship and financial management ACAT matters is not necessary and not sustainable within its resourcing. It has agreed this current approach with the ACAT, who remain able to request PTG attendance or reporting wherever the Tribunal anticipates their input would be useful. This may be a sufficient approach and judicious use of public resources but requires some vigilance as to the quality of resultant private guardianship and financial management decisions and outcomes. At times when there are new Tribunal members appointed there may be a greater need for expert input.

By function (advocacy), the Public Advocate is the most appropriate body for addressing the issue of safeguarding for private guardianship and financial management arrangements. The Public Advocate is suited to a safeguarding function in the ACAT as an objective entity who only ever acts as an advocate of the person, in contrast to the PTG who is the potential alternative guardian or financial manager and may at times (if appointed) need to make decisions at odds with the person's immediate wishes. However, the Public Advocate does not hold the same guardianship expertise as the PTG who equally apply a human rights paradigm to matters before the ACAT, and as the alternative guardian/ manager has an interest in seeing appropriate decision making occur.

9.4. Advocacy for people under guardianship or financial management

Concerns regarding the PTG's role in ACAT, as advocate for people subject to Guardianship hearings, and in investigations (section 9.2 above), represent disadvantages which in part arise from the splitting of the Public Advocate and Guardianship functions. The concerns illustrate wider questions of:

- whether it is better (and the legislative intent) that the PTG, with its expertise, be actively involved in supporting the quality of all guardianship and financial management arrangements in the ACT (including private), or
- the degree to which that responsibility should be shared with the Public Advocate due to its individual advocacy and oversight functions, or
- in what proportion of matters is the ACAT suitably positioned to make its determinations without the advice of either body in private guardianship and financial management matters?

From here, some agreement between the three bodies is required as to their respective roles and expectations in matters where

- a. there are potentially inappropriate applications to the ACAT and no guardianship or financial management arrangement seems warranted
- b. it is likely that a financial manager or guardian needs to be appointed and the questions include: is the nominated person appropriate, and what constitutes the least restrictive approach
- c. it is suspected the existing private guardian or financial manager may be acting inappropriately and either investigation is required and/or input provided to the ACAT on what good decision making practice would look like in this instance and whether existing arrangements ought to continue or be changed.

The Public Trustee and Guardian, Public Advocate and ACAT have sound communication and engagement with each other. The Public Trustee and Guardian and Public Advocate are well placed to provide joint advice to the Government on these matters, however suitable solutions will have resourcing implications.

As guardianship evolves towards supported decision making, the ACAT will benefit from consistent input that assists it assess the appropriateness of proposed private guardianship and financial management arrangements, and apply the least restrictive orders specific only to the areas requiring independent decision making or management.

9.5. Evaluation, feedback and complaints

Individuals may complain about the PTG to the Ombudsman or the Human Rights Commission. Since the reforms the number of complaints received by those bodies, and the number warranting investigation or leading to a finding of administrative deficiency have decreased notably, and this in the context of increasing opposition to the practice of substitute decision making (as opposed to *supported* decision making). Those complaints that do emerge tend to relate to PTG's communication with people and explanation of its decisions and actions, rather than the substance of those actions. This is commendable.

The PTG has a Feedback tab at the top of its website's Home Page and a clear invitation for people to provide positive and negative feedback. It encourages complaints and provides a link to a clear Complaints policy, with some assurances regarding privacy and responsiveness.

Stakeholders observed the following in relation to complaints:

- That individuals with impaired decision making who have the PTG appointed as guardian or financial manager have a keen sense of their vulnerability to decisions by the PTG, and of a power imbalance. The website and policy therefore need to provide avenues for anonymous feedback (recognising this makes it impractical to resolve the issue with the person) and provide strong assurances regarding the privacy of the complaint within the organisation and protection of their rights. The current information goes a long way towards this but could be strengthened.
- That the Public Trustee and Guardian personally handles complaints, which can be a positive in terms of the attention and response a matter receives, but can also be

a discouragement to making a complaint if the person or organisation is uncertain about the reception their complaint will receive – for the reasons outlined above.

The Public Trustee and Guardian has hitherto been personally active in handling complaints in order to model a culture that is not defensive and rather values feedback as a means to improvement. The Public Trustee and Guardian has been able to use complaints to improve policy, systems and practice, and has sought to be active on behalf of the complainant, ensuring there is good communication back to them.

While this has been useful during consolidation following the reforms it would be timely to design and implement a policy and procedure that more strongly aligns with best complaints practice and reserves the role of the office holder to providing oversight of the complaints process and as an option for escalation.

The PTG maintains functional relationships at senior levels with the HRC, including through the Public Advocate who sits on the Official Visitors Board chaired by the Public Trustee and Guardian. Key non-government stakeholders described strong respect and trust in the senior leadership of the PTG but did not describe active engagement whereby there could be ongoing constructive dialogue regarding shared clients or issues requiring attention. The PTG would benefit from effective formal and informal channels for feedback from external stakeholders whose engagement with the PTG's clientele enable them to provide useful perspectives.

The PTG would also benefit from a strategic approach to evaluating the quality of its service delivery, practice, and governance (including policies, procedures and practice resources). Consultation with internal and external stakeholders regarding the Terms of Reference have raised useful perspectives and these could be accessed through a robust evaluation and continuous improvement approach.

9.6. Other PTG matters

Several community members and organisations were concerned about the fees levied for the provision of financial management services. While the Minister sets the maximum fees the PTG often waives these either in part or full for people of limited financial means. This impacts on the PTG's ability to effect cost recovery but is an appropriate response to people's varying needs. There may be a need for greater stakeholder awareness of this option and practice.

We note that the Community Service Obligation (CSO) funding to the PTG has not been structurally reviewed for twenty years and that revenue from PTG's contestable commercial services currently subsidises the cost of PTG services to people with limited financial means. Some stakeholders advocated for the PTG to be free from obligations to recover financial services costs at all from vulnerable people. The current gap between income and costs demonstrates a need for the Government to revisit the CSO funding.

Stakeholders report that a single historic instance of fraud within the PTG remains in the community consciousness – especially among older Canberrans. Less appreciated is the

fact that fraud or abuse occurs more frequently among private arrangements - which lack the oversight and safeguards applied to PTG services - and that restitution is much more likely to be accessible if committed within a public body. Community education is still needed to ensure people who need the PTG's services are willing to access them.

Recommendations

19. The PTG and Government continue the transition to a supported decision making framework including through the timely amendment of legislation.
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.
21. The PTG develop accessible practice guidance for the quality delivery of guardianship functions.
22. The Government seek joint advice from the PTG and Public Advocate regarding the allocation of responsibilities to pro-actively support the quality of private guardianship and management, including the investigative function, community capacity building and adequate representation of people subject to guardianship hearings at ACAT. This should address any associated legislative change and resourcing requirements
23. The PTG revisit its policies, practices and website regarding complaints and feedback and better align them to best practice.
24. The PTG actively engage with key stakeholders for feedback and continuous improvement, and support this with a strategic approach to ongoing evaluation.

10. Visibility in community: PTG

Terms of Reference

5. Visibility in community:

- b) Ensuring that each independent statutory office holder is appropriately visible and accessible to the community and able to perform their functions within the new protection of rights framework.

Stakeholders were satisfied with their connection to the senior levels of the PTG. The Public Trustee and Guardian engages in a number of ways with community organisations including through information presentations. The Public Trustee and Guardian participates in various oversight coordination processes and on relevant working groups, maintains a range of strategic relationships, and is responsive to complaints.

The PTG website was not well regarded among stakeholders who observed it was difficult to navigate and did not provide some of the key information relevant to people with impaired decision making, or not in an accessible format. Rather than provide links to PTG webpages other organisations sometimes sought to address these shortcomings with their own content regarding PTG matters which is not a satisfactory or ultimately reliable arrangement.

Findings

- The office holder is appropriately visible and accessible to the community.
- The Public Trustee and Guardian is able to perform their functions within the 2016 protection of rights framework.
- Continuing public education regarding the PTG's functions is required.

Recommendations

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

11. Our Booris, Our Way Review

Terms of Reference

In addition, the review will also consider and consult stakeholders and the community in relation to the recommendation from the interim report on the *Our Booris Our Way* review to establish an Aboriginal and Torres Strait Islander Children's Commissioner.

The *Our Booris, Our Way* final report (Dec 2019) makes the following recommendation:

“Three jurisdictions, Queensland, Victoria and South Australia have appointed specialist Aboriginal and Torres Strait Islander Children Commissioners. While their roles are primarily framed as review and advocacy roles, the *Our Booris, Our Way* Steering Committee recommend that the ACT appoint an Aboriginal and Torres Strait Islander Children's Commissioner with these and additional capacity to specifically intervene and engage in child protection processes.

The Commissioner, on an ongoing basis, would provide monitoring, advice and advocacy on systemic and individual cases. The Commissioner would be able to advise and influence government on a broad spectrum of issues that impact our children across both government and non-government services including for example, education, health, housing, child protection and provide independent advice on issues of culture and equity. They would also have the specific ability to engage as a party to case conferences and provide alternative pathways to resolution than court orders.

It is the desire of the community for the Commissioner to be more engaged and connected to the community through current Aboriginal Community Controlled Organisations (ACCO) and the future Aboriginal Child Care Association that would distinguish it from other jurisdictions' singular rights-based framework.”

The recommendation was first put forward in the *Our Booris, Our Way Interim Report* of August 2018 when oversight via a Children's Commissioner was the first priority in a short list. The Government initially noted the recommendation in May 2019 and then agreed to it in principle in July 2020, with the recommendation under consideration while this review consulted stakeholders and the community.

This Review

By the time this review commenced there was a sense of community urgency around this recommendation. The referral of the recommendation to be considered as part of this wider review of rights protection in the ACT, and the impact of the Covid-19 pandemic, have resulted in unanticipated delays. Recently NSW has appointed an Aboriginal Deputy Children's Guardian in response to that jurisdiction's *Family is Culture* report, published in October 2019.

Hence our Review's scope and approach has been:

1. To engage widely with community – including people not usually consulted - to ensure there is wide and strong community support for this proposal
2. That being so, to then ensure this review process adds value to progressing the recommendation by using our process to

- a. Raise community awareness of the recommendation
- b. Explore the detail and complexities of delivering on this recommendation and out of those discussions develop some options for initial implementation and/or further community consultation.

We sought input from stakeholders on:

1. General views of the recommendation
2. What considerations need to be explored in the process of progressing this proposal (function, structure, governance, delivery, consultation - including in the context of existing oversight bodies)
3. What key steps would the Government need to take in order to progress the recommendation, and any other comments.

After this review completed its stakeholder consultations, the issue of an Aboriginal and Torres Strait Islander Commissioner was the subject of ACT election campaign promises by both the Labor and Greens parties.

11.1. Approach

Insight consulted with the *Our Booris, Our Way* Implementation Oversight Committee and Aboriginal and Torres Strait Islander organisations, community members and service users in relation to the recommendation and to obtain their input to the broader review.

A community intermediary approach was taken to utilise current Aboriginal organisations' contacts within the community to assist connection with staff and clients as well as to provide guidance on the appropriate methods of engagement. This ensured the review reached community members who are not usually consulted in these sorts of processes and did so appropriately.

A series of questions were provided to ascertain community respondents' views on the Commissioner's potential role, functions and governance arrangements. All of the perspectives captured provided a detailed set of considerations from a community and grassroots level for ACT Government to utilise in progressing the recommendation.

Lynnice Church, a member of Insight's review team, is of Ngunnawal, Wiradjuri and Kamilaroi ancestry and active within the local Aboriginal community. She has previously served on the ACT Aboriginal and Torres Strait Islander Elected Body and is a well-known local artist. Lynnice and Ross Beaton (Insight's Director) conducted all stakeholder consultations for this review.

11.1.1. Stakeholders

We engaged with a diverse representation of the ACT Aboriginal and Torres Strait Islander community including:

- The *Our Booris, Our Way* Implementation Oversight Committee
- Aboriginal community organisations and staff

- Community members and clients (Elders, kinship carers, people with lived experience, young people including those with an out of home care experience and parents)
- The Office for Aboriginal and Torres Strait Islander Affairs
- Aboriginal staff within the Human Rights Commission and other agencies.

A total of 43 Aboriginal and Torres Strait Islander people participated in the review.

We also:

- Facilitated a discussion involving the four HRC Commissioners and two representatives of the Our Booris, Our Way Committee to explore options for shaping the proposed Commissioner's role
- Consulted the Principal Commissioner and Commissioner for Aboriginal Children and Young People who make up the Victorian Commission for Children and Young People on how the two roles function together in that jurisdiction.

All non-Indigenous stakeholders involved in this review regarding the HRC and PTG were also consulted regarding the *Our Booris, Our Way* recommendation. Most indicated support for the recommendation on the proviso that it had broad support within the ACT Aboriginal and Torres Strait Islander community. Some raised concerns regarding the practicalities of having two Commissioners in the ACT covering the same systems, services and issues, but only a couple did not believe that such a position and focus was warranted. Government stakeholders and non-government organisations generally saw significant value in having an Aboriginal and Torres Strait Islander Commissioner. Some stakeholders did not offer views as they believed this was a matter outside their scope or which primarily should be shaped by the views of Aboriginal and Torres Strait Islander people.

11.2. What we heard from community

There was strong support for the establishment of an Aboriginal and Torres Strait Islander Children's Commissioner from Aboriginal and Torres Strait Islander community members and organisations. This was seen as a priority in response to a number of issues impacting Aboriginal and Torres Strait Islander children, young people and families in the ACT such as:

- the increasing number of Aboriginal and Torres Strait Islander children, young people and families involved with the child protection system
- the number of Aboriginal and Torres Strait Islander children being removed and placed in out of home care
- the lack of early support and culturally safe services for families to engage with to keep children safe at home with family
- over representation of Aboriginal and Torres Strait Islander people in the criminal and youth justice system

- Aboriginal and Torres Strait Islander community organisations being under-resourced while experiencing increased demand
- a lack in representation for Aboriginal and Torres Strait Islander people in existing oversight bodies at a Commissioner level, and at other senior levels across the ACT Government and community sector to direct systemic reform.

While there were mixed levels of confidence in existing rights protection bodies, this did not vary the strong support among community stakeholders for an Indigenous body. People raised the following reasons for establishing an Aboriginal and Torres Strait Islander Children's Commissioner:

- The need for a specific and culturally informed focus on Aboriginal and Torres Strait Islander children, young people and families given the above issues
- The need for people to experience cultural safety as they access rights protection services, and common experiences of distrust or disappointment with many services
- The importance of ensuring there is self-determination for Aboriginal and Torres Strait Islander people, and for this to be evident in the leadership and delivery of rights protection and oversight functions.

Community stakeholders wanted to see the Commissioner be very involved in individual and systemic advocacy and have the power to make changes. Not all community expectations align with existing models of rights protection or are able to be implemented through a single body without a conflict between functions. However, the vast majority of powers sought by the community is embodied in the functions of the current Public Advocate and Children and Young People Commissioner (PACYPC).

11.2.1. Role Scope

In terms of what the role was responsible for there was support for the focus on Aboriginal and Torres Strait Islander children, young people and their families with a holistic remit across the areas of:

- Child protection
- Justice including youth justice and social justice
- Education
- Health and community services
- Cultural rights
- Self-determination.

The responses provided by participants to support the broader scope were:

“we need advocacy for the whole family” - *Aboriginal Community Controlled Organisation*

“The role needs to be for Aboriginal and Torres Strait Islander families”

“A child in the context of their family as defined by them (family)” - *Carer*

“we need to be holistic when it comes to Aboriginal and Torres Strait Islander families, there are lots of things in our lives that can be happening that can be impacting us which can lead to contact with justice and child protection and poor health and education” - *Aboriginal Community Controlled Organisation*

“we understand the importance of a focus on children, but they are a part of a family and a community so you can't separate them” - *Aboriginal staff member*

“Our issues are across lots of areas, we need someone who can actually stand up for us and advocate when our rights are ignored, but can also tell government what's not working and change it” - *Community member*

“broader remit and capacity to move things for families”

11.2.2. Functions and Powers

When asked about the powers/functions such a commissioner should have they included the following responses:

- Independent
- Decision making and review of decisions by government and agencies such as child protection
- Individual advocacy
- Outreach
- Direct recommendations to government and Ministers
- Systemic advocacy and reform
- Powers to intervene in cases for individuals
- Oversight and accountability mechanism back to community in relation to the protection of peoples cultural and human rights as Aboriginal and Torres Strait Islander people
- Regulatory role as it related to the compliance of Aboriginal and Torres Strait Islander placement principle and cultural plans for children and young people.

Throughout discussions there were strong views that the role should not be limited to that of the current Human Rights Commission, and that the role would need to be tailored with powers that may extend beyond current Commissioners' scope. Comments such as:

“we don't want a toothless tiger”

“we want it to have real powers and abilities to do its role effectively

“needs to be different to address the areas that are important”

“not just a cookie cutter role- we don't want the same as other jurisdictions it needs to be relevant to the ACT context”

People questioned if one role would be enough and suggested a number of roles focussing on key areas to provide a cultural perspective. Concerns were raised that one

role could not be “the be all and end all” otherwise it could risk becoming overloaded and ineffective.

11.2.3. Structure

Overall, community respondents wanted the role to be independent but have a connection with the Human Rights Commission in order to leverage from each other and coordinate activities.

There were recommendations that the HRC, *Our Booris, Our Way* committee and ACT Government work with the community to provide information that would allow for a better understanding of the current structure in HRC and the roles of existing commissioners as part of a process of co-designing the Children’s Commissioner role. This would assist the Aboriginal and Torres Strait Islander community to consider the best options for where such a position would sit, including a model that would support it to undertake its functions.

11.2.4. Governance

Aboriginal community members and organisations raised the need for governance arrangements to be developed with Aboriginal Community Controlled Organisations, community members and people with lived experience, with a clear accountability and connection mechanism back to community organisations and members. This two-way communication and understanding aspect was seen to be fundamental to ensure the HRC’s governance works to support self-determination and buy-in from the community. Community accountability does not equate to the ability to direct or manage the Commissioner, and the nature of community connection, governance and accountability needs to be further explored with the community.

Current models of governance regarding Aboriginal and Torres Strait Islander matters within the ACT Government were not seen as effective for enabling community led priorities, voice and engagement.

Overall the community sought a governance model that had representation from:

- Aboriginal Community Controlled Organisations
- community members and people with lived experience as service users
- sector representation and professionals
- government
- community legal stakeholders.

People wanted government to work with them to develop a governance model which reflects the ways they work and which acknowledges the diversity and cultural protocols of communities.

11.2.5. Characteristics of the Person/s

Community provided feedback in relation to the desired characteristics of a person for the role and how they ought to be recruited. Participants spoke of important skills, experience

and knowledge required for the role and the importance of a person having legitimacy within the broader Aboriginal and Torres Strait Islander community and organisations. This included an expectation that they would already be involved in the community, have positive relationships and an understanding of community needs and aspirations, and an ability to walk between “both worlds”. Validation of a person’s legitimacy is achieved through community members being able to speak to a person’s character, relationships and work within the community. They are then recognised and accepted as a person of trust and integrity with high community support behind them.

11.2.6. How do the community want to be engaged in progressing the recommendation?

Participants made it clear that community organisations and members need to lead the design of the role, functions, governance and recruitment - in genuine partnership with government. This included being engaged in ways that work for them such as:

- Community led engagement - using the sector to conduct its own forums and community consultations
- Ensuring diversity of representation from Aboriginal Community Controlled Organisations, other Aboriginal bodies, Aboriginal and Torres Strait Islander children, young people, families and individuals
- Utilising methods such as community forums, individual interviews, social media, surveys and written submissions.

All participants sought to work directly with the ACT Government, Human Rights Commission, *Our Booris Our Way* committee, and Aboriginal and Torres Strait Islander Community Controlled Organisations to draft options to be considered by the community with opportunities to feedback preferences and voting.

There is consensus amongst the Aboriginal Community Controlled Organisations and members of the community for the recommendation to be actioned as a matter of priority and for ACT Government and for the *Our Booris, Our Way* committee to work with them across all stages of its development and implementation.

11.3. Findings

There is strong community support for self-determined oversight of services and systems relevant to Aboriginal and Torres Strait Islander child and family outcomes – given the very poor outcomes currently experienced. This support was evident even among people who were not engaged in the *Our Booris, Our Way* process or who were not supportive of it.

Community stakeholders agree with the Committee that the oversight needs to

- 1) Focus on children, young people (with culturally flexible definition) and their families
- 2) Be holistic regarding child outcomes –covering health, education, family, justice and community contexts.

With some variation, community stakeholders generally agree with the Committee that the appropriate focus at the moment is children and families – not a wider ‘social justice’ or similar remit. This is partly due to the specific challenges facing children and families and the importance of breaking cycles of disadvantage, and partly because there is fear of the Commissioner being overwhelmed with the multitude of significant matters and losing a clear focus on child outcomes. There is open-ness in the community to this scope evolving over time. Grounding the role in a focus on children is a well-supported starting point.

Community stakeholders generally wish to see the Commissioner have more “teeth” than they perceive the current HRC Commissioners as having, especially in relation to complaints. On exploration, it seems that the current Public Advocate and Children and Young People Commissioner largely has the desired range of powers (except for a complaints function) but the PACYPC is not as actively involved in Care and Protection and Justice processes as is envisaged for this Commissioner. As well as complaints, some of the additional powers desired seem to be determinative powers and the power to direct Directorates – powers which would give rise to a number of legislative and operational issues – and could be further explored through a co-design process. Primarily, however, the case for the new Commissioner lies in the role’s specificity to Aboriginal and Torres Strait Islander children and families, and the importance of this function being exercised by Aboriginal and Torres Strait Islander people, not for them.

The high level approach outlined by the *Our Booris, Our Way* committee and by stakeholders to this review is consistent with the Paris Principles and with the model proposed for a national Commissioner for Aboriginal and Torres Strait Islander Children and Young People in:

- Being entrenched in law
- Having a human rights mandate
- Cooperating with other human rights bodies
- Ensuring pluralism
- Having clear, transparent and participatory selection and appointment of the Commissioner
- Having independence from Government
- Having adequate funding, and
- Reporting publicly⁶.

Representatives from ACT Directorates were generally strongly supportive of the need for more effective oversight for Aboriginal and Torres Strait Islander people – including with greater self-determination and community engagement. Respondents did see a range of

⁶ SNAICC and King & Wood Mallesons, (Dec 2020), *Options Paper: Models for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People*, pp. 4-5, 75-78.

potential complexities, and wanted to see clarity of scope and coordination with other oversight bodies.

With a few exceptions, neither government nor community respondents saw the HRC as unusually deficient in engaging with Aboriginal and Torres Strait Islander people, nor neglectful of the need for oversight. Many community members reported not understanding the functions of the HRC, some reported positive experiences while others reported disappointment with specific processes. Respondents simply identified a need now for self-determined oversight, with strong cultural safety and community relationships.

There is obvious potential for this role to be duplicative of the PACYPC. In Victoria the challenge of resolving this potential has been addressed through the collaborative practice of the Principal Commissioner and the Commissioner for Aboriginal Children and Young People – although they would recommend clearer legislative definition. In the ACT, for the sake of clear self-determination and independence, we are proposing the Commissioner be independent of the Human Rights Commission but work in close collaboration with its President and Commissioners. Similarly, SNAICC has recently reconsidered its model for a national Commissioner for Aboriginal and Torres Strait Islander Children and Young People, having originally recommended the position sit within the Australian Human Rights Commission. The latest national options paper instead recommends establishment via standalone legislation.

The Children's Commissioner and the PACYPC will need to plan and coordinate together, and be highly collaborative. Similarly, there will need to be strong operational relationships between the Children's Commissioner and the Discrimination, Health Services, Disability and Community Services Commissioner. For the ACT Government and community, the compelling rationale for establishing an Aboriginal and Torres Strait Islander Children's Commissioner lies not in the creation of new powers or functions, but in:

- Respecting and strengthening self-determination through responding to the *Our Booris Our Way* process and by establishing a rights protection body with Indigenous leadership and community connections
- Establishing a rights protection body that, in the context of the poor outcomes currently experienced, has a unique focus on Aboriginal and Torres Strait Islander children and families and a thoroughly culturally informed perspective, with high engagement with the local community
- Creating a body capable of stimulating and developing solutions tailored to the experiences and strengths of Aboriginal and Torres Strait Islander children, young people and families
- Increasing cultural safety for Aboriginal and Torres Strait Islander people wishing to access rights protection and oversight services
- Creating a foundation for further developing cultural safety and insight across other rights protection and oversight bodies.

These reasons are reinforced by those identified in the SNAICC options paper for a national Commissioner for Aboriginal and Torres Strait Islander Children and Young People.⁷

All respondents stressed that there would be high expectations and a large volume of complex matters brought to the Commissioner so, in order not to be set up to fail, they would need:

- An appropriately sized team
- Clear delineation of what is in their scope and effective means for referring matters elsewhere
- Effective links to community governance and support.

Having an Aboriginal and Torres Strait Islander Commissioner would provide an opportunity, if leveraged well, to lift all oversight in the ACT for Aboriginal and Torres Strait Islander people through its collaboration with the HRC, Ombudsman, Human Services Registrar, Inspector of Correctional Services, Official Visitors, etc. In Victoria, the team of the Commissioner for Aboriginal Children and Young People is called on by other bodies to provide input, and that team also resources the work of the wider Commission.

While the *Our Booris, Our Way* Committee has made a clear recommendation, they and most other stakeholders wish to see Government engage closely with community in the final design of the Commissioner role - in terms of its powers, functions, organisational and legislative context, the kind of person who should be sought to fill the role, and the selection process itself, including the nature of community involvement.

The Community Services Directorate (CSD), with Insight Consulting Australia, recently managed a co-production process with Aboriginal and Torres Strait Islander people with lived experience. There are many national and international articulations of co-production but this example provides a template developed within the ACT. Co-production is essentially about involving the intended beneficiaries of a service or function – people with relevant lived experience - in the design, delivery and evaluation of those functions equally with relevant professionals. It recognises the expertise that service users, their families and communities offer to each stage of the process of development, delivery and review. In this case, because the Commissioner needs to have clear independence, it is useful to focus community engagement around co-design of the role, and then on ongoing engagement. The principles the ACT Aboriginal and Torres Strait Islander Co-Design Network articulated were:

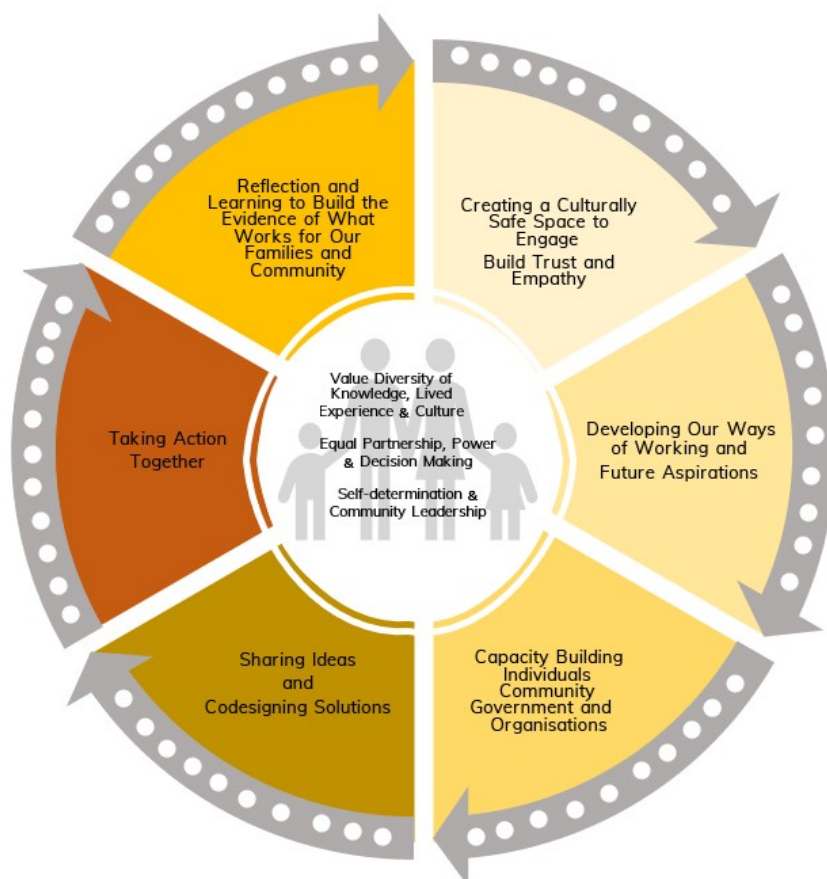
- Self determination
- Equal voice, partnership and decision making
- Lived experience, service user and client perspectives are valued and recognised

⁷ SNAICC and King & Wood Mallesons, (Dec 2020), *Options Paper: Models for a National Commissioner for Aboriginal and Torres Strait Islander Children and Young People*, p3.

- Culturally safe
- Aboriginal and Torres Strait Islander trauma informed
- Advocacy
- Community and Individual Leadership
- Capacity building
- Co-production
- Relationships of trust.

These principles informed the below Network model (diagram courtesy of CSD):

Model of the Aboriginal and Torres Strait Islander Codesign Network



Operationalising this approach for this purpose could take many forms. Because of the complexities involved in designing the role we would suggest consideration of a two layered approach:

- 1) Broad community engagement to maximise awareness of the process and gain broad input, so that there is widespread and sustained understanding and support for the role, with realistic expectations. This should feed into and hear back from the following group
- 2) Focussed co-design work led by Aboriginal community organisations in

partnership with JACS, engaging relevant community professionals, organisations, community members with sound community networks, and community members with appropriate lived experience to consider each of the areas addressed through our recommendations.

While there will be budget and timeline constraints for the co-design process, it is important that community organisations take a lead in designing and delivering the co-design process - in genuine partnership with JACS - as the formal link between JACS and the wider community.

This approach enables most community members to choose to be engaged without onerous time commitments, while still enabling a consistent set of community stakeholders to get into the detail and complexities of the design process with JACS and relevant experts. Community members who are involved in the detailed group process, but not as part of their employment, are usually paid in recognition of their time, expertise and costs.

For example, within our recommendations, some of the specific areas for attention through this process are:

- How to reconcile the community priority for a complaints function with the proper exercise of advocacy and oversight functions
 - Will the Commissioner's capacity for individual and systemic advocacy, in tandem with the existing HRC complaints mechanisms, better meet community expectations
 - Understanding the advantages of the existing combination of complaints jurisdictions, how can this best be accessed and used to serve the needs of the Aboriginal and Torres Strait Islander community (if appropriate)
- How to maintain the robust independence of the Commissioner (who will have oversight of key Aboriginal organisations and units) while also maintaining appropriate community connection and community 'accountability'
- In selecting the Commissioner, what is the appropriate balance of local community and systems connection/expertise and wider expertise/experience in human rights, oversight, community engagement, and systemic and individual advocacy.

All co-design processes have some inherent parameters, which in this case are likely to include:

- Respectful, inclusive and culturally safe processes – which in themselves will require time
- The resources and timeline available for the co-production process itself
- The budget ball-park for the Commissioner and team
- The resultant design needing to be constitutionally and legislatively valid
- Coherence with the United Nations Principles Relating to the Status of National Human Rights Institutions (Paris Principles)

- Connection to Cabinet, Legislative and Budget processes and timelines.

Recognising both a sense of community urgency around this work and the realities of the budget and legislative processes involved, this co-design work needs to commence quickly in order to enable the selection of a Commissioner within a timeframe that maintains community trust and engagement – preferably within twelve months of this report being formally received. The below recommendations from community input provide a sound community-informed starting point for the co-design work.

Recommendations

26. The process to establish an Aboriginal and Torres Strait Islander Children's Commissioner from here ought to involve:
 - b. 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.
 - c. 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:
 - iii. 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
 - iv. Co-design be used to develop the new role, functions, governance and recruitment process.
 - d. The co-design work commence quickly in order to enable the selection of a Commissioner within twelve months of the formal receipt of this report or as soon as practical while also delivering sufficient quality of co-design, budget and legislative processes.
 - e. Publication of a timeline for establishment that, along with allocated resources, gives stakeholders confidence in the process.

Commissioner's organisational context

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.
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 PACYPC and the Discrimination, Health Services, Disability and Community Services Commissioner.

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.

The above is consistent with the *Our Booris, Our Way* Committee's preference for independence from the HRC so that the new Commissioner

- a. Is not accountable to President
- b. Is not dependent through the HRC for resources
- c. Has appropriate community involvement in its governance and for accountability back to community

It also aligns with wider community preferences for the role's independence and clear self-determination.

Whatever the context, it will be essential for the Public Advocate and Children & Young People Commissioner, the Discrimination, Health Services, Disability and Community Services Commissioner and the Aboriginal and Torres Strait Islander Children's Commissioner (and teams) to plan their work together, collaborate and coordinate closely. If at all possible, physical co-location with the HRC should be achieved. Other Aboriginal and Torres Strait Islander Commissioners report significant value gained by having the close support of existing Commissioners and teams. They also report that it takes time and effort to establish the desired collaborative relationships, expectations and operations. The four HRC Commissioners have demonstrated a significant capacity to work collaboratively and a strong commitment to supporting the new Commissioner when established. We anticipate the HRC's active support will be essential.

Alternatives to this arrangement were discussed with stakeholders during this Review were but were not as supported (subject to future co-design), and included being

- a. Located within the HRC, perhaps increasing the ease of which the two Commissioner and Public Advocate functions can be coordinated, and making it easier to draw on the Complaints team
- b. Stand alone as an Officer of the Assembly with maximum statutory independence.

While the above represents our recommendations regarding administrative context, we note that community respondents were open to other ways of achieving the desired level of self-determination, independence and resourcing.

The HRC is currently administratively supported via the Justice and Community Safety Directorate and this context seems preferable to stakeholders rather than other Directorates given JACS' legal expertise and responsibility for other rights protection bodies.

The nature of the Commissioner's connection to community – including in terms of support, communication and informal accountability - is important and needs further exploration through community co-design. In order to retain clear independence, we recommend strong continual engagement by the Commissioner with key fora and organisations but no specific community governance structure be established pending further consultation. Ultimately the community have said they want independent oversight able to advocate clearly for children, young people and their families so there will be value in the Commissioner being demonstrably independent of existing bodies and organisations.

Commissioner powers and functions

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.

While this is largely consistent with the expectations of the *Our Booris, Our Way* Committee, we note that both the Committee and wider community expressed a strong expectation that the new body will be able to accept complaints, and that this would assist the Commissioner's connection with community. However, a complaints function (which maintains neutrality) would likely come into conflict with advocacy functions (which take the side of the person), and there are advantages in keeping all ACT Complaints under a single Commissioner – with synergies across various complaints jurisdictions and with other teams in the HRC. It is also likely that the Public Advocate functions of the new Commissioner will be able to address some of the relevant community expectations.

Keeping the new Commissioner's remit relatively free of Complaints would avoid their team being swamped in complaints matters rather than free to focus on the systemic and individual advocacy envisaged. The recommended approach would be for the new Commissioner to act as a culturally safe and well networked link between the community and the HRC's complaints processes. The Aboriginal and Torres Strait Islander Children's

Commissioner will have expertise and community connections to offer the Discrimination, Health Services, Disability and Community Services Commissioner's teams. This function will require some resourcing within the new Commissioner's team and in the Discrimination, Health Services, Disability and Community Services Commissioner's teams. The co-design process should be used to explore the appropriate approach.

It is important the new Commissioner be able to become involved in compliance and regulatory matters as needed. The bulk of this routine work may well continue to be delivered by the existing PACYPC, with the new Commissioner able to select areas for their focus while also adding expertise to the PACYPC's work.

Alternatives/variations to the above recommended functions (subject to further community co-design) include:

- a. Not incorporating Compliance/ Regulatory functions within the new team and relying on the HRC for this work – with the ability to provide input, be consulted by the HRC and refer matters to the HRC
- b. Additional powers (to be defined through community co-design).

In articulating the remit of the Aboriginal and Torres Strait Islander Children's Commissioner it will be important to consider how to maintain a strong focus on improving universal services and systems and early support (often called early intervention) in the ACT – as articulated in the *Our Booris, Our Way* process and community input to this review. Such a focus would assist Aboriginal and Torres Strait Islander children avoid the Out of Home Care (OOHC) and justice systems. Formal oversight can readily be absorbed into a focus on intensive and late interventions as these most affect human rights, have higher and tighter compliance/ regulatory expectations and have greater directly observable impact on individual lives. However, such a focus would be at odds with community priorities, the *Our Booris, Our Way* report, and research evidence regarding the improvement of child and family outcomes.

The Commissioner will need to raise the Commissioner's profile across Aboriginal and Torres Strait Islander communities, and improve community members' confidence in knowing when and how to seek the assistance of the HRC.

It remains important that Aboriginal and Torres Strait Islander people have choice in their access to Human Rights protection so the existing Commissioners, including the Public Advocate and Children and Young People Commissioner, need to continue to respond to Aboriginal and Torres Strait Islander matters and work pro-actively with community – in coordination with the new Commissioner.

The Commissioner

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, including the

dimensions of:

- Being locally respected and connected
- Being actively involved in the community
- Being qualified with relevant formal and/or cultural qualifications
- Having the skills and capability to effect change
- Having the ability to work across community and government, with existing respect and relationships.

It will be important for there to be community representation and/or leadership of the recruitment process.

12. Conclusion

On the basis of extensive stakeholder feedback, we are confident that each independent office holder is able to perform their functions within the 2016 protection of rights framework. This is partly due to the functionality of the architecture of those reforms, and partly due to the professionalism and capabilities of the office holders and their teams who make it work.

The main reform-related issues have in part arisen due to the separation of Guardianship from Public Advocate functions, and in part from the ongoing evolution of each function. However, that separation seems to be strategic and appropriate. Rather the delivery of both functions, and of community based services, needs to respond to the issues raised regarding individual advocacy and safeguarding in the ACAT.

Both the Human Rights Commission and the Public Trustee and Guardian benefit from capable leadership, effective governance, fierce independence, and a commitment to collaborative operation across other office holders, other oversight bodies and wider stakeholders. These are critical success factors for the ACT's protection of rights framework, and ought to continue to be a central consideration in the selection of future office holders.

The overall picture of both organisations is positive and their strengths ought to be recognised, maintained and built upon. It is important to note that each office holder delivers their functions and services in complex fields so they will frequently be criticised, and a proportion of those criticisms will be warranted. Strategic approaches to evaluation and stakeholder engagement are required to ensure each organisation delivers as intended and keeps improving the rights protection of Canberrans.

The self determination of Aboriginal and Torres Strait Islander people in the ACT ought to include oversight and advocacy. The current experience of Aboriginal and Torres Strait Islander people in terms of outcomes, services and systems warrants a culturally informed, culturally safe and accessible oversight body. The *Our Booris, Our Way* review and this review have brought together community input which can be used to shape the future of rights protection in the ACT.

Appendix 1: Stakeholders

Table: Stakeholders interviewed

Interviewees and/or focus group participants	No. of People
ACT Government	
Justice and Community Safety Directorate	2
ACT Health, Canberra Health Services	6
ACT Ombudsman	2
Education Directorate	2
Inspector of Correctional Services	1
Official Visitors	4
Transport Canberra and City Services	1
Community Services Directorate	
Office for Aboriginal and Torres Strait Islander Affairs (OATSIA)	9
Housing	2
Strategic Policy and Service Design	3
Quality, Complaints and Regulation	2
Family Safety	3
Office of the Senior Practitioner	1
HRC and PTG	
Human Rights Commissioners	4
Human Rights Commission staff	15
Public Trustee and Guardian	1
Public Trustee and Guardian Deputies and staff	7
Aboriginal and Torres Strait Islander stakeholder groups	
Gugan Gulwan	12
Our Booris Our Way Implementation Oversight Committee	3
Yeddung Mura Aboriginal Corporation	3
Community Service Providers and Advocacy and Representative Groups	
ACT Council of Social Services (ACTCOSS)	3
ADACAS	2
Advocacy for Inclusion	3
Barnardos/ ACT Together	1
Canberra Community Law	5
Canberra Rape Crisis Centre	1
Council On The Ageing (COTA)	1
CREATE Foundation	2

Health Care Consumer Association (HCCA)	8
Legal Aid ACT	3
Women's Legal Centre	2
YWCA	1
Service Users	
Aboriginal and Torres Strait Islander community members	12
Health Care Consumer Association (HCCA)	7
Advocacy for Inclusion	1
A Gender Agenda	8
CREATE Foundation	7
Others	
Victorian Commissioners for Children and Young People	2
TOTAL	154

Written submissions

1. ACT Council of Social Services
2. Australian Lawyers for Human Rights
3. Meridian
4. ACT Policing
5. ACT Correctional Services
6. Resident family
7. Resident
8. Resident

Relevant existing documents were also provided by other organisations as background but were not authored for this review.

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- ACT Intermediary Program – 2019-20, infographic
- Annual Reports, 2017, 2018, 2019 and 2020 (draft)
- *Client Services Charter*, 2016 and iterations accessed online during 2020
- Comments on our draft report, Dec 2020
- *Communications Strategy*, 2018 and 2020
- *Cultural Safety Charter*, 2020
- Deadly Advice website, <https://deadlyadvice.hrc.act.gov.au>
- *Governance and Corporate Support Protocol*, 2017
- HRC website – multiple pages
- International Human Rights Day Community Forum, participant survey format and results, Dec 2018
- *Operations Protocol*, 2019
- Organisational Chart
- *Public Advocate and Children and Young People Commissioner Decision Making Framework*, Mar 2020
- *Public Advocate and Children and Young People Commissioner Oversight Framework*, Mar 2020
- Stakeholder list
- Strategic and Accountability Indicators
- *Strategic Plan 2016 – 2020*
- Victim Support ACT Staff List, 10 August 2020

PTG documents

- PTG website – multiple pages
- Factsheet: *Our Complaints Policy*, June 2016
- *Statement of Performance* for year Ending 30 June 2020
- Organisation Chart, July 2020
- Comments on our draft report, Nov 2020

Other sources

Legislation

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- *ACT Discrimination Act 1991*, effective April 2020
- *ACT Domestic Violence Agencies Act 1986*, effective 1 May 2017

- *ACT Family Violence Act 2016*, effective April 2020
- *ACT Guardianship and Management of Properties Act 1991*, effective 16 Nov 2017
- *ACT Human Rights Act 2004*, effective 14 May 2020
- *ACT Human Rights Commission Act 2005*, effective 1 July 2019 and 28 Aug 2019
- *ACT Justice and Community Safety Directorate, Annual Reports 2016/17, 2019/20*
- *ACT Mental Health (Secure Facilities) Act 2016*, effective Dec 2019
- *ACT Mental Health Act 2015*, effective April 2020
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- *ACT Protection of Rights (Services) Legislation Amendment Act 2016*, effective 1 April 2016
- *ACT Public Trustee and Guardian Act 1985*, effective Aug 2020
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